BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.06.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.5382 and 7526 of 2016
and
W.M.P.(MD).Nos.4832 and 6313 of 2016

W.P.(MD).No.5382 of 2016:

S.Nagarajan ... Petitioner

Vs.

1.The Commissioner,
Thuvakudi Municipality,
Trichy District.

2.Sudha,
Commissioner,
Thuvakudi Municipality,
Trichy District.

Now working at:

Bhavani Municipality,
Bhavani,
Erode District. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the first respondent in Na.Ka.No.A1/315/2014 dated 19.02.2016 and quash the same.

For Petitioner	:	Mr.K.Guhan
For R-1	:	Mr.Siddharthan
For R-2	:	Mr.G.Karthik, For M/s.Lajapathi Roy and Associates.

W.P.(MD).No.7526 of 2016:

T.Karthikeyan ... Petitioner

Vs.

1.The Commissioner,
Thuvakudi Municipality,
Trichy District.

2.Sudha,
Commissioner,
Thuvakudi Municipality,
Trichy District.

Now working at:

Bhavani Municipality,
Bhavani,
Erode District. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the first respondent in Na.Ka.No.A1/315/2014 dated 19.02.2016, quash the same as illegal and arbitrary and direct the first respondent to repay the amount recovered from the salary of the petitioner in February 2016 and March 2016.

For Petitioner	:	Mr.R.Paranjothi
For R-1	:	Mr.Siddharthan
For R-2	:	Mr.G.Karthik, For M/s.Lajapathi Roy and Associates.

COMMON ORDER

The issue raised in both the Writ Petitions are one and the same. Hence, a common order is passed.

2. The Writ Petitions are filed to quash the order dated 19.02.2016 with a consequential direct to the first respondent to repay the amount recovered from the salary of the petitioners in February 2016 and March 2016. Through the impugned order, the respondents have directed to recover the loss created by the petitioners.

3. The petitioner Nagarajan in W.P.(MD)No.7526 of 2016 is working as Revenue Inspector. The petitioner Karthikeyan in W.P.(MD)No.5382 of 2016 is working as Revenue Assistant. The contention of the petitioner Nagarajan is that he was transferred to the first respondent office only on 04.07.2013, but the respondents have initiated action against the petitioner for not collecting taxes from the year 2005 onwards, thereby not achieved the target fixed by the respondents for collecting profession taxes, property taxes from some of the Petrol Bunk, Hospitals, Dispensaries, Marriage Hall. The contention of the petitioner is that the collection of taxes was pending from 2005 onwards and the earlier incumbent has failed to collect takes from the year 2005 and the same has been fastened on the petitioner. The petitioner is not liable to collect taxes from the year 2005 onwards when the petitioner has joined duty only in the year 2013, hence the recovery of Rs.5,09,010/- is not in accordance to law. However, this contention is partially acceptable, even though the petitioner is transferred in the year 2013, if there are any arrears of taxes, the petitioner is liable to initiate action. Similarly, the other petitioner is also aggrieved by the same issue.

4. In the present petition, the learned counsel appearing for the petitioners relied on a memo issued to the Manager of the Municipality dated 17.03.2015 by the Municipal Administration and Water Supply Department citing that the Municipality has not recovered the taxes for the assessment year 2014-2015. This indicates every year the Municipality has not achieved the target. From this, it is evident that the petitioners alone are not liable. The other persons like the Manager are also liable for not collecting the taxes. And the head of the institution is Municipal Commissioner of Municipal and he is also liable for the same, since the overall supervisory power is vested with the Commissioner of Municipality.

5. However, the learned counsel appearing for the Municipality as well as the Commissioner of Municipality who has been averred in the personal capacity submitted that repeatedly the petitioners were directed to achieve their targets and there were several communications. Inspite of several communications, the petitioners have not initiated action against the defaulters, for which the respondents relied on the duty of Revenue Inspectors, where it is clearly stated that to check and verify the monthly and half yearly list of all taxes and to deduct omission from the list and verification of particulars given

in the list. Since the petitioners have not verified the same, action has been initiated. This contention of the respondents is refuted by the petitioners by stating that if the earlier incumbent had not taken any action, the same cannot be fastened on the petitioners. Moreover, the Manager is also liable (as stated supra) and the respondents have not taken any action against the Manager. The learned counsel appearing for the petitioners relied on the judgment rendered by this Court in the case of *V.Nagarajan Vs Commissioner of Salem Municipality in W.P.No.91 of 1982 vide order dated 21.01.1988* and this Court has held the proceedings taken against the petitioner, Bill Collector for recovery from his salary, of time barred professional taxes is illegal and the same is liable to be quashed. Following the said judgment, another judgment was passed by this Court in *W.P.No.26426 and 26427 of 2005 dated 14.02.2006 reported in 2006(1) CTC 632.* Therefore, the learned counsel appearing for the petitioners submitted that if it is a time bar, the petitioners are not liable. This contention is acceptable, since the petitioners have entered the service in the present municipality in the year 2013. If the earlier incumbent failed to take any action, then the petitioners cannot be made to pay the loss.

6. Therefore, the impugned order needs to be interfered. Hence, the impugned order is quashed.

7. However, the petitioners are directed to take steps to recover tax which are not time barred.

8. In view of the above, the Writ Petitions are allowed in above terms. No costs. Consequently, connected miscellaneous petitions are closed.

20.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr

To
The Commissioner,
Thuvakudi Municipality,
Trichy District.

S.SRIMATHY, J.

Nsr

W.P.(MD).Nos.5382 and 7526 of 2016

20.06.2023