IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2024

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THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.P. No.21704 of 2012
and
M.P. No.2 of 2012

R.Kamalakannan ... Petitioner

- Vs -

1.The Commissioner of Municipal
Administration, Chepauk, Chennai-600 005.

2.The Commissioner,
Erode Municipal Corporation,
Erode.

3.The Assistant Director,
Local Fund Audit,
Erode Corporation, Erode. ... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus calling for the records on the file of the 2nd Respondent in and by his proceedings Na.Ka.No.C1/3962/11 dated 31.10.2011 and Na.Ka.No.B3/7749/2011 dated 05.2012 (signed on 28.05.2012) and quash the same to the limited extent of recovering the amount of Rs.78,045/- (Rupees seventy eight thousand and forty five only) from the petitioner's DCRG benefits and the other conditions imposed on his retirement and to direct the Respondent to disburse the amount of Rs.78,045/- (Rupees seventy eight thousand and forty five only) to the petitioner herein with interest and all the DCRG benefits along with interest on the delayed payment within a limited time frame.

For Petitioner : Ms.T.Subiksha

For Respondents : Mr.A.M.Ayyadurai
Government Advocate (for R1 and R3)

Mr.M.Rajamathivanan (for R2)

O R D E R

The instant writ petition has been filed challenging the audit report dated 31.10.2011.

2. The learned counsel for the petitioner would submit that, he was about to retire on 31.10.2011 whereas on the date of his retirement, the 2nd Respondent issued impugned recovery notice and deducted a sum of Rs.78,045/- from his gratuity, on the ground that the petitioner has caused loss to the Corporation. It is the submission of the learned counsel for the petitioner that no notice was given as to how the 2nd Respondent has arrived at such monetary value, and the same is against natural justice.

3. Per contra, the learned counsel for the Respondents would vehemently content that the petitioner, and the other three employees have caused loss to the tune of Rs.2,53,328/- while assessing the vacant land tax for the assessment year 2004-05 similarly for the year 2008-09 also they have caused loss to the sum of Rs.63,332/-. Therefore, contended that the issuance of recovery notice is valid.

4. I have given anxious consideration to the submissions made by either side.

5. On perusal of the impugned notice, this Court finds two reasons to interfere with the impugned notice. Firstly, though the 2nd Respondent has arrived at the same conclusion that the petitioner and the other three staffs have caused loss to the Corporation, apparently, there were no notices sent to them so as to provide them an opportunity to explain as to how they are not responsible for this. Therefore, on the face of it, in view of not following natural justice, this impugned notice is liable to be interfered with.

6. Apart from the above ground, according to Section 13 of the

Gratuity Act, 1972, no gratuity payable to an employee shall be liable for attachment in any civil, revenue or criminal court. In this regard, it may be relevant to extract Section 13 of the Gratuity Act, 1972:

Section 13 – Protection of gratuity:

“No gratuity payable under this Act and no gratuity payable to an employee employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop exempted under section shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.”

7. Therefore, the gratuity amount has got certain statutory protection by virtue of Section 13 of the Gratuity Act, 1972. But in the case in hand, the 2nd Respondent simply passed order for deduction of amount from gratuity, which is contrary to the statute. Therefore, this Court has got every reason to interfere with the order of the Respondent. Further, it is also relevant to refer here that the order of recovery was issued at the fag end of their career which is iniquitous, harsh and arbitrary. Therefore, the impugned notice is set aside by allowing this writ petition. However, a liberty is given to the 2nd Respondent to proceed against the petitioner in accordance with law for recovery of the alleged losses on the part of the petitioner. Consequently, connected miscellaneous petition is closed. No costs.

12.09.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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To:
1.The Commissioner of Municipal
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2.The Commissioner,
Erode Municipal Corporation,
Erode.

3.The Assistant Director,
Local Fund Audit,
Erode Corporation, Erode.

C.KUMARAPPAN, J.

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