IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:29.02.2024

Coram:

THE HONOURABLE MR. JUSTICE BATTU DEVANAND

Writ Petition No.18630 of 2017
and
Writ Miscellaneous Petition No.20171 of 2017

G.Radha .. Petitioner

/versus/

The Chief Executive,
Tamil Nadu Khadi and Village,
Industries Board, Kuralagam,
Chennai 600 108. .. Respondent

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to Rc.No.6809/PEN(3)/2011, dated 22.06.2017 passed by the respondent herein and quash the same consequently direct the respondent to pay all the retirement benefits with interest at the rate of 12% from the date of superannuation till the date of payment to the petitioner.

For Petitioner :M/s.N.Poovanalingam

For Respondent :Ms.R.Uma,
Standing Counsel for Khadi

ORDER

Heard the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondent and also perused the materials available on record.

2. The case of the petitioner is that the petitioner, who worked as Assistant Grade-II in the respondent-Board, retired from service on 31.05.2011 on attaining superannuation. She was permitted to retire from the respondent-Board by proceedings vide Rc.No.4548/E11(3)/2011-5. She was paid provident fund amount and she was sanctioned pension from the date of her retirement. The petitioner was constrained to give an undertaking in a Non-Judicial Stamp paper to the effect that agreeing to recover the amount pending towards departmental sales done by her during the years from 1994-95 to 1998-99. At this stage, the respondent, by its order dated 24.10.1989 directed its officers to recover the amount of Rs.5,68,968/- in respect of irregular sales committed by the staff.

3. The petitioner filed a Writ Petition in W.P.No.44641 of 2016 seeking a direction to the respondent to pay all the retirement benefits with

interest at the rate of 12% p.a., from the date of superannuation till the date of payment to the petitioner. This Court directed the respondent to consider the representation/reply of the petitioner dated 24.03.2016 and 03.10.2016, on merits and in accordance with law and pass appropriate orders, within a period of eight (8) weeks from the date of receipt of a copy of the order.

4. The Assistant Manager of the respondent-Board sent a communication dated 26.04.2017 to the respondent marking a copy to the petitioner. In the said communication, it is stated that the petitioner was held responsible for the non-receipt of Rs.5,43,450.35. The respondent, after receipt of the above said communication and after receipt of the order of this Court passed the impugned order dated 03.05.2017 holding the petitioner is responsible for illegal sales of Rs.5,43,430.35 and directed the subordinates to attach the above said amount from the retirement benefits of the petitioner and to release the balance amount to her.

5. The respondent again sent a communication dated 30.05.2017 directing the petitioner to give explanation along with documents within 15 days from the date of receipt of the above letter. The petitioner submitted a reply dated 19.06.2017 within the time stipulated. After receipt of the

explanation, the respondent passed the impugned order dated 22.06.2017. Aggrieved by the said impugned order, the present writ petition is filed.

6. A counter-affidavit has been filed on behalf of the respondent wherein it is stated that while the petitioner was working as in-charge of Anna Salai Khadi Kraft during the period from 1994 to 1998, she committed certain irregularities by conducting irregular sales by which a sum of Rs.5,68,968/- was not realized and a sum of Rs.1,77,928/- was not adjusted and pending realisation towards khadi credit sales till the date of retirement on superannuation. As per the Board's instructions, any credit sale of khadi effected to Government Employees/Government Departments, the same should be recovered within 10 months from the month following the month of sales.

7. The case of the petitioner is that the total amount on the sales said to have been conducted by the petitioner should have been collected before 1999. However, even after 13 years, the demand collection balance amount was not collected. In fact, in the event of huge amount pending to be realized from out of the sales effected by the petitioner, the respondent ought to have taken a different decision, instead of permitting the petitioner to retire on the date of her superannuation. But, taking a lenient and sympathetic view on the petitioner,

based on the undertaking given by the petitioner in a non-judicial stamp paper she was permitted to retire. However, the petitioner gave her consent to the effect that if she fails to recover the amount from the concerned and remit in to the Board's account within 6 months, the same may be recovered from her pensionery benefits. It is further averred that before retirement of the petitioner, the General Manager, Khadi Kraft, Chennai, vide his memo dated 24.02.2011 had directed the petitioner to offer her explanation regarding the genuineness of the demand collection balance amount pending to be collected towards the sales conducted her during the period from 1994-1995 to 1998-1999 and also sought her explanation for the non-realization of the said amount for years together. But, the petitioner did not furnish any reply for the above memo. Since no explanation was received from the petitioner, she was again reminded vide memo dated 10.06.2011 of the General Manager, Khadi Kraft, Chennai. Even after receiving the above memo, she failed to give any explanation. Without submitting any explanation to the said memos dated 24.02.2011 and 10.06.2011, the petitioner approached this Court seeking to sanction all her pensionery benefits without insisting the due amount to be recovered from her. In compliance with the order of this Court to dispose of the representation of the petitioner and since no explanation was received from the petitioner, even after receiving two reminders issued during her service, the Assistant Manager of the respondent vide proceedings dated 26.04.2017 ordered to recover a sum of Rs.5,43,450.35, which is the amount pending to collect on the irregular sales done by her during the years from 1994-95 to 1998-99. Accordingly, this amount was recovered from her pensionary benefits.

8. The learned counsel appearing for the petitioner contends that the respondent, without conducting any enquiry and without affording any opportunity to the petitioner, fixed the responsibility of the illegal sale amount of Rs.5,43,430.35 and held the petitioner is responsible for the non-receipt of the same. He further submits that the respondent failed to note that the sales done by the petitioner is only to the Government Departments, after obtaining intent from the respective departments and the petitioner credited the bills and handed over the bills, after obtaining due receipt from the respective departments. The learned counsel appearing for the petitioner further submit that the respondent did not give any charge memo and no enquiry was conducted and without giving any opportunity, the respondent has passed the impugned order. As such it is liable to be set aside, as it is against the principles of natural justice. The learned counsel appearing for the petitioner also submits that the impugned order is passed after more than 5 years of the retirement of the petitioner and 17 years from the date of non-collection of sale amount

which is illegal and unsustainable under law and requested to allow the writ petition.

9. On the other hand, the learned Standing Counsel appearing for the respondent submits that before passing the impugned order, the petitioner was given ample opportunity to submit her explanation, but she failed to submit any explanation to the memos dated 24.02.2011 and 10.06.2011 during her service. The learned Standing Counsel appearing for the respondent also submits that the petitioner had given an undertaking that she will take responsibility to collect the entire amounts within 6 months from the date of her retirement and in the event of non-collection within the above period, the same can be recovered from her pensionary benefits. But, she did not take any steps to collect the amount and kept silence for more than 6 years. Under these circumstances, in the interest of the Board, the impugned order is passed and the entire amount was recovered from her pensionary benefits. The learned Standing Counsel further submits that the statement of the petitioner that the recovery order was passed against her without giving any opportunity is entirely false and sought to dismiss the writ petition.

10. Having heard the submissions of the learned respective counsels and on careful perusal of the materials available on record.

11. It is an admitted fact that the petitioner failed to recover a sum of Rs.5,43,430.35, which is the amount pending to be collected on the sales conducted by her during the years from 1994 -1995 to 1998-1999. It is also an admitted fact that the respondent sought explanation from the petitioner vide memos dated 24.02.2011 and 10.06.2011, but she did not submit any explanation. It is also an admitted fact that the petitioner has given the undertaking to the respondent that she will take responsibility to collect the entire amount within a period of 6 months from the date of her retirement and in the event of non-collection within the above said period, the same can be recovered from her pensionary benefits.

12. On careful perusal of the undertaking given by the petitioner, it is an undisputed fact that the petitioner is accepting her responsibility to collect the said amount, which has to be collected for the sales done by the petitioner during the years from 1994-1995 to 1998-1999. In the said undertaking, she also agreed to permit the respondent to recover the said amount from her pensionary benefits, in the event of non-collection within the six months period, she stated

in the undertaking

13. Considering all these facts, in our considered view, the petitioner failed to discharge her duty to collect the amount on the sales done by her during the years from 1994-1995 to 1998-1999 and due to that reason, the respondent-Board sustained financial loss for an amount of Rs.5,43,430.35. Even after affording opportunity to the petitioner to collect the said amount and to credit the same to the respondent, she could not collect the said amount for which definitely the respondent-Board sustained loss.

14. This Court is unable to accept the contention of the learned counsel appearing for the petitioner that without affording any opportunity, the impugned order is passed, in the light of the memos dated 24.02.2011 and 10.06.2011 issued to the petitioner.

15. On careful examination of the materials, it appears that before passing the impugned order dated 22.06.2017, notice was issued to the petitioner on 30.05.2017 calling for her explanation and the petitioner also submitted her explanation on 19.06.2017. On consideration of the same, the respondent passed the impugned order.

16. In our considered view, there is no illegality or infirmity in the order passed by the respondent-Board and there is no violation of principles of natural justice in this case and only to protect the interest of the respondent-board, the impugned order was passed by the respondent. The entire amount was recovered from the pensionary benefits of the petitioner. Under these circumstances, this Court is not inclined to interfere with the order impugned in this writ petition.

17. In the considered opinion of this Court, the petitioner failed to make out any case warranting interference of this Court on law or on facts and accordingly, she is not entitled for the relief sought for in the writ petition. Accordingly, this Writ Petition is dismissed.

18. At this stage, the learned counsel appearing for the petitioner submits that actually, the amount to be collected from the Government Departments for the sales conducted by the petitioner during the years from 1994-1995 to 1998-1999 was collected by the respondent-Board and it is kept in suspense account.

19. If it is true, the respondent shall return the amount recovered from the petitioner, within a period of four weeks, from the date of receipt of a copy of this order, to the petitioner.

20. Consequently, connected Miscellaneous Petition is closed.

21. There shall be no order as to cost.

29.02.2024

Index:yes/no
Speaking order:yes/no
Neutral Citation:yes/no
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To:

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Tamil Nadu Khadi and Village,
Industries Board, Kuralagam,
Chennai 600 108.

BATTU DEVANAND,J.

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