

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/01/2004

CORAM

THE HONOURABLE MR. JUSTICE N.KANNADASAN

WRIT PETITION No.3071 of 1997

and

WMP No.5166 of 1997

S.Ramar Pandian .. Petitioner

-Vs-

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

This writ petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the Chief Executive Officer, Tamil Nadu Khadi and Village Industries Board "Kuralagam", Chennai-600 108 (the respondent herein) in this Rc.No.12637/P1/94 dated 20.1.1997 and to quash the same in so far as it related to the entire Clause-3 of the Order relating to the recovery of the sum of Rs.1,58,405/- from the petitioner and direct the respondent to pay the petitioner all the amounts withheld by the respondent pursuant to the impugned order, with interest at the rate of 18% per annum from 20.1.1997 till the date of disbursement.

!For Petitioner : Mr.S.Subbiah

^For Respondent : Mr.B.Diwakar

:ORDER

By consent of both the parties, the main writ petition itself is taken up for final hearing.

2. The above writ petition is filed by the petitioner challenging Clause-3 of the proceedings of the respondent in Rc.No.12637/P1/94 dated 20.1.1997 in so far as it relates to the recovery of a sum of Rs.1,58,405/- and for a consequential direction, directing the respondent to pay the amounts withheld along with the interest at the rate of 18% from 20.1.1997 till the date of disbursement.

3. It is contended by the petitioner that he has joined the services of the State Government in its Khadi Department as Grade-I Assistant during the year 1959 and during the year 1960 when a separate Department was constituted viz., Tamil Nadu Khadi and Village Industries Board (hereinafter called as the "Board"), he was absorbed as Grade-I Assistant. The petitioner has served as Grade-I Assistant from 1964 to 1977 and later on he was promoted as Central Khadi Officer in the year 1989 and again promoted as Assistant Khadi Officer with effect from 1.1.1991. On attaining the age of superannuation, the petitioner was permitted to retire from the services through the proceedings of the respondent in Rc.No.16466/94/G-IV(1) dt.28.3.1994 with effect from 31.3.1994. The said order of retirement proceeds to the effect that the individuals mentioned therein, numbering 11 employees, were permitted to retire from their services and the concerned Officers were requested to relieve them after obtaining necessary undertaking in respect of any amount which is found to be recoverable from them later on. Except the above observation, the said order of retirement does not attach or reserve any condition in respect of the employees including the petitioner. However, even at the earlier point of time, the Assistant Director of the respondent-Board has issued a memo dated nil.6.1993, which proceeds to the effect that a sum of Rs.1,55,590.25 representing sale proceeds was not collected, while the petitioner was in service as Grade-I Assistant at Tiruvellore depot for the period from 1963-64 to 1978-79. The petitioner has submitted a reply to the said memo and it is only thereafter, he was permitted to retire without reserving any right to initiate disciplinary proceedings. Subsequently, the respondent-Board has sent a further memo on 4.8.1994, reiterating the same averments of the earlier memo, to which the petitioner has submitted a reply. Thereafter, the respondent-Board, by a letter dated 26.2.1996 has informed the petitioner that a sum of Rs.1,41,207.70 is still remaining as outstanding and he was directed to explain in detail about the non-recovery of the said amount. As per the directions, the petitioner appeared in the Office and explained the steps that he has initiated to recover the amount and also pointed out that the other Officers of the Board have failed to initiate steps to recover the same and he cannot be held responsible. Suddenly, by impugned proceedings dated 20.1.1997, while sanction was accorded for the payment of the pensionary benefits to the petitioner, in Clause-3 of the said order, it is indicated that a sum of Rs.1,58,405/- is liable to be recovered from the pensionary benefits and a sum of Rs.97,520/- was adjusted and the balance amount was ordered to be recovered, which resulted in filing the above writ petition.

4. It is contended by the counsel for the petitioner that the impugned order is ex-facie illegal inasmuch as the same was passed in the absence of any condition reserving liberty by the Board to initiate disciplinary proceedings, while the petitioner was permitted to retire by proceedings dated 28.3.1994. It is further contended that the respondent has not initiated any disciplinary proceedings, while the petitioner was in service and all that the respondent did was by issuing a memo, the petitioner was called upon to explain about the nonrecovery of the amount, to which necessary explanation was submitted. It was not known as to how the quantum was arrived at in the absence of initiation of any disciplinary proceedings supported by material evidence.

5. It is further contended that the amount which was ordered to be recovered from the petitioner cannot be construed as a loss to the Board, due to misappropriation or irregularity on the part of the petitioner and it only represents the sale proceeds to the various Government employees on credit basis, which ought to have been recovered by other employees who are incharge of the recovering the dues. The petitioner cannot be held to be responsible for the non-recovery of the said amount, that too for the periods, which dates back to 1963-64 and nothing prevented the higher authorities to initiate prompt action then and there.

6. The learned counsel for the respondent on the other hand, contended that the respondent-Board is well within its right to order recovery as per the impugned order, since the petitioner ought to have been diligent and collected the amounts. Even though the petitioner was permitted to retire by proceedings dated 28.3.1994, a condition is attached in the said proceedings to the effect that the concerned Officers should relieve the individuals, after obtaining necessary undertaking to make good the loss, if any, found at a later period. It is further contended that as per Section 9(2)(a) of the Tamil Nadu Pension Rules enables the respondent-Board to initiate proceedings to recover the loss.

7. I have considered the rival submissions of the parties.

8. It is seen from the records that the respondent has passed the impugned order to recover the amount as stated therein, which represents the amount outstanding towards the Board by way of credit sales to various Government employees relating to the period from 1963 to 1979, during which period, the petitioner was serving as Grade-I Assistant at Tiruvellore depot. The communication suggests that the petitioner has effected the credit sales contrary to the circular instructions of the Board, resulting in the said amount could not be recovered from the parties. If the stand of the Board is to be accepted, there is nothing on record to show as to why no disciplinary action was initiated immediately when the said fact of irregular sales came to the knowledge of the Board. It is unbelievable that from the year 1963 onwards till 1994, no higher authority has come to the knowledge of the said irregular sales by the petitioner. Even otherwise, when the respondent-Board has issued a memo for the first time during June 1993 to which the petitioner has submitted his reply, it was not explained as to why disciplinary proceedings was not initiated by framing regular charges as against the petitioner. The respondent-Board has not chosen to place the petitioner on suspension as well no order was passed in not permitting the petitioner to retire from services on his reaching superannuation with effect from 31.3.1994. Even though, a general instruction is contained in the said order of retirement dated 28.3.1994, which was issued in respect of as many as 11 employees to the effect that necessary undertaking should be obtained, there is nothing on record to suggest that such an undertaking was obtained. Further, this Court in W.P.No.5982 of 1997 in Kathiresan vs. The Chief Executive Officer, Khadi and Village Industries Board and Another dated 3.7.2001 and in W.P.No.14585 of 1996 in T.Dhandapani (died) and 4 Others vs. The Assistant Director, Khadi and Village Industries, Villupuram and Another dated 11.3.2003 has taken a view that the undertaking said to have been

obtained from the employees cannot be relied upon, in the absence of a categorical finding on the part of the department that the non-recovery of the said amount was due to any defalcation on the part of the employees and the said decisions squarely apply to the facts of the present case. It is also pertinent to note that Section 23 of the Tamil Nadu Khadi and Village Industries Board Act 1959, empowers the Board to recover the amount by proceedings as against the defaulters by way of arrears of land revenue. It is also pertinent to note that the credit sales were effected only to the Government employees or other employees on whom the Government is having control and the Board undertakes the risk of supplying the materials on credit. In fact, while effecting the credit sales, in order to ensure prompt payment of dues, the Board obtains an undertaking in Form-13 which will enable the Government to recover the said amount from the monthly pay of the employees. When such safeguards are provided in the Act and Rules, the authorities of the Board ought to have been taken prompt steps to effect recovery from the purchasers, as and when the default is noticed. It cannot be held that the petitioner is the sole individual, who is liable to be proceeded with for nonrecovery of the amount from the purchasers. In fact, it is the joint responsibility of several employees to recover the dues, for which, the petitioner cannot be singled out.

9. As regards to the contention of the learned counsel for the respondent that the Board is empowered to initiate action even after retirement of the employees by virtue of Rule 9(2)(a) of the Tamil Nadu Pension Rules, 1978 as per Rule 2 of the said Rules, it cannot be suggested that Tamil Nadu Pension Rules, 1978, shall have any application in respect of the employees of the respondent-Board. Assuming without admitting that the said Rule is applicable, Rule 9(2)(b) makes it clear that the departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall not be in respect of any event which took place more than four years before such institution. Admittedly, the non-recovery of the amount is relatable for the period commencing from 1963-64 and as such, Rule 9(2)(b) clearly prohibits the authorities from initiating any departmental proceedings. This Court in its judgment rendered in W.P.No.10496 of 1992 dated 25.9.2000 in K. Karuvelam vs. The Chief Executive Officer, Khadi and Village Industries Board and Another, has held that if no action was initiated within a period of four years, the Board has no authority to do so. Further, Rule 9(2)(6) defines the term departmental proceedings, which is extracted here-under:-

"For the purpose of this rule,--

(a) departmental proceedings shall be deemed to include the enquiry pending before the Tribunal for Disciplinary Proceedings;

(b) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner or if the Government servant has been placed under suspension from an earlier date, on such date; and

(c) judicial proceedings shall be deemed to be instituted,--

(i) in the case of criminal proceedings, on the date of the complaint or report of a police officer, of which the Magistrate take cognizance, is made; and

(ii) in the case of civil proceedings, on the date on which

plaint is presented in the Court" (emphasis is supplied by the Court)

10. It is an admitted fact that no departmental proceedings has been initiated as against the petitioner even as on today, by framing regular charges as contemplated under Rule 9(2)(6)(b) of the Tamil Nadu Pension Rules, 1978. Hence, the respondent cannot take umbrella under Rule 9 of the said Rules and contend that the Board is empowered to initiate action against the petitioner. Yet another factor to be noticed is that the service regulations of the respondent-Board does not provide any specific provision for initiating disciplinary proceedings to effect recovery from an employee after his retirement. In this connection, it is worth mentioning that the Supreme Court in its judgment rendered in BHAGIRATHI JENA Vs. BOARD OF DIRECTORS, O.S.F.C. (1999 3 SCC 666) has held that in the absence of any provision for conducting disciplinary proceedings after retirement nor any provision to proceed as against the retiral benefits due to misconduct on the part of the employee, the employer had no legal authority to proceed against the retired employee. The relevant portion of para-7 of the judgment is extracted here-under:-

"In view of the absence of such a provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.6.1995, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement"

11. A reading of the above makes it clear that in the absence of the respondent-Board armed with any provision to proceed against the terminal benefits of the employees, no action can be initiated against the petitioner. Hence, I am of the clear opinion that Clause-3 of the impugned order is liable to be quashed and the respondent shall disburse the amount withheld to the petitioner. With regard to the quantum of interest, the Supreme Court in its decision rendered in Vijay L.Mehrotra vs. State of U.P. And Others (2002 (2) LLJ 253 = 2002 SCC (L&S) 278) has observed that an employee would be expecting the payment of all his terminal benefits on the date of retirement or soon thereafter and awarded 18% interest. Even though the Supreme Court has awarded interest at the rate of 18% in the above said decision, having regard to the facts and circumstances of the case on hand, I am inclined to direct the respondent-Board to pay simple interest at the rate of 9% on the amount withheld till the date of payment.

12. Under the above said circumstances , the writ petition is allowed and the respondent is directed to refund the amount to the petitioner, which was ordered to be withheld, on simple interest at the rate of 9% from

the date of his retirement till the date of payment, which should be effected within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected WMP is closed.

Index : Yes.

Internet : Yes.

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To

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

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