

## Retired Official's Association Vs The State of Tamil Nadu and Others

**Court:** Madras High Court

**Date of Decision:** Oct. 18, 2006

**Acts Referred:** Constitution of India, 1950 " Article 21  
Penal Code, 1860 (IPC) " Section 409, 420, 468, 471

**Citation:** (2007) WritLR 34

**Hon'ble Judges:** M. Jaichandren, J

**Bench:** Single Bench

**Advocate:** V. Raghavachari, for the Appellant; C. Thirumaran, Government Advocate for Respondents 1 to 4 and 6, for the Respondent

### Judgement

@JUDGMENTTAG-ORDER

M. Jaichandren, J.

The writ petition has been filed for the issuance of a writ of certiorarified mandamus to direct respondents 1 to 5 to pay the retirement benefits to the members of the petitioner association, more fully described and set out in the annexure (typed set) filed in support of the writ petition.

2. Heard the learned Counsel appearing for the petitioner as well as the learned Counsel appearing for respondents 1 to 4 and 6.

3. The brief facts of the case, as stated by the petitioner, are as follows:

The members of the petitioner association are retired teachers under the control of the second and third respondents. On account of reaching the

age of superannuation, they have demitted their office and were awaiting payment of their retirement benefits. Though certain amounts have been

paid by the second and third respondents by way of demand drafts, they came to realise that the entire amounts due had not been paid. In

response to the letter of the third respondent, the fourth respondent had given the particulars of dues that each of retired teacher was to receive.

When the members of the petitioner association had lodged a complaint with regard to the non-payment of their retirement benefits, they had come

to learn that one Muthukumarasamy, the fifth respondent herein, a Junior Assistant in the Office of the third respondent, had diverted the funds and

misappropriated the same. It was also learnt that the third respondent had lodged a complaint against the fifth respondent, on 12.9.2002 and the

Inspector of Police, District Crime Branch-EOW II, Dharmapuri, had registered a case in Crime No. 9 of 2002, under Sections 468, 471, 409 &

420 of the Indian Penal Code. The members of the petitioner association had learnt of the charges framed against the fifth respondent from the

news published in the Tamil news paper, "Dinamani", dated 16.5.2002, and also based on the scrutiny of the various records maintained by the

Office of the third respondent. On the date of the complaint, the fifth respondent had misappropriated amounts to the tune of Rs. 49,69,389/-.

4. It is the case of the third respondent that the bills had been collected by the fifth respondent after receipt of the actual amount from the Treasury.

The members of the petitioner association were surprised to know that the fifth respondent had not been apprehended so far and that no serious

action had been taken against the fifth respondent. In any case the retirement benefits of the members of the petitioner association, whose names

are listed and annexed in the typed set of papers filed in support of the writ petition, have to be paid by the respondents, more particularly by the

third respondent, in accordance with law. Non-payment of the amounts due to the members of the petitioner association would amount to

infringement of their right to life and livelihood, enshrined in Article 21 of the Constitution of India.

5. In the counter affidavit filed by the third respondent, it is submitted that the fifth respondent, who was a Junior Assistant, had claimed the

provident fund amounts and had paid a lesser amount than the actual amount due to the members of the petitioner association and the third

respondent, on receipt of the complaint from the petitioner association had called for an explanation from the fifth respondent. It is further

submitted that the entire amounts had been claimed from the Sub-Treasury, Krishnagiri, and handed over to the fifth respondent and one K.

Kolandai, Record Writer, had admitted to the misappropriation of the amounts from the Teacher's Provident Fund.

6. It has also been stated that proper steps had been taken and a complaint had been lodged against the fifth respondent. Thereafter, the fifth

respondent had surrendered before the Principal District Sessions Judge, Krishnagiri, and he was placed under Judicial Custody. Later, he was

released on a conditional bail granted by the Principal District Sessions Judge, Krishnagiri. Since the case is pending before the said Principal

District Sessions Judge, further action could be taken against the fifth respondent only after the judgment is pronounced by the said Court. Since

steps had been taken against the fifth respondent for the recovery of the amounts misappropriated by him, the members of the petitioner

association can be paid retirement benefits only after the necessary orders had been obtained from the concerned Court.

7. From the contentions put forth by the learned Counsels appearing on behalf of the petitioner association and on behalf of the respondents and

on a perusal of the records available, it is seen that even according to the third respondent, the fifth respondent had misappropriated the provident

fund amounts due to the members of the petitioner association. Further, it is not the case of the respondents that the amount had been drawn from

the Treasury by the members of the petitioner association or their representatives. It has been clearly admitted that it is only the fifth respondent, a

Government employee, who was entrusted with the job of drawing the amounts from the Government Treasury and disbursing it to the members of

the petitioner association as retirement benefits. In such circumstances, any misappropriation on the part of the fifth respondent would not in any

way discharge the liability of the other respondents in paying the retirement benefits due to the members of the petitioner association. Any inability

on the part of the concerned authorities to take appropriate action against the fifth respondent to recover the misappropriated amounts will not

dilute their responsibility from discharging their obligations. If prompt action had not been taken against the fifth respondent, and if the amounts

allegedly misappropriated by the fifth respondent have not been recovered, it would only show the inefficiency or lack of will on the part of the

concerned authorities to take appropriate steps in this regard. However, it is of no consequence with regard to the amounts due and payable to the

members of the petitioner association as retirement benefits. It is admitted by the learned Counsel appearing for respondents 1 to 4 and 6, that the

third respondent is the authority, who is responsible to pay the retirement benefits to the members of the petitioner association.

8. For the reasons stated above, the third respondent is directed to pay the entire amounts due to the members of the petitioner association, whose

names are listed in the annexures to the typed set of papers filed along with the writ petition, with the interest at 6% per annum, from the date of

filing of the writ petition till the date of disbursal of the amounts, within a period of twelve weeks from the date of receipt of a copy of this order.

9. With the above direction, the writ petition is disposed of. No costs.