

(2010) 10 MAD CK 0251

Madras High Court

Case No: Writ Petition No. 48083 of 2006 (O.A. No. 5756 of 2000)

M. Lakshminarayanan

APPELLANT

Vs

The Commissioner,
Chidambaram
Municipality and The
Commissioner,
Kumbakonam
Municipality

RESPONDENT

Date of Decision: Oct. 22, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 60, 60(1)
- Tamil Nadu Pension Rules, 1978 - Rule 70, 70(2)

Hon'ble Judges: D. Hariparanthaman, J

Bench: Single Bench

Advocate: K.S. Govinda Prasad, for the Appellant; C. Kalaichelvan, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

D. Hariparanthaman, J.

The petitioner is a handicapped person. He joined Kumbakonam Municipality as Clerical Attender on 24.02.1974. He was promoted as Junior Assistant in the year 1977. he was further promoted as Revenue Inspector on 26.09.1991. He retired from service on 30.06.2000. The 1st respondent passed the impugned order dated 29.06.2000 ordering recovery of Rs. 36,719/- from the D.C.R.G. of the petitioner on the ground that the petitioner failed to collect the time barred lease amount from the lessees of the municipality.

2. The petitioner filed O.A. No. 5756 of 2000 (W.P. No. 48083 of 2006) to quash the aforesaid order dated 29.06.2000 of the 1st respondent.

3. Heard Mr. K.S. Govinda Prasad, learned Counsel for the petitioner and Mr. C. Kalaichelvan, learned Counsel for the respondents.

4. The learned Counsel for the petitioner submits that the impugned order was passed in contravention and violation of the principles of natural justice as he was not heard before passing the said order. Secondly, it is submitted that the impugned order is in violation of and in contravention to Rule 70 of the Tamil Nadu pension Rules and also a judgment of this Court dated 26.08.2010 in W.P. No. 233 of 2007.

5. On the other hand, the learned Counsel for the respondent seeks to sustain the impugned order stating that the petitioner was inclined in not collecting the lease amount and caused loss to the Municipality.

6. I have considered the submissions made on either side. As rightly pointed out by the learned Counsel for the petitioner, the impugned order was passed in contravention to and violation of the principles of natural justice and the petitioner was not heard before passing the impugned order. It is well settled that no order resulting in civil consequences will be passed against a person without hearing him.

7. The other submission made by the learned Counsel for the petitioner also is well founded. This Court in an identical circumstances, considering Rule 70 of the Tamil Nadu Pension Rules held that the order of recovery made from D.C.R.G. is illegal and in contravention to Rule 70 of the Tamil Nadu pension Rules. Paragraph 4 to 6 of the order dated 26.08.2010 in W.P. No. 233 of 2007 is extracted hereunder:

4. Even otherwise, the amount recovered denotes the failure of the petitioner in not making recovery of taxes due to the municipality which are admittedly time-barred dues. It is not as if the Municipality by any procedure known to law has ascertained any sum as loss to the Municipality by the conduct of the petitioner. Unless the municipality concludes any ascertainable government loss stated to have been caused to the Municipality by the conduct of the petitioner, by applying Rule 70(2) of the Tamil Nadu Pension Rules the amount cannot be recovered.

70. Recovery and adjustment of Government dues:

(1) It shall be the duty of every retiring Government servant to clear all Government dues before the date of his retirement.

(2) Where a retiring Government servant does not clear the Government dues and such dues as ascertainable-

(a) an equivalent cash deposit may be taken from him; or

(b) out of the gratuity payable to him an amount equal to that recoverable on account of ascertainable Government dues shall be deducted therefrom.

(Note (1) "The expression" ascertainable Government dues" includes balance of house building or conveyance advance, arrears or rent and other charges pertaining to occupation of Government accommodation, over-payment of pay and allowances and arrears of Income Tax deductible at source under the Income Tax Act, 1961 (43 of 1961). It also includes dues to the local bodies or to the Staff co-operative societies comprising of Government servants and registered under the Tamil Nadu Co-operative Societies Act, 1961 (or to the Tamil Nadu Housing Board or to the Corporation owned/controlled by the State Government.)

(Note 2:- Gratuity shall not be liable to attachment in accordance with the provision of Clause (g) of the proviso to Sub-section (1) of Section 60 of the Code of Civil Procedure, 1908, (Central Act V of 1908)

The said provision makes it clear that even from the DCRG the amount may be recovered only if it is ascertainable government dues. The term "ascertainable Government dues" has also been defined in Note 1 of the said rules as follows:

Note (1) The expression "ascertainable Government dues" includes balance of house building or conveyance advance, arrears or rent and other charges pertaining to occupation of Government accommodation, over-payment of pay and allowances and arrears of Income Tax deductible at source under the Income Tax Act, 1961 (43 of 1961). it also includes dues to the local bodies or to the Staff co-operative societies comprising of Government servants and registered under the Tamil nadu Co-operative Societies Act, 1961 (or to the Tamil Nadu Housing Board or to the Corporation owned/controlled by the State Government.

Inasmuch as the amount which is recovered from the DCRG of the petitioner does not fall under any one of the categories in the Government Rule, by applying even the provisions under Rule 70(2) of Tamil Nadu Pension Rules, such recovery cannot be held to be valid in law.

5. The issue relating to the failure of the Revenue Inspectors from collecting the time-barred dues have came up for consideration before this Court on many occasions. It was held that mere failure on the part of the Revenue Inspectors of Municipality in making the revenue collection or collection of taxes cannot be said to be a pecuniary loss caused to the Municipality. In *Selvaraj and Ors. v. Commissioner Thiruvavur Municipality* Mohan J. (as His Lordship then was), in this regard has observed as follows:

Having regard to these provisions, I find it rather impossible to appreciate the stand of the Municipality as to how a Bill Collector could cause pecuniary loss to Municipality by his failure to collect the taxes. Firstly, it does not lie within his powers to allow the recovery of taxes to become time-barred. The very elaborate procedure relating to collection of taxes

mentioned in paragraph 65 of Municipal Volume-I would clearly indicate that it is the duty of the Executive Officer to have periodic verification of the arrears. If arrears of tax had become time-barred for recovery, that liability cannot be passed on to the Bill Collector.

6. In view of the said categoric legal position, there is absolutely no difficulty to conclude that the impugned order of the second respondent in making recovery is not in accordance with law and is liable to be set aside and accordingly the impugned order is set aside with direction to the third respondent to refund the amount of Rs. 82,609/- to the petitioner with interest at the rate of 12% per annum from 01.10.2000 till the date of payment and the amount is directed to be paid within eight weeks from the date of receipt of a copy of this order.

8. The aforesaid decision of this Hon"ble Court squarely applies to the facts of this case. Hence, for the aforesaid reasons, the impugned order is quashed and the writ petition is allowed. No costs.