(2010) 09 MAD CK 0019

In the Madras High Court

Case No : Writ Petition (MD) No. 7348 of 2009 and M.P (MD) No''s. 1 and 2 of 2009

Christinal Mary APPELLANT

Vs

The Commissioner, Kuzhilithurai Municipality RESPONDENT

Date of Decision : 23-09-2010

Acts Referred:

Citation : (2010) 09 MAD CK 0019

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Saji Bino, for the Appellant; Kalainila, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—The Petitioner is working as Revenue Assistant in the Respondent Municipality. She has come forward to challenge the

order dated 14.06.2006, by which the Respondent fixed the liability on the Petitioner to pay back the amount, which are not collected from the

various persons under the Head of Professional tax.

2. It is stated by the Respondent that it is the responsibility of the Revenue Assistant to collect the professional tax from the various employers and

if any amounts are not paid, they should issue reminder notice and take appropriate disciplinary proceedings including Court action and since the

arrears of amount are not collected from the defaulters, the entire responsibility should be fixed on the Revenue Assistant. It is also stated because

of her shirking responsibility, the Municipality has faced with loss of revenue.

3. When the matter came up on 03.08.2009, this Court ordered notice to the Respondent. On notice, the Respondent has entered appearance,

but till date no counter affidavit has been filed by them.

4. The learned Counsel for the Petitioner stated that in case of any arrears of tax, whether professional tax or house tax, the role of the Revenue

Assistant is very limited and if there is any deliberated omission to collect the said amount, disciplinary action can be taken. But the entire liability

for collection of arrears cannot be fastened on the Revenue Assistant. Strong reliance was placed upon the judgment in V. Nagarajan v.

Commissioner, Salem Municipality, Salem reported in 1988 WLR 38. In that case, this Court, after referring to the previous decisions of the said

subject, held that under the municipal rules, the responsibility to collect the tax arrears from the defaulters vested only with the Commissioner being

the Chief Executive of the Panchayat and it is for him to set the law in motion by filing appropriate cases. The arrears standing to the credit of such

defaulters cannot be taken from the salary of either the Bill Collector or the Revenue Assistant. The said decision was also came in M. Ramiah v.

Commissioner, Tirunelveli Corporation, Tirunelveli and Anr. reported in 2008 INDLAWMAD 1362.

5. In the light of the above, the impugned orders cannot have any legal reason to stand and accordingly, the same stands set aside. This Court

while passing order in M. Ramiah case in paragraph 13 has observed as follows:

13. In view of this fact, the impugned order will stand set aside and the first Respondent Corporation is directed to hold a proper enquiry and fix

the liability to the extent the Petitioner was responsible for the loss. While doing so, the first Respondent Corporation, against whom several Writ

Petitions have been filed earlier on similar issues, wherein this Court had held that for the time barred tax dues or non-collection, responsibility

cannot be fixed on the collecting officials and there must be further materials to prove that they were directly responsible for causing loss to the

Corporation, shall take note of the same. After taking note of the circumstances, the first Respondent should pass appropriate orders, after giving

opportunity to the Petitioner and fix the liability. If the Petitioner is even thereafter aggrieved, it is open to him to work out his remedy in the manner

known to law. The first Respondent is hereby directed to undertake this exercise within a period of twelve weeks from the date of receipt of a

copy of this order. The writ petition is disposed of accordingly. No costs. The connected Miscellaneous Petition is closed.

6. In the light same, if there is any negligence or any lacks on the part of the Revenue Assistant, it is always open to Respondent to take disciplinary

action and impose appropriate punishment. But that does not mean the entire arrears due from the defaulters fastened on the Revenue Assistant.

With these observations, the writ petition stands allowed. Consequently, connected miscellaneous petitions are closed. However, there shall be no

order as to costs.

