

(2013) 06 MAD CK 0264

In the Madras High Court

Case No : Writ Petition No's. 12113 and 12114 of 2007 and M.P. No's. 1 and 2 of 2007

D. Stanley and Another

APPELLANT

Vs

District Adi-Dravidar and Tribal Welfare Officer and Another

RESPONDENT

Date of Decision : 26-06-2013

Acts Referred:

Citation : (2013) 8 MLJ 471

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : P. Ganesan for S.S. Mani, for the Appellant; M.E. Rani Selvam, Additional Government Pleader, for the Respondent

Judgement

T. Raja, J.—W.P. No. 12113 of 2007 is filed by Mr. D. Stanley challenging the impugned proceedings of the 1st respondent passed in Na.Ka. No. J-5/7948 of 2006 dated 21.08.2006 and the writ petition in W.P. No. 12114 of 2007 is filed by Mr. M. Arockiasamy challenging the impugned proceedings in Na.Ka. No. 29417 of 2005/J.5 dated 28.12.2005 with a prayer to quash the same. Since the issue involved in both the writ petitions is one and the same, with the consent of both the parties, both the petitions are taken up together for final disposal.

2. Learned counsel for the petitioners would submit that the petitioners joined the service as Higher Grade Teachers in the Adi-Dravidar Welfare Department in the year 1970 and 1969 respectively. They were promoted as Secondary Grade Teachers in 1979 and 1987 respectively. The petitioner in W.P. No. 12113 of 2007 was further promoted as Elementary School Headmaster in the year 2003 and retired from service on 31.9.2006 and the petitioner in W.P. No. 12114 of 2007 retired from service as a Secondary Grade Teacher on 31.5.2006. Learned counsel for the petitioners would submit that the issue involved in both the matters is that while the petitioners were working as Warden-cum-Teachers in Adi-Dravidar Welfare Hostel, they were issued with a direction by the respondents to provide eggs to the hostel students once in a week. As the

petitioners were working for a long time as Wardens, they have provided the food and other rations as per the directions issued by the respondents then and there. The petitioners purchased all the provisions from the official outlets of the Civil Supplies Corporation including eggs. When the internal audits were held every year, there was no objection whatsoever from the respondents. But the 2nd respondent has raised an objection that when each of the students is to be provided 4 eggs per month, as against the permissible supply, eggs have been provided in excess causing loss to the tune of Rs. 1,569/- (W.P. No. 12113 of 2007) and Rs. 376.50 (W.P. No. 12114 of 2007). On that basis, the respective excess amounts were ordered to be recovered from the petitioners' DCRG for having caused loss to the Hostel. The 2nd respondent raised objection with regard to the transportation charges and although, the petitioners have paid the transportation charges for transporting commodities like rice, dhall, oil etc., the audit objection included the loss in respect of the transportation charges which is unacceptable. It is further submitted that the said Audit Objection is vague as it could be because there is no specific amount mentioned and the period during which the entire transaction took place is also not mentioned. Learned counsel for the petitioners also submitted that in similar circumstances, when the respondents have almost issued an identical proceedings, this Court, by interfering with such proceedings, has allowed the writ petitions in W.P. No. 44115 of 2006 by the order dated 09.08.2010 followed by another order in W.P. No. 18838 of 2010 dated 24.03.2011 and on that basis, the learned counsel for the petitioners prayed for allowing of the present writ petitions.

3. Though a detailed counter has been filed by the respondents in both the matters, the learned Additional Government Pleader appearing for the respondents, while assailing the submissions made by the petitioners in respect of the impugned proceedings, has not shown before this Court that the respondents have issued prior notice before passing the impugned proceedings calling upon to recover the excess amount from the petitioners' DCRG.

4. Heard both sides and perused the materials available on record including the earlier orders passed by this Court.

5. When it was specifically pleaded before this Court that the respondents having undertaken the annual inspection, have failed to bring to the notice of the petitioners about the irregularities on completion of the audit objection. If at all the irregularities were noticed whatsoever, the present impugned orders calling upon the petitioners to pay the excess amount, is absolutely unwarranted. As rightly argued by the learned counsel, had there been a regular annual audit objection and that if the petitioners were called for to give explanation, they could have given sufficient explanation every year and without calling upon the petitioners to submit their explanation on completion of the yearly audit, all of a sudden, the 1st respondent has issued the impugned proceedings to the respective petitioners, without even mentioning as to how the loss has occurred at the instance of the petitioners. Moreover, no explanation whatsoever can be

given by the petitioners for the said objections since the objections are very vague and bald. It is submitted that the Government has issued an order to supply one egg to every hostel student per week, some of the months are having 5 weeks and therefore, the petitioners while serving as the Hostel Wardens, have supplied eggs as prescribed by the respondents and as such, at times, they have to provide 5 eggs per student per month. Therefore, the audit objection cannot find fault with the petitioners for having supplied 5 eggs in a month which is having 5 weeks. Further more, if the audit objection has indicated that the petitioners have provided more than 4 eggs in a month which is having 4 weeks, then the said objection could be accepted; but there is no such allegation raised or brought to the notice of the petitioner indicating violation of any specific provision. While so, all of a sudden, the impugned orders calling upon to recover the respective amount from the DCRG of the petitioners were issued to the petitioners without giving notice and the same is against the principles of natural justice, hence, the same are liable to be set aside. This Court having considered similar issues in W.P. No. 44115 of 2006 by the order dated 9.8.2010 and in W.P. No. 18838 of 2010 dated 24.3.2011, agrees with the arguments advanced by the learned counsel for the petitioners that no notice was issued whatsoever prior to the passing of the impugned orders which is nothing but flagrant violation of the principles of natural justice.

6. Accordingly, the impugned orders/impugned proceedings passed by the 1st respondent in Na.Ka. No. J-5/7948 of 2006 dated 21.08.2006 (in W.P. No. 12113 of 2007) and in Na.Ka. No. 29417 of 2005/J.5 dated 28.12.2005 (in W.P. No. 12114 of 2007) are hereby quashed and the writ petitions are allowed. In view of the setting aside of the impugned orders, the order passed to recover the excess amount from the DCRG of the petitioners shall also stand quashed. No costs. Consequently, connected miscellaneous petitions are also closed. It is brought to the notice of this Court by the learned counsel for the petitioners that already the excess amounts have been withheld by the respondents from the petitioners' DCRG amount. In view of the same, since the petitioners are retired from service and that the impugned orders are being quashed by this Court as stated above, the respondents are directed to disburse the amounts withheld by them within a period of two months from the date of receipt of a copy of this order.