(2011) 02 MAD CK 0508

In the Madras High Court

Case No : Writ Petition No. 21922 of 2010

R. Senthamarai APPELLANT

Vs

The Commissioner, Municipal Corporation RESPONDENT

Date of Decision : 04-02-2011

Acts Referred:

Tamil Nadu Municipal Services (Discipline and Appeal) Rules, 1970 — Rule 8(2)

Citation : (2011) 02 MAD CK 0508

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : K. Shanmugam, for the Appellant; K. Sridhar, for K. Sridhar, Associates, for the Respondent

Final Decision : Dismissed

Judgement

T. Raja, J.—The Petitioner has filed the present writ petition challenging the order passed by the Respondent/the Commissioner, Salem Municipal Corporation, Salem, in Na. Ka. No. L7/472/2008, dated 08.06.2010 and to quash the same in so far as it relates to order recovery of Rs. 20,836/- towards time barred tax arrears from the gratuity and with a consequential direction to the Respondent to refund a sum of Rs. 20,836/- to the Petitioner.

2. Learned Counsel appearing for the Petitioner submitted that the Petitioner was issued with a charge memo in Na. Ka.C2/472/2008, dated 30.04.2008 under Rule 8(2) of the Tamil Nadu Municipality (Discipline and Appeal) Rules, 1970, for not collecting the time barred taxes relating to the year 1998-99, while he was working as Assistant Revenue Officer in the Ammapet ward, to the extent of Rs. 6,61,799/- and out of which, his share of 15% was worked out at Rs. 99,270/- , which was finally treated loss to the Respondent Corporation. Subsequently, the Petitioner retired from service on 30.04.2008 and on the same day, he was issued with the impugned charge memo permitting the Petitioner to retire from service without prejudice the pending disciplinary proceedings. Though the said charge memo dated 30.04.2008 was challenged by filing writ petition in W.P. No.

5012 of 2009, this Court, by order dated 15.06.2009, without quashing the charge memo, directed the Respondent to complete disciplinary proceedings and to pass final orders within 12 weeks. Pursuant to the order passed by this Court on 15.06.2009, when an enquiry was held, the Petitioner had agreed for adjusting a sum of Rs. 20,836/- from his gratuity, but, that was done only out of compulsion and also to get his gratuity settled. Therefore, he contended that his admission to pay a sum of Rs. 20,836/- cannot be held against the Petitioner.

3. Further, the learned Counsel for the Petitioner submitted that in a similar circumstances, this Court in W.P. No. 5596 of 2008, dated 21.10.2008, has passed an order quashing the order of recovery on the ground that the Petitioner, while working as Revenue Assistant, failed to collect the time barred arrears of tax and therefore, 7.5% of the total arrears of tax is to be recovered from the gratuity of the Petitioner. On that basis, he sought for quashing of the impugned order.

4. Per contra, learned Counsel appearing for the Respondent submits that the Petitioner was, at the relevant point of time, served as Assistant Revenue Officer in the Salem Municipality Corporation. As a responsible Assistant Revenue Officer, he has miserably failed to discharge his duties in collecting the property tax from the owners of the property situated within the Salem Municipality Corporation. Therefore, he was issued with a charge memo dated 30.04.2008 under Rule 8(2) of the Tamil Nadu Municipal (Discipline and Appeal) Services Rules, 1970, for not collecting the time barred taxes for the year 1998-99.

5. Further, it was contended that when the Petitioner himself has come forward and given a letter in writing with a request to adjust a sum of Rs. 20,836/- , the judgment cited by the Petitioner in W.P. No. 5596 of 2008, dated 21.10.2008, cannot be taken into account in favour of the Petitioner, as the case dealt with in the above mentioned order passed by this Court is different from the one raised in the present writ petition.

6. In his further submission, it was contended that this Court, against the writ petition filed by the Petitioner in W.P. No. 5012 of 2009, by order dated 15.06.2009, directed the Respondent to complete the disciplinary proceedings and to pass final orders within 12 weeks and only in the light of the order passed by this Court, the Respondent held an enquiry against the Petitioner. Only during the course of enquiry, the Petitioner has come forward in his own hand written letter requesting to adjust a sum of Rs. 20,836/- from his gratuity. In that view of the matter, it is not proper for the Petitioner to say that the said letter was given out of compulsion.

7. Heard the learned Counsel appearing on either side and perused the materials available on record.

8. It is admittedly true that the Petitioner, at the relevant point of time, served as Assistant Revenue Officer in the Ammapet Ward of Salem Municipal Corporation. While he was serving as Assistant Revenue Officer, his duty was to collect the

property tax from all the land owners without any delay, so that the property tax would not suffer time of limitation under the Limitation Act. When the Petitioner has committed dereliction of duty in not collecting the property tax, the said lapse was finally found out only at the time of his retirement from service. Therefore, he was permitted to retire from service by order dated 30.04.2008 without prejudice to the pending disciplinary proceedings.

9. Admittedly, the Petitioner has filed the writ petition in W.P. No. 5012 of 2009, dated 15.06.2009 before this Court and this Court, by order dated 15.06.2009, having known the fact that the Petitioner was issued with a charge memo on the last date of his retirement, directed the Respondent to complete the disciplinary proceedings and pass final orders within 12 weeks. Only in the light of the order passed by this Court, the Respondent held an enquiry against the Petitioner. During the course of enquiry, the Petitioner, in his written statement, requested the Respondent to recover a sum of Rs. 20,836/- from his gratuity. Therefore, as rightly contended by the learned Counsel for the Respondent, the Petitioner is not entitled to say that the time barred taxes cannot be recovered from the Petitioner.

10. In that view of the matter, this Court, for reasons stated above, does not find merit in the writ petition and accordingly, the same is dismissed. No Costs.

