

(2010) 08 MAD CK 0403

In the Madras High Court

Case No : Writ Petition No. 12194 of 2003 and W.P.M.P. No. 15298 of 2003

T.R. Krishnamoorthy

APPELLANT

Vs

The Managing Director, Financial Advisor, Tamil Nadu Housing
Board and The Government of Tamil Nadu

RESPONDENT

Date of Decision : 27-08-2010

Acts Referred:

Citation : (2010) 08 MAD CK 0403

Hon'ble Judges : M.M. Sundresh, J

Bench : Single Bench

Advocate : R. Vaigai, for the Appellant; A. Vijayakumar, for Respondents 1 and 2 (TNHB) and C. Devi, Government Advocate for Respondent-3, for the Respondent

Final Decision : Allowed

Judgement

M.M. Sundresh, J.—The petitioner was working as an Allottee Service Manager with the 1st respondent. After working in the said capacity, the petitioner retired from service on 30.04.1983. After the retirement of the petitioner, the first respondent issued a show cause notice dated 11.02.2002 stating that on account of the delay caused by the petitioner and in view of the deliberate failure on his part along with some other officials in intimating the final cost of 174 flats constructed in the Madurai Mill Colony, the respondent board has incurred a loss of Rs. 3,39,250/-. Therefore, the said amount was sought to be taken against the petitioner for recovering a sum of Rs. 31,584/- being the proportionate amount of loss caused by the petitioner.

2. The petitioner gave a reply stating that other persons who are working along with the petitioner from the month of October 1977 to March 1984 are only responsible for the alleged loss. It was further stated in the reply that the Allotment Section is not empowered to finalise the cost of construction and the completion of Report Section should have intimated the final cost to the Allotment Section. The petitioner also stated that he was not in-charge of the

allotment from the month of October 1984 to March 1986.

3. According to the petitioner that only after 1984 the final price was intimated to the allottees who filed writ petitions and obtained interim orders. However without giving any reply to the petitioner, an order was passed by the 1st respondent directing the petitioner to pay a sum of Rs. 31,584/-. The petitioner filed a further appeal to the 3rd respondent who in turn has confirmed the order passed by the 1st respondent. Challenging the above said orders, the present writ petition has been filed.

4. The learned Counsel appearing for the petitioner submitted that the alleged occurrence was for the period starting from 1976 to 1979. It is further submitted that the finalisation is not the duty of the petitioner but it is only the Completion of the Report Section which is responsible for the same. It is also submitted that in any case for the alleged occurrence which was from 1976 to 1979, the action cannot be taken nearly 10 years after the retirement of the petitioner.

5. According to the petitioner that the involvement of the other persons have not been taken into consideration and on a mechanic application of mind, the petitioner was asked to make out proportional loss. The learned Counsel for the petitioner further submitted that in pursuant to the impugned orders recovery was sought to be made in the pension granted to the petitioner. Therefore, the learned Counsel submitted that the writ petition will have to be allowed.

6. Per contra, the learned Counsel appearing for the respondents 1 and 2 submitted that the petitioner was in-charge at the relevant point of time and therefore the impugned orders passed have to be sustained. It is further submitted that the fixation of the loss to the Housing Board and the petitioner should have coordinated with the Completion of Record Section, the finalisation of the cost made after 1984 was quashed by the Honourable Court on the question of delay. Therefore, the writ petition is liable to be dismissed.

7. Admittedly, the petitioner was working with the respondents 1 and 2 in his capacity as Allottee Service Manager, the finalisation has to be done by the Completion of Report Section. It was stated by the respondents that the petitioner should have coordinated with the Completion of Report Section. When the duty is cast upon the Completion of Report Section, the petitioner cannot made liable for the same. In any case, the amount of proportionate liability cannot be fastened on the petitioner as in the case of other persons who are primarily responsible for finalising the cost, the respondents have not given any finding about the dereliction of duty by the responsible officers whose duty is to finalise the cost. Merely because of the petitioner was working at the relevant point of time an order of recovery cannot be made against the petitioner that too after a period of 10 years after his retirement.

8. Admittedly no departmental proceedings have been initiated against the petitioner during his service. The petitioner was allowed to retire on 30.04.1993. Thereafter, the proceedings cannot be initiated for the alleged occurrence which

happened between 1976 to 1979. Therefore on the ground of laches also, the writ petition is liable to be allowed. The respondents have also not substantiated the power under which they have passed the impugned orders against a retired employee who was allowed to retire.

9. As observed above, no proceeding was initiated during the service of the petitioner and the employer, employee relationship came to an end after retirement. Merely giving a show cause notice for recovering the amount would not be sufficient. The petitioner was not given the basis upon which the show cause notice was issued such as the material records as well as the oral evidence. Further as observed above, no finding has been rendered about the actual persons who were responsible for the same, more so when the petitioner has specifically raised such a contention.

10. Considering the above said facts, this Court is of the opinion that there is no justification for sustaining the impugned orders. Accordingly, the impugned orders are set aside and the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.