(2008) 07 MP CK 0037

In the Madhya Pradesh High Court

Vishnu Vakil APPELLANT

Vs

The State of Madhya Pradesh and Others RESPONDENT

Date of Decision : 16-07-2008

Acts Referred:

Madhya Pradesh Civil Services (Pension) Rules, 1976 — Rule 9
Madhya Pradesh Land Revenue Code, 1959 — Section 146

Citation : (2008) ILR (MP) 2609 : (2008) 5 MPHT 110 : (2009) 1 MPLJ 18

Hon'ble Judges : S.S. Kemkar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shantanu Kemkar, J.

The petitioner a retired Upper Division Clerk from the Public Works Department of the State of Madhya Pradesh, has filed this petition seeking quashment of Revenue Recovery Certificate (for short ''RRC'') dated 27-9-2001 (Annexure P-1) issued against him by 4th respondent Tehsildar, Burhanpur for the recovery of Rs. 65,580/-.

Briefly stated, on attaining the age of superannuation on 30-9-91, the petitioner was retired from the Public Works Department. The Executive Engineer deducted a sum of Rs. 68,575.20 paise from the petitioner''s GPF account. Feeling aggrieved the petitioner had filed O.A. No. 684/93 before the Madhya Pradesh State Administrative Tribunal Bench at Indore (for short "the Tribunal"). The said O.A. was allowed by the Tribunal vide dated 8-4-94 and the recovery was set aside observing further that allowing of the O.A. and setting aside the order of recovery will not be a bar for the recovery according to the law and procedure.

Thereafter, Tehsildar, Burhanpur issued the aforesaid RRC (Annexure P-1). Aggrieved, the petitioner approached to the Tribunal in O.A. No. 1286/01. On abolition of the Tribunal, the O. A. was transferred to this Court and was renumbered as W.P. No. 9148/03. The said W.P. No. 9148/03 was dismissed as withdrawn vide order dated 16-2-2006 passed by this Court with a liberty to the petitioner to file a fresh petition making appropriate pleadings to challenge the Rule. According to the said liberty, the present petition has been filed.

The case of the petitioner is that it is after more than 10 years of his retirement, the RRC for the recovery of amount of Rs. 65,580/- has been issued against him. According to him, no recovery could be effected invoking provisions of Land Revenue Code, 1959 (for short ''the Code''). He submits that the only mode prescribed for recovery under the service rules in such circumstances is under Rule 9 of the Madhya Pradesh Civil Services (Pension) Rules, 1976 (for short, ''the Pension Rules''). His further case is that before issuance of RRC the respondents have failed to follow the principles of natural justice in as much as no opportunity of hearing was ever given to the petitioner.

The respondents filed the reply and have stated that while the petitioner was posted as Store Keeper some articles were found missing, therefore, the recovery was ordered. According to the respondents, the petitioner accepted the shortage in the articles of the stores and, therefore, the recovery has rightly been ordered byway of RRC.

Having heard learned Counsel for the parties in my view the petition deserves to be allowed. The petitioner was retired from service in the year 1991. Thereafter the recovery made from GPF account of the petitioner was set aside by the Tribunal on 8-4-94. No action for the alleged recovery was taken for such a. long period, now vide RCC, dated 27-9-01 (Annexure P-1) the respondents have taken action for the recovery of the amount by invoking Section 146 of the Code. The amount sought to be recovered from the petitioner is not the arrears of the land revenue and as such the same is not recoverable by invoking the provisions of Code. There is no adjudication by way of any departmental or judicial proceedings about the liability or ascertainment of quantum of the alleged shortage in the stores department.

The plea taken by the respondents that the petitioner had accepted the shortage and therefore recovery by way of RCC is justified also has not been substantiated by the respondents by producing any document in support, therefore, the averment of the respondents in this regard has no base. The respondents did not invoke Rule 9 of the pension rules nor filed a civil suit for the said recovery from the petitioner. Having not done so, the respondent cannot invoke the provisions of the Code and issue RCC against the petitioner for the recovery of the said amount.

A learned Single Judge of this Court in the case of Kuldeep Gupta v. State of M.P. and Ors. 2002 RN 419 had occasion to deal with similar facts and it has been held in the case of Kuldeep Gupta (supra), that recovery of amount of defalcation being not the amount of the land revenue cannot be recovered under the provisions of the Code. It has also been held that the amount due from an employee against excess payment made by him in the discharge of his duties cannot be recovered as arrears of the land revenue.

Having regards to the aforesaid, the impugned action of issuance of RRC in the year 2001 by the respondents for the alleged recovery of the period prior to 30-9-1991 without there being any departmental enquiry or judicial proceedings, cannot be sustained. The amount sought to be recovered is not recoverable under the provisions of the Code.

Accordingly, the petition is allowed. The impugned RRC (Annexure P-1) is quashed. No order as to costs.