SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

L.Ganesan Vs. Mg. Director Tamil Nadu Handicrafts Development Corporation

L.Ganesan Vs. Mg. Director Tamil Nadu Handicrafts Development Corporation

SooperKanoon Citation : sooperkanoon.com/964413

Court : Chennai

Decided On : Apr-23-2013

Judge : T.RAJA

Appellant : L.Ganesan

Respondent : Mg. Director Tamil Nadu Handicrafts Development Corporation

Judgement :
IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

23. 04.2013 CORAM THE HONOURABLE MR.JUSTICE T.RAJA W.P.No.9236 of 2005 L.Ganesan .. Petitioner -vs- The Managing Director Tamil Nadu Handicrafts Development Corporation Ltd., Chenna

002. .. Respondent Petition under Article 226 of The Constitution of India, praying for the issue of a Writ of Certiorari, calling for the records of the respondent pertaining to his order which is made in Rc.No.2010/Per/04 dated 24.2.2005 and quash the same. For Petitioner :: Mr.R.Malaichamy For Respondent :: No appearance ORDER This writ petition was filed by Mr.L.Ganesan challenging the correctness of the impugned order of recovery passed by the respondent-Managing Director of Tamil Nadu Handicrafts Development Corporation Ltd., Chennai in Rc.No.2010/Per/04 dated 24.2.2005 and to quash the same, since the said order came to be passed after thirteen months the petitioner was allowed to

retire from the services of the Corporation under Voluntary Retirement Scheme Phase-II on 31.12.2003 AN, by the proceedings of the Chairman and Managing Director in Rc.No.7328/Per/04 dated 30.1.2004, specifically permitting him to encash the earned leave for 122 days standing to his credit as on 31.12.2003, inasmuch as the relationship of master and servant between the respondent and the petitioner had ceased to exist on and from 31.12.2003 AN.

2. The learned counsel for the petitioner submitted that when the petitioner was serving as Superintendent in-charge at Art Plate Production Centre, Thanjavur, the respondent called for applications from the willing employees of the Corporation to opt for voluntary retirement in phase-II scheme. In response to the said announcement made for the employees working in the respondent-Corporation to opt for VRS, the petitioner also applied for the same and accepting the request of the petitioner, the respondent, on complete scrutiny of the service records to find out whether the petitioner was facing any departmental proceeding or any charge was pending against him, has come to the conclusion that the petitioner was fit enough to proceed on VRS, it goes without saying that there was no charge pending against him. Further, it was pleaded that when the Chairman and Managing Director of the respondent-Corporation, by proceedings dated 30.1.2004, had allowed the petitioner to retire from the services of the Corporation on 31.12.2003 AN and as well permitted him to encash the earned leave for 122 days standing to his credit as on 31.12.2003, it is absolutely not legally possible for the respondent to issue any order thereafter seeking to recover any amount from the petitioner's terminal benefits. Further, when the respondent was entitled to recover any dues before the petitioner proceeded on voluntary retirement, but having seen that there were no dues payable by the petitioner to the Corporation from his side on account of any lapse, it is not open to the respondent to pass the impugned order seeking to recover a huge sum of Rs.81,720/- i.e., by adjusting and retaining a sum of Rs.23,973/- from the petitioner's terminal benefits and directing the petitioner to remit the balance sum of Rs.57,747/-, after a period of thirteen months from the date on which the petitioner was allowed to retire on VRS. On this basis, he prayed for interference with the impugned order.

3. Though the matter is pending for quite a long time from 2005, no counter affidavit has been filed. Moreover, no one appeared before this Court to defend the impugned order of recovery passed by the Managing Director of Tamil Nadu Handicrafts Development Corporation Ltd., Chennai, that too after thirteen months from the date on which the petitioner was allowed to retire from the services of the Corporation under VRS, Phase-II.

4. A perusal of the order passed by the Chairman and Managing Director of the respondent-Corporation dated 30.1.2004 in proceedings Rc.No.7328/Per/04 clearly shows that the petitioner was allowed to retire from the services of the Corporation on 31.12.2003 AN under the VRS Phase-II. When the said order also shows that he was permitted to encash the earned leave for 122 days standing to his credit as on 31.12.2003; that the leave salary was directed to be calculated at 1/30th of monthly salary of each day of encashment and that the Finance Manager was also authorised to draw and disburse only 50% of the total amount of encashment salary in cash, the respondent-Managing Director, having allowed the petitioner to retire from the services of the Corporation on 31.12.2003, has no legal relationship as master against the petitioner to issue the order of recovery, that too after thirteen months from the date of his retirement. Further, it is to be seen that even after the receipt of the show cause notice dated 6.4.2004 issued by the very same Chairman and Managing Director calling upon the petitioner to submit his explanation, the petitioner had submitted his explanation clearly mentioning that the recovery cannot be made, since he was allowed to proceed on VRS on 31.12.2003 AN specifically certifying that there was no due pending against him. Even after receipt of such explanation, the respondent ought not to have issued the impugned order of recovery against the petitioner. Besides, the proceedings passed by the Chairman and Managing Director of Tamil Nadu Handicrafts Development Corporation Limited, dated 30.01.2004, allowed the petitioner to retire from service of the Corporation on 31.12.2003 under the VRS Phase-II and also further permitted him to encash Earned Leave for 122 days, which was lying in his credit as on 31.12.2003. The said order further stated that the leave salary of the petitioner shall be calculated at 1/30th of monthly salary of each day of encashment. Therefore, when such an order was passed permitting the petitioner to retire from service, the respondent, having lost the relationship of Master and

Servant, after 13 months from the date of retirement, cannot issue an order of recovery. In fact, a mere reading of the order of retirement dated 30.01.2004 does not say that he was permitted to retire from service, without prejudice to any loss to the Corporation. Whileso, the notice dated 06.04.2004, complaining that the respondent office noticed that certain consumables used in the manufacture of art plates were found to have been purchased at higher rates, resulting in loss to the Corporation during the year 2002-03, is not legally in order, when he was already allowed to retire from service. In that view of the matter, this Court has no other option except to allow the writ petition by setting aside the impugned order of recovery. Accordingly, the writ petition is allowed and the impugned order is set aside. Consequently, W.P.M.P.No.10051 of 2005 is closed. No costs. ss To The Managing Director Tamil Nadu Handicrafts Development Corporation Ltd., Chenna

00.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com