

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 15TH DAY OF JULY 2011

BEFORE

THE HON'BLE MR. JUSTICE ANAND BYRAREDDY

WRIT PETITION No. 13682 OF 2006 (S)

BETWEEN:

H. Nandakumar,
Aged 55 years,
S/o Late H. Visveswaraiah,
Residing at No.6,
Jawaharlal Street,
Seshadripuram,
Bangalore – 560 020. ...PETITIONER

(By Shri. S.V. Tilgui, Advocate)

AND:

The Managing Director
Karnataka Handloom Development
Corporation Limited,
No.1, Priyadarshini Shopping Complex,
Next to MEG Centre,
Ulsoor, Bangalore. ...RESPONDENT

(By Shri. L. Govindraaj, Advocate)

This Writ Petition is filed under Articles 226 and 227
of the Constitution of India praying to direct the

Respondent Corporation to disburse the withheld terminal benefits with interest and etc.,

This Writ Petition coming on for Hearing this day, the Court made the following: -

ORDER

Heard the learned counsel for the petitioner and the respondent.

2. The facts are as follows:-

The petitioner had joined the respondent-Corporation during the year 1976 as a First Division Assistant and worked in various capacities. At the time of retirement, the petitioner was a Senior Accounts Officer and working as a Personnel Officer on other official duties in the Personnel and Administration Department. When he was so working, the respondent-Corporation had introduced a voluntary retirement scheme by its Office order dated 12.1.2005. The petitioner had sought to avail the benefit of the said scheme along with several others. His application was accepted. He was permitted to retire

and he was relieved from service by an Office order dated 4.10.2004 subject to the condition that the terminal benefits would be settled only after the Corporation received funds from the Government. It is the petitioner's case that though such a benefit ought to have been conferred at the very point of time when the petitioner was relieved from service, the petitioner had no choice. The terminal benefits were settled only after a lapse of seven months and to the further shock of the petitioner though he was entitled to a total terminal benefit of Rs.5,72,814.25 including earned leave, death relief fund and ex-gratia under the voluntary retirement scheme, the Corporation paid him a sum of Rs.2,65,575.38 paise as terminal benefits on the footing that the remaining amount was adjusted towards other dues in a sum of Rs.1,05,299/- and a sum of Rs.6,449,70 paise as stock shortages. Therefore, a total sum of Rs.1,11,748.70 paise was withheld without assigning valid reasons and the petitioner was neither placed on notice nor was afforded

an opportunity of hearing before the deductions were made. The petitioner made several representations pointing out the manner in which the amounts have been summarily withheld without notice and without valid reasons. The respondent-Corporation by an Office order dated 2.11.2004 called upon the petitioner to handover the complete charge along with all files in his custody, which was done on 24.11.2004. Thereafter he was called upon to work from the date of relieving order without any salary or allowances till 6.00 P.M. on 12.5.2005. By a letter dated 12.5.2005, he was informed that two files were missing and it should be searched and handed over and till the files are located 10% of the terminal benefits would be withheld and would not be disbursed. Eventhough the Office order was to withhold only 10% of the terminal benefits, the respondent actually withheld a sum of Rs.1,05,299/- which would be 20% of the terminal benefits due to the petitioner. The petitioner came to know of the reason for withholding of the balance amount

of terminal benefits only on receipt of Annexure-“F”. The petitioner immediately replied to the same stating that the petitioner was not responsible for the same. On the other hand, the respondent-Corporation is fully aware of the file of Shri.Huchegowda having been sent to the Audit department on 21.6.2003 as per outward register of the Head Office at Hubli, which was not returned from the Audit Department. Other files including rubber stamps and punching machines were handed over to one Raju, the Assistant Personnel Officer of the respondent-Corporation at the time of handing over charge. These aspects have not been considered for holding the petitioner responsible for the missing files and withholding large sum of money. Insofar as the stock shortages are concerned till the year 1988 no action had been initiated for recoveries. However, by an order of this Court an enquiry was ordered for recovery of shortages in the Corporation. During the tenure of the petitioner there were atleast Rs. Fourty Lakh ordered to be recovered from Sales

Personnel who were found responsible for stock shortages.

The petitioner is in no way concerned insofar as stock shortages are concerned as he was the Accounts Officer at the relevant point of time. The long and short of it is that the petitioner was denied a large part of the terminal benefits, which have been withheld.

3. The learned counsel for the respondent has filed statement of objections to contend that there was no intentional delay in settling the terminal benefits of the petitioner since details had to be received from various units to ascertain whether the petitioner was due any sum on account of stock shortages and on receipt of such details and after calculation by the Accounts Department, the terminal benefits were quantified. This procedure has been adopted and followed in all cases of voluntary retirement scheme and the petitioner has not been isolated for such treatment. The further allegation of the petitioner that a sum of Rs.1,11,748.70 paise had been

withheld for no reason is not correct. He was informed the reason as to why the deductions were made in the terminal benefits as per the letters dated 13.7.2005, 31.8.2005 and 13.7.2006, one of which is produced at Annexure-R1. According to which the petitioner has been mulcted with several acts of misfeasance and malfeasance as a result of which the petitioner has been denied such benefits. Insofar as the allegation that he had handed over files pertaining to the enquiry proceedings is incorrect. Eventhough several reminders were issued to the petitioner as per annexures-R2 and R3, there was no response from the petitioner eventhough he had received the same. It is in this background, in order to compel the petitioner to return the files that the monies have been withheld. The claim of the petitioner is therefore not readily acceptable. It is in this vein the respondent seeks to justify its action.

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4. In the above background, the petitioner's application for voluntary retirement having been accepted, the question arises, whether the petitioner could have been fastened with the liabilities and could have been denied the benefits on the several grounds that have been put forth to justify the action of withholding of large sum of money out of the terminal benefits due to the petitioner. The respondent would have been well within its limits to have done so, if there was a provision under which the respondent was acting. There is no reference to any such provision governing the respondent or conferring it the power to do so. Even otherwise if the respondent as an employer can recover such amounts from the retirement benefits due to the petitioner, it could have been done only after placing the petitioner on notice of such losses being attributed to him and after giving an opportunity of hearing. This again is an extraordinary power, which is conferred under a statutory provision. Since the relationship of the employer and the employee would

cease on the acceptance of the application for voluntary retirement and when he is relieved from service, the petitioner not having been placed on notice of any such losses when he was relieved from service would no longer enable the employer to withhold the benefits without any such legal provision, which would enable holding of an enquiry even to recover the amounts legitimately due to the respondent-Corporation. In that view of the matter, the respondent belatedly seeking to mulct the petitioner with several allegations of misfeasance and malfeasance and seeking to arbitrarily quantify the losses relating to the same and withholding amounts which would otherwise be legitimately due to the petitioner is unjust and results in an unjust benefit being derived by withholding such monies. The only manner in which the respondent could hope to recover any amount lost to it would be to file a civil suit or seek other modes of recovery and not to arbitrarily withhold the same under the guise of power available to it.

5. Accordingly, the writ petition stands allowed. The respondent shall release all amounts withheld out of the petitioner's retirement benefits forthwith with interest at 6% per annum from the date on which it fell due till the date of payment, in any event, within a period of six weeks. If there is delay even beyond six weeks, the respondent shall be liable to pay interest at 12% per annum on the said amount.

Sd/-
Judge

*alb/-.