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W.P. No.33875 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.33875 of 2013

N.G. Rathinaselvan

... Petitioner

Vs.

1. The Secretary to Government
Highways & Minor Ports (HL1) Department
Fort St. George, Chennai 9

2. The Chief Engineer (General)
Highways Department
Chepauk, Chennai 5

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of certiorari or any other appropriate writ or direction in the nature of writ calling for the records of the respondents in connection with the impugned orders passed by the 1st respondent in GO(D) No.88 HW&MP (HL1) Department dated 29.06.2010, GO(D) No.12, High Ways & Minor Ports (HL1) Department dated 25.07.2013 and GO(D) No.174 High Ways & Minor Ports (HL1) Department dated 30.08.2013 and quash the same.

For Petitioner : Mr.K.Venkataramani
Senior Counsel
for Mr.M. Muthappan
For Respondents : Mr.S. Arumugam
Government Advocate



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ORDER

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This Writ Petition has been filed seeking to quash the impugned orders passed by the 1st respondent in GO(D) No.88 HW&MP (HL1) Department dated 29.06.2010, GO(D) No.12, High Ways & Minor Ports (HL1) Department dated 25.07.2013 and GO(D) No.174 High Ways & Minor Ports (HL1) Department dated 30.08.2013.

2. The relevant facts that are necessary for disposal of this Writ Petition are as under:

2.1. While the petitioner was working as an Assistant Divisional Engineer in Thirukoilur Sub-Division, a disciplinary proceeding was initiated against him under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on five charges. After concluding the enquiry, the petitioner was imposed with a punishment of compulsory requirement from service by issuing a G.O. D No.88 Highways & Small Ports (HL1) Department dated 29.06.2010.

2.2. Aggrieved by the said order, the petitioner approached this



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Court by filing W.P.No.19209 of 2010 and this Court, by an order dated 07.12.2011, allowed the said Writ Petition by remanding the matter back to the respondents with a further direction to furnish a copy of the remarks of the Tamil Nadu Public Service Commission to the petitioner and to afford an opportunity to him. The operative portion of the said order reads as under.

"Accordingly, the writ petition is allowed and the respondent is directed to furnish a copy of the remarks of Tamil Nadu Public Service Commission to the petitioner within a period of four weeks from the date of receipt of a copy of this order. After receipt of the same, the petitioner shall give suitable reply within a period of four weeks therefrom. Thereafter, the 1st respondent is directed to pass appropriate orders by taking into consideration the representation given by the petitioner vis-a-vis the Enquiry Officer's report and the recommendation of the Tamil Nadu Public Service Commission by way of speaking order."

2.3. Thereafter, an opportunity was afforded to the petitioner by furnishing a copy of the remarks furnished by the Tamil Nadu Public Service Commission. Thereafter, the first respondent passed order in G.O.(2D) No.12 dated 25.07.2013, rejecting the contentions raised by the petitioner in his representation and confirming the original order of



punishment of compulsory retirement imposed on the petitioner, through

G.O. D No.88 Highways & Small Ports (HL1) Department dated

29.06.2010. The operative portion of the said order reads as under :

"The Government have carefully and independently examined the case in detail along with the connected records. It has been clearly proved in the inquiry report that Thiru.N.G.Rathinaselvn connived with Junior Engineer and made false entries in the godown log book stating that 489.750 tones of bitumen were obtained from other divisions. Further 340.303 tones bitumen were returned back to those divisions and the remaining 149.347 tones of bitumen has to be given to contractors. The delinquent officer himself has agreed that their entires were false and it is evident from statements made by prosecution witnesses as well. Moreover, Thiru.N.G. Rathinaselvan was also responsible for making false entries in the godown log book that bitumen obtained from other divisions were returned back. This is evident form the fact that on cross checking with dodown log book of other divisions, log book entries do not match at all. Besides, Thiru. N.G. Rathinaselvan in collusion with D.Shanmugam has issued unstamped receipt for the issue of 377.380 MT bitumen to Metro Road Construction, Chennai and obtained acknowledgment receipt for 530.975 MT bitumen, which is a wrong procedure. The amount mentioned



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in log book has to coincide with amount made in USR. It is proved beyond doubt that delinquent officer has made false entries in godown log book. Further, the delinquent officer has not given any appropriate reason to refute the above said punishment imposed by Government. After taking into the consideration of all aspects, the Government have, therefore, decided to reject the representation dated 29.03.2012 of Thiru. N.G. Rathinaselvan, formerly Assistant Divisional Engineer and accordingly, the Government confirm the punishment of Compulsory Retirement awarded to Thiru. N.G. Rathinaselvan in the Government Order second read above."

2.4. While so, the first respondent issued yet another G.O.(D) No.174 dated 30.08.2013, under Rule 39 of the Tamil Nadu Pension Rules, 1978, imposing cut in pension and gratuity payable to the petitioner. The operative portion of the said order reads as under:

"7. மேலே தமிழ்நாடு அரசு பணியாளர் தேர்வாணையம் தெரிவித்துள்ள கருத்துடன், இந்நேர்வினை சம்பந்தப்பட்ட ஆவணங்களுடன் அரசு மீண்டும் கவனமாகவும் சுயமாகவும் ஆய்வு செய்து திரு.ஜி.இரத்தினசெல்வம், உதவிக் கோட்டப் பொறியாளர் அவர்களுக்கு தமிழ்நாடு ஓய்வூதிய விதிகள் 1978ன் விதி 39(1)ன் படி நிர்ணயித்துள்ள தனியருக்கான பணிக்கொடைத் தொகையான ரூ.6,24,105 x 2/3 = ரூ.4,16,070/- லிருந்து தனியரால் அரசுக்கு ஏற்படுத்தப்பட்ட இழப்புத்



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தொகையான ரூ.2,00,000/- ஐ பிடித்தம் செய்து கொண்டு மீதத் தொகையான (ரூ.4,16,070 (-) ரூ.2,00,000 = ரூ.2,16,070/-னை மட்டும் பணிக்கொடையாக வழங்கவும், அன்னாரின் ஓய்வூதியத்தில் 2/3 பங்கு மட்டும் ஓய்வூதியமாக வழங்கவும் முடிவு செய்து அவ்வாறே அரசு ஆணையிடுகிறது. "

2.5. Aggrieved by the said orders issued by the Government, viz., vide G.O. D No.88 dated 29.06.2010, G.O.(2D) No.12 dated 25.07.2013 and G.O.(D) No.174 dated 30.08.2013, the petitioner approached this Court by filing the present Writ Petition. .

3. Mr. K. Venkataramani, learned Senior counsel appearing for the petitioner, without going into the merits of the case, contended that the actual date of superannuation of the petitioner was 31.07.2010 and whereas the punishment of compulsory retirement was imposed by an order dated 29.06.2010 i.e. hardly a month prior to the date of actual superannuation of the petitioner and further contended that the first respondent having passed the final order in the disciplinary proceedings imposing the punishment of compulsory retirement on the petitioner with effect from 29.06.2010, has not chosen to reserve the right to pass any consequential order under Rule 39 of the Tamil Nadu Pension Rules,



1978 or to continue the disciplinary proceedings under Rule 9 of the said Rules and therefore it is incompetent for the State to pass a separate order under Rule 39 Tamil Nadu Pension Rules, 1978 after the disciplinary proceedings were concluded. He also placed reliance on the orders passed by a Division Bench of this Court dated 08.08.2023 in W.A. No.1813/2019. Thus, he contended that the punishment of compulsory retirement imposed by impugned order dated 29.06.2010 and 25.07.2013, have no effect on the petitioner and hence restricted his argument only to the extent of impugned order dated 30.08.2013.

4. On the other hand, Mr. S.Arumugam, learned Government Advocate appearing for the respondents contended that the State is entitled to exercise its power under Rule 39 of Tamil Nadu Pension Rules, 1978, irrespective of the conclusion of the disciplinary proceedings as the order to be passed under Rule 39 of Tamil Nadu Pension Rules, 1978 is only a consequential order and no further procedure need to be followed.

5. This Court has carefully considered the submissions made on either side, perused the entire materials on record and also perused the



orders passed by the learned Division Bench in W.P. No.1813 of 2019.

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6. A perusal of the said order makes it clear that it is a settled legal position that unless and until the disciplinary authority, while imposing the punishment of compulsory retirement as a measure of disciplinary action, reserves his right to pass an order under Rule 39 of the Tamil Nadu Pension Rules, 1978 or to exercise his power under Rule 9 of the said Rules simultaneously imposing the punishment of compulsory retirement, the disciplinary authority is not competent to exercise the power under Rule 39 of the Tamil Nadu Pension Rules, 1978 at a later point of time. The learned Division Bench also has taken note of the other decisions rendered by various other Division Benches of this Court on earlier occasions. The relevant portion of the said decision of the learned Division Bench reads as under:

15. We have considered the said submissions made by the learned counsel appearing for both sides and perused the materials placed before this Court.

16. Even though Rule 39 (1) and (2) of the Tamil Nadu Pension Rules appears to support the contention made by the learned Additional Government Pleader that after getting the concurrence from the Tamil Nadu Public Service



Commission, such kind of decision can be taken to withhold the pension into 2/3rd instead of full pension after making such compulsory retirement punishment inflicted against the delinquent, however, if we look at the decision that has been made consistently by two Division Benches of this Court confirmed by the Hon-ble Supreme Court, the position is different.

17. In the first decision, i.e, in W.A.No.850 of 2013, the argument advanced on behalf of the delinquent is as follows:

"6. Mr.K.Raja, learned counsel appearing for the appellant, would submit that admittedly while imposing punishment of compulsory retirement on the appellant vide G.O.(2D)No.174, dated 01.11.2007, the first respondent did not reserve any right either under Rule 9 or under Rule 39(1) and (2) of the Tamil Nadu Pension Rules and therefore, the subsequent order, dated 15.12.2008, deducting pension to 2/3rd and recovering a sum of Rs.74,782/- from DCRG, is not all in tune with the above said statutory rule and hence prays for interference.?"

18. Having considered the same, the Division Bench has held as follows:



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"8. Admittedly, at the time of passing the order or compulsory retirement vide G.O.(2D)No.174, dated 01.11.2007, the first respondent Government did not reserve any right either under Rule 9 or under Rule 39(1) and (2) of the Tamil Nadu Pension Rules. The appellant, after receipt of the order of compulsory retirement, since terminal benefits have not been settled, filed Writ Petition No.12131 of 2008, implying that he was not interested in challenging the order of compulsory retirement. This Court, by the order dated 21.07.2008, directed the Government to pass orders sanctioning terminal benefits to the appellant, after obtaining remarks from the Tamil Nadu Public Service Commission. Therefore, the first respondent had passed G.O.(2D)No.181, dated 15.12.2008, granting 2/3rd of his eligible pension and recovering a sum of Rs.74,792/- . Since the first respondent did not reserve its right to deduct pension and to recover a portion of amount from DCRG at the time of passing the order of compulsory retirement, the order dated 15.12.2008 is unsustainable in law and on facts.?"

19. This position has been further fortified by another Division Bench judgment in the matter of Jeyajothi cited supra in W.A.No.661 of 2015, where the learned Single Judge order which was impugned in the said writ appeal itself had been taken into aid.



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20. *In the said case also, the subsequent Division Bench has discussed the issue in detail and passed the following orders:*

"6. The other plea projected on behalf of the Appellants before this Court is that when the charge of corruption is established only after pension was sanctioned, then, it is not possible to invoke the Rule 6 of Tamil Nadu Pension Rules, 1978.

7. The Learned Special Government Pleader for the Appellants relies on the Full Bench Decision of this Court in Mathesu V. Secretary to Government, Revenue Department, Chennai 9 and Others reported in 2013 (3) CTC at Page 369 at Special Page 371 whereby and whereunder it is observed and held as follows:-

"....The provisions of Rule 56(1) under the Fundamental Rules deal with retirement on superannuation. It only provides that a Government servant who has been placed under suspension shall not be permitted to retire, but shall be retained in service until the enquiry into the charge of misconduct, etc., is concluded and a final order is passed by the Competent Authority. Whereas, under Rule 9 of the Pension Rules, the Government has been given a right to withhold or withdraw pension.



It provides for continuance of the Departmental proceedings instituted while the Government servant was in service or even after his retirement and if the Government servant is found guilty of causing loss of revenue to the Government or otherwise found guilty of grave misconduct or negligence during the period of his service, then the Government can withhold or withdraw, either in part or full, his pension. Thus the two provisions operate in different fields.?

8. It is to be borne in mind that the 1st Appellant / Government of Tamilnadu by means of a G.O.(D) No.39, Commercial Taxes and Registration (K) Department dated 07.02.2011 had converted the 'Punishment of Removal from Service' in respect of the Respondent/Petitioner into that of 'Compulsory Retirement'. Also that, the 1st Appellant on 08.05.2012 issued a G.O.(D) No.178, Commercial Taxes and Registration (K) Department in and by which a standard amount of 30% from Pension and Death-cum-Retirement Gratuity was ordered to be deducted.

9. In the present case on hand, it cannot be lost sight that at the time of issuance of G.O.(D) No.39, Commercial Taxes and Registration (K) Department dated 07.02.2011, the Government had not reserved any right to deduct pension and to recover the portion of amount from DCRG in respect of the Respondent/Petitioner. In a similar situation, the



Division Bench of this Court in W.A.No.850 of 2013 had observed that when the Respondent Government did not reserve any right to deduct pension and to recover the portion of amount from DCRG at the time of passing the order of Compulsory Retirement, they cannot pass such an order at a later point of time?

21. It is further to be noted that the view taken by the Division Bench in Ganasekaran case in W.A.No.850 of 2013 having been confirmed by the dismissal of the Special Leave Petition by an order dated 14.09.2015 by the Hon'ble Supreme Court, the law has been settled in this regard.

22. According to the said settled proposition of law, if the employer i.e., State Government has not reserved any right either under Rule 9 or under Rule 39 (1) and (2) of the Tamil Nadu Pension Rules, 1978, such kind of action for the second time to inflict the said punishment of withholding 1/3rd of the pension of an employee who has already been suffering with the punishment of compulsory retirement is not permitted. This position, as has been held by the Division Bench in the said judgment has been upheld upto the Hon'ble Supreme Court, against which no decision can be taken by the Government.

7. In the light of the above legal position, the order issued by the



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Government in G.O.(D) No.174 dated 30.08.2013 cannot be sustained. In view of the submission made by the learned senior counsel appearing for the petitioner that even if the order of imposing compulsory retirement is allowed to sustain, it would not make any difference to the petitioner as he has attained the age of superannuation, this Court is not inclined to examine the validity or correctness of the other two impugned Government orders, viz., G.O. D No.88 Highways & Small Ports (HL1) Department dated 29.06.2010 and G.O.(2D) No.12 dated 25.07.2013.

8. Accordingly, the Writ Petition is partly allowed to the extent indicated above. Consequently, if any amounts are recovered from the petitioner by virtue of G.O.(D) No.174 dated 30.08.2013, the same shall be refunded to the petitioner as expeditiously as possible at any rate within a period of eight weeks from the date of receipt of a copy of this order. The miscellaneous petitions if any pending shall stand disposed off. No costs.

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Index : Yes/No
Speaking Order : Yes/No



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To:

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Highways Department
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MUMMINENI SUDHEER KUMAR,J.

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