

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-11-2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K.AGNIHOTRI
AND

THE HON'BLE DR.JUSTICE P.DEVADASS
Writ Appeal No.1594 of 2015
and M.P.No.1 of 2015

- 1 THE SECRETARY TO GOVERNMENT
HIGHWAYS AND RURAL WORKS DEPT.,
FORT ST. GEORGE, CHENNAI-9.
- 2 THE DIRECTOR GENERAL
HIGHWAYS AND RURAL WORKS DEPT.,
CHEPAUK, CHENNAI-5. ... APPELLANTS

Vs.

THIRU. K.JAGANATHAN (under suspension)
ASSISTANT DIVISIONAL ENGINEER
95/135M GANGA STREET
NEDUNCHALAI NAGAR, SURAMANGALAM (POST)
SALEM DISTRICT-636005. ... RESPONDENT

Appeal filed under Clause 15 of Letters Patent against the order, dated 16.9.2014 made in W.P.No.13596 of 2014 on the file of this Court.

W.P.No.13596 of 2014 petition filed under Article 226 of the constitution of India for issuance of a writ of certiorarified mandamus to call for the records in G.O.(3D):68 dated: 27.03.1996 and G.O.(3D) No.70, dated 29.03.1996 issued by the first responset and to quash the same and to consequently direct the first respondent to permit the petiitoner to retire from service and to settle all the retirement benefits with interest within a stipulated to time limit

For Appellants	:	Mrs.A.Srijayanthi Spl. Govt. Pleader
For Respondent	:	Mr.S.Ilamvazhuthi for M/s.Malarvizhi Udayakumar

(ORDER OF THE COURT WAS MADE BY DR.P.DEVADASS, J.)

This writ appeal at the instance of the Government respondents arises out of the order of the Writ Court passed in W.P.No.13596 of 2014 on 16.9.2014.

2. In 1961, the respondent joined the State Highways Department as a Supervisor. After several years of service, he became a Junior Engineer, Assistant Engineer and Assistant Divisional Engineer. And he has served in several places. He was due to retire on 31.3.1996. However, on 27.3.1996, in the public interest, he was suspended. On 28.3.1996 Government passed orders not permitting him to retire from service.

3. The Vigilance and Anti-Corruption Police registered a criminal case relating to certain irregularities alleged to have been committed by certain persons in the purchase of various materials by the Highways Department. The respondent has been cited as an accused. After completing the investigation, police charge sheeted several persons including the respondent in the trial Court. This case is pending for a long time. Respondent was continued to be kept under suspension.

4. In the circumstances, respondent moved the Writ Court by filing W.P.No.13596 of 2014 for revoking his prolonged suspension and also sought for direction to the appellants to permit him to retire from service and settle his retiral benefits with interest.

5. On 16.9.2014, the Writ Court holding that his prolonged suspension for more than a decade is bad allowed his writ petition and directed the appellants to settle all the monetary benefits with 6% interest p.a., within three months, in default, directed payment of 12% p.a. from the date of writ petition.

6. However, on 14.10.2014, Government framed charges against him under Rule 17(b) of Tamilnadu Civil Services (Discipline and Appeal) Rules. On 22.1.2015, the Government permitted him to retire from service subject to the outcome of the criminal case and the disciplinary proceedings.

7. Thereafter, the Government filed the present Writ Appeal.

8. The learned Special Govt. Pleader contended that since the respondent was permitted to retire subject to the outcome of the criminal case, if he is awarded punishments like compulsory retirement/removal/ dismissal from service, terminal benefits disbursed to him cannot be recovered from him. Further, because of the respondent, Government suffered a loss of Rs.2,68,159/-.

9. According to the learned counsel for the respondent, the Writ Court directed disbursement of the retiral benefits as early as in 16.9.2014. They have disbursed only certain amounts. Gratuity and pension amounts are not disbursed.

10. The learned counsel for the respondent further contended that as the respondent was permitted to retire without prejudice to the outcome of the departmental and criminal proceedings, as per the Government rules, the Government is bound to disburse him all the eligible amounts.

11. We have anxiously considered the rival submissions, perused the impugned order of the writ Court and the materials on record.

12. Admittedly, except gratuity and pension, other items of retiral benefits were already disbursed to the respondent.

13. In *Deokinandan Prasad vs State Of Bihar & others* (1971)2 SCC 330) a Constitution Bench of the Honourable Apex Court held that right to receive pension is now recognised as right to property. A Full Bench of the Punjab and Haryana High Court in *Punjab State Civil Supplies Corporation Ltd. and others vs. Pyare Lal* (L.P.A.No.113 of 2012 dt.9.11.2012) held that now pension is no longer a bounty and right to pension is a statutory right also falling under Article 300-A of the Constitution of India and withholding of pension must be in consonance with rules framed by the Government under Article 300-A, Constitution of India. Although gratuity amount can be withheld that too it must be in accordance with the rules framed by the Government.

14. The Tamilnadu Pension Rules, 1978 regulates

disbursal of pension, gratuity, etc. Rule 9 empowers the Government to withhold or withdraw pension under certain circumstances. The said Rule 9(4) runs as under:

'In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental proceedings are continued under sub rule (2), a provisional pension as provided in Rule 60 or Rule 69, as the case may be, shall be sanctioned.'

15. Rule 60 of the said rules deals with grant of provisional pension when departmental or judicial proceedings is pending. It runs as under:

'Provisional pension where departmental or judicial proceedings may be pending:-

(1) (a) In respect of Government servant, referred to in subrule (4) of Rule 9, the Audit Officer shall authorise the payment of provisional pension not exceeding the maximum pension which would have been admissible on the basis of the qualifying service up to the date of retirement of the Government servant.

(b) The provisional pension shall be authorised by the Audit Officer during the period commencing from the date of retirement to the date on which, upon conclusion of the departmental or judicial proceedings final orders are passed by the competent authority.

(c) No gratuity shall be authorised to the Government servant until the conclusion of such proceedings and issue of final orders thereon:

[Provided that no such gratuity, shall be withheld in respect of a Government servant, who has been permitted to retire without prejudice to the departmental or judicial proceedings pending against him, where such

departmental or judicial proceedings are only for administrative lapses not involving any pecuniary loss to the Government:]

[Provided further that where a Government servant against whom a departmental or judicial proceedings involving pecuniary loss to Government is pending, is permitted to retire without prejudice to such departmental or judicial proceedings, a portion of gratuity may be authorised, after deducting the maximum computed financial loss to the Government for which the Government servant is held liable, along with unrecovered Government dues if any, of such Government servant with interest.

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

(3) Nothing contained in this rule shall prejudice the operation of Rule 6 when final pension is sanctioned upon the conclusion of the departmental or judicial proceedings.

16. Rule 69 of the said Rules dealing with similar issue runs as under:

'69 Provisional pension where department or judicial proceeding may be pending:-

(1) (a) in respect of a Government

servant referred to in sub-rule (4) of rule 9, the Head of Office shall pay the provisional pension not exceeding the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant.

- (b) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon:

[Provided that no such gratuity, shall be withheld in respect of a Government servant who has been permitted to retire without prejudice to the departmental or judicial proceedings pending against him, where such departmental or judicial proceedings are only for administrative lapses not involving any pecuniary loss to the Government:]

[Provided further that where a Government servant, against whom a departmental or judicial proceedings involving pecuniary loss to Government is pending, is permitted to retire without prejudice to such departmental or judicial proceedings, a portion of gratuity may be authorised after deducting the maximum computed financial loss to the Government for which the Government servant is held liable, along with un-recovered Government dues if any, of such Government servants, with interest.

- (2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings but on recovery shall be made where the pension final sanctioned is less than the

provisional pension or the pension is reduced or withheld either permanently or for a specific period.

- (3) Nothing contained in this rule shall prejudice the operation of Rule 6 when final pension is sanctioned upon the conclusion of the departmental or judicial proceedings.'

17. Thus, from the above rule position, it is clear that if a Government servant is permitted to retire under Rule 9 (4) of the said Rules, without prejudice to the outcome of the departmental or judicial proceedings he cannot be denied pension, he must be granted provisional pension.

18. As far as gratuity is concerned, as per the first proviso to Rule 60(1) (c) if the departmental or judicial proceedings are pending only with respect to administrative lapses not involving any pecuniary loss, gratuity shall not be withheld. However, as per the second proviso to the said Rule 60(1) (c) if the pendency of the departmental or judicial proceedings involves any pecuniary loss to the Government and he is also permitted to have retired without prejudice to such proceedings then he shall be paid gratuity less maximum computed financial loss to the Government.

19. In the light of the above rule position, we shall revert to the case at our hand.

20. As per its letter No.56783/HL1/1995-116 dated 14.10.2014 the Government framed charges under Rule 17(b) of the Tamilnadu Civil Services (Discipline & Appeal) Rules as against the writ petitioner. Thus, departmental proceedings were initiated against him and it is pending. In the circumstances on 22.1.2015 Government permitted him to retire subject to the outcome of the said criminal case and disciplinary proceedings. He was so permitted to retire under Rule 9 of the Tamilnadu Pension Rules, 1978. In such circumstances, the writ petitioner is entitled to provisional pension.

21. The learned Special Government Pleader in writing submitted that so far as the writ petitioner is concerned, loss occasioned to the Government is computed at Rs.2,68,159/-. It is pertinent to note that in the pending departmental and

criminal proceedings still it is to be determined. In such circumstances, Government cannot withhold the entire gratuity amount. However, it can withhold Rs.2,68,159/- out of the gratuity amount payable to him and the disbursement of the balance amount is to be determined in the final orders to be passed by the Government based on the outcome of the criminal case and the disciplinary proceedings.

22. In view of the foregoings, ordered as under:

(1) Appellants shall grant provisional pension to the respondent in accordance with the Tamilnadu Pension Rules, 1978.

(2) Appellants shall disburse the gratuity amount to the respondent less Rs.2,68,159/-.

(3) The said amounts will carry 12% interest p.a. from the date of writ petition till the date of realisation.

(4) It is made clear that the said exercise shall be completed

within a period of eight weeks from the date of receipt of a copy of this order.

(5) Settlement of full gratuity amount and grant of regular pension shall be determined in the final orders to be passed by the Government based on the outcome of the criminal case and departmental proceedings pending against the respondent.

23. Accordingly, this writ Appeal is disposed of. Consequently, connected miscellaneous petition is closed. However, in the circumstances, costs made easy.

Sd/- सतयमेव जयते
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Vaan/Svn

To

1

The Secretary to Government
Highways and Rural works dept.,
Fort St. George,
Secretariate,
Chennai-9.

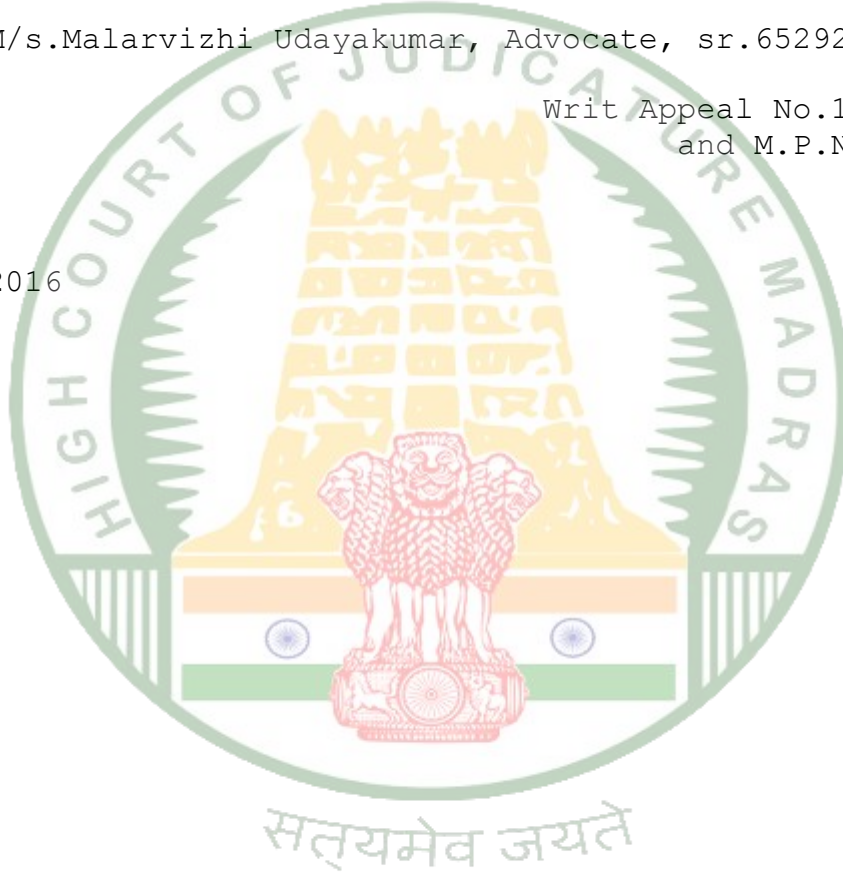
2 The Director General,
Highways and Rural Works Dept.,
Chepauk, Chennai-5.

+1 cc to M/s.Malarvizhi Udayakumar, Advocate, sr.65292

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