IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.06.2015

CORAM:

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

W.A.No.661 of 2015
and
M.P.No.1 of 2015

1. The Government of Tamilnadu
rep. by its Secretary to Government,
Commercial Taxes and Registration (K)
Department, Fort St.George,
Chennai - 600 009

2. The Inspector General of Registration,
100, Santhome High Road,
Chennai - 600 028 ...Appellants/Respondents

Vs.

T.Jeyajothi ...Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent Appeal against the Order of this Court dated 14.07.2014 made in W.P. No. 18415 of 2014.

W.P.No.18415 of 2014:

This Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus, to call for the records pertaining to G.O.(D) No.178,Commercial Taxes and Registration Department dated 08.05.2012 of the first respondent herein and quash the same and consequently direct the respondents to pay monthly pension without any deduction and also pay the arrears of pension and gratuity so far deducted to the petitioner.

For Appellants : Mr.P.S.Sivashanmugasundaram
Special Government Pleader

For Respondent : Mr.V.Suthakar

JUDGMENT

[Judgment of the Court was Delivered By M.VENUGOPAL, J.]

The Appellants / Respondents have focused the present Writ Appeal before this Court as against the order dated 14.07.2014 passed by the Learned Single Judge in W.P.No.18415 of 2014.

2. The Learned Single Judge while passing the Impugned Order on 14.07.2014 in W.P.No.18415 of 2014 filed by the Respondent/Petitioner in Paragraph Nos.4 and 5 had observed the following and resultantly Allowed the Writ Petition by quashing the order.

> "....4. In similar circumstances, the Hon'ble Division Bench of this Court in W.A.No.850 of 2013, held 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 the later point of time.
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> 5. Following the same, the order of the first respondent Government in issuing G.O.(D) No.178, Commercial Taxes and Registration Department dated 08.05.2012, is liable to be set aside, as in this case also the Government after passing the order of compulsory retirement, has no right or reason to pass any order regarding deduction of amount from the DCRG."

3. Challenging the correctness of the order dated 14.07.2014 in W.P.No.18415 of 2014, the Learned Special Government Pleader for the Appellants/Respondents contends that the Learned Single Judge failed to appreciate that the Respondent/Petitioner had accepted illegal gratification while she was working as Sub-Registrar at Melapalayam and on that basis disciplinary proceedings were initiated against her and whereas the other case concerns a loss to the Government Revenue.

4. The Learned Special Government Pleader appearing for the Appellants vehemently submits that the Punishment of Removal from Service in respect of grave charges was modified as Compulsory Retirement in respect of the petitioner after considering her long tenure of past service.

5. According to the Learned Special Government Pleader for the Appellants, the Learned Single Judge had failed to take into account that Rule 39(1) of Tamil Nadu Pension Rules 1978 clearly takes care of a situation when a person is compulsorily retired and same reads as under:-

> "A Government Servant compulsorily retired from service as a penalty may be granted by the authority

competent to impose such penalty, pension or gratuity or both at a rate not less than two thirds and not more than full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement."

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.

10.Indeed, the term 'Gratuity' is reward for long and meritorious service rendered by an Employee. The term signifies certain amount promised by the Employer to pay the Employee at the end of the service. In short, it is like that of a 'Gift' and not of a 'Debt'. It is to be remembered that 'Gratuity' is not attachable in execution of a decree.

11.In sum and substance, the term 'Gratuity' is a kind of retirement benefit like either Pension or Provident fund. After all, Gratuity paid to an employee is only to assist him after retirement, whether the retirement is on account of superannuation or compulsory retirement or on physical disability.

12.At this stage, this Court very pertinently makes a significant mention that Pension and Gratuity have become valuable rights and property in the hands of an Employee, who is in retirement and there cannot be any delay in settlement and disbursement thereof. Suffice it for this Court to point out that Pension and Gratuity are no longer a bounty to be distributed by the Government to an Employee on his retirement.

13.Be that as it may, on going through the Impugned Order dated 14.07.2014 in W.P.No.18415 of 2014 passed by the Learned Single Judge in allowing the Writ Petition and quashing the G.O.(D) No.178 Commercial Tax and Registration (K) Department dated 08.05.2012, this Court is of the considered view that the same is flawless. Per contra, the same is just and valid one in the Eye of Law. Consequently the Writ Appeal fails.

14. In the result, the Writ Appeal is dismissed. Consequently connected Miscellaneous Petition is closed. No Costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Government of Tamilnadu
   rep. by its Secretary to Government,
   Commercial Taxes and Registration (K)
   Department, Fort St.George,
   Chennai - 600 009

2. The Inspector General of Registration,
   100, Santhome High Road,
   Chennai - 600 028

1 CC to Mr.V.Suthakar, Advocate SR.No. 25969

1 CC to the Government Pleader, SR.No. 25778

W.A.No.661 of 2015 and
M.P.No.1 of 2015

CA (CO)
PSI (23.06.2015)