

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18-08-2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

WRIT PETITION No.21157 of 2015

K.Syad Saliya

.. Petitioner

- 1.The Director
Fire and Rescue Services
No.12, Rukmani Lakshmi pathy Road
Egmore, Chennai 8
- 2.The District Officer
Tamilnadu Fire and Rescue Services
Dharmapuri District,
Dharmapuri
- 3.The Principal Accountant General
of Tamil Nadu
Anna Salai, Chennai 600 018
(R3 suo motu impleaded as per
order dated 15.7.2015 in
WP 21157/2015)

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the second respondent to disburse the retirement benefits payable to the petitioner with interest.

For Petitioner

: Mr.G.Pugazhenth

For Respondents

: Mr.R.Vijayakumar
Additional Government Pleader
for RR1 & 2
Mr.V.Vijayashankar for R3

ORDER

By consent, the writ petition itself is taken up for final disposal.

2.The petitioner would state that he while working as a Leading Fireman in the services of Tamil Nadu Fire and Rescue Services Department, was placed under suspension vide proceedings of the second respondent dated 11.10.1995, on the ground that he is facing prosecution for the commission of offences punishable under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. The petitioner would further state that challenging the order of suspension, he filed O.A.No.5805 of 1999, on the file of the Tamil Nadu Administrative Tribunal and on account of the interim order obtained by the petitioner, he was reinstated in service on 13.10.1999, and the criminal case registered by the Inspector of Police, Vigilance and Anti Corruption, Dharmapuri, in Crime No.3/Ac/95, has culminated in a charge sheet, which was taken on file in C.C.No.1 of 1999, on the file of the Court of Chief Judicial Magistrate (Special Court for trial of Prevention of Corruption Act cases), Dharmapuri.

3.It is further stated by the petitioner that the trial Court, after full-fledged trial, has convicted and sentenced the petitioner and pursuant thereto, he was dismissed from service vide proceedings of the Zonal Officer, Fire and Rescue Services, Dharmapuri, dated 31.7.2004, and challenging the legality of the above said conviction and sentence, he filed an appeal in C.A.No.960 of 2004, and this Court vide judgment dated 1.4.2013, has acquitted the petitioner on the ground that the prosecution has failed to establish the ingredients that the appellant/accused demanded bribe and further that the evidence let in on behalf of the prosecution, is surrounded by doubts and thereafter, the District Officer, in-charge of Dharmapuri District, viz. the second respondent, has passed an order dated 17.2.2015, permitting him to retire from service unconditionally, and also directed the concerned authority to fix the pay scale of the petitioner in accordance with the V Pay Commission recommendation, and send a proposal to the third respondent and subsequently, the very same Officer vide proceedings dated 6.6.2015, has ordered the payment of provisional pension subject to the result of the Disciplinary Proceedings, and the petitioner, thereafter, submitted a representation dated 11.6.2015, praying for settlement of terminal benefits, and since no orders have been passed, came forward to file this writ petition.

4.The learned Counsel appearing for the petitioner, would submit that since the criminal case instituted against the petitioner, has ended in acquittal vide judgment dated 1.4.2013, made in C.A.No.960/2004, and that the petitioner was also permitted to retire unconditionally, there cannot be any impediment on the part of the second respondent to disburse the terminal benefits and prays for appropriate orders.

5.Per contra, Mr.R.Vijayakumar, learned Additional Government Pleader, who accepted notice on behalf of the respondents 1 and 2, has invited the attention of this Court to the counter affidavit of the second respondent and would submit that after obtaining opinion, necessary steps are being taken to file a Special Leave Petition before the Hon'ble Supreme Court of India challenging the order of acquittal dated 1.4.2013, made in C.A.No.960/2004, and hence, the terminal benefits sought for by the petitioner, cannot be given.

6.This Court has carefully considered the rival submissions and also perused the materials placed before it.

7.Though the trial Court convicted and sentenced the petitioner, the same was set aside by this Court vide judgment dated 1.4.2013, made in C.A.No.960/2004.

8.It is a settled position of law that once an order of acquittal is recorded, the stigma of conviction gets erased and admittedly, the petitioner has been permitted to retire without any condition, and as such, the claim made by him, prima facie appears to be sustainable.

9.In the light of the facts and circumstances, this Court directs the respondents 1 and 2 to consider the petitioner's representation dated 11.6.2015, on merits and in accordance with law, in the light of the observations made herein, and pass orders thereon, within a period of six weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner as well as to the third respondent. The writ petition is disposed of accordingly. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To:

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3.The Principal Accountant General
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+1 cc to Mr.G.Pugazhenthii, Advocate (sr.43769)
+1 cc to Government Pleader (sr.43827)
+1 cc to Mr.V.Vijay shankar, Advocate (sr.43907)

KU(co)
cp 04/09/2015

W.P.No.21157 of 2015



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