

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.30663 of 2008

Order Reserved on 04.07.2014 Judgment Pronounced on 11.08.2015

P.Rengasamy
Chief Engineer,
(Highways) Mechanical - Under suspension
39/15, Agasthiyar Street,
East Tambaram,
Chennai - 600 059. Petitioner

Vs.

- 1.The State of Tamil Nadu
Rep. by its Secretary to Government,
Highways Department,
Secretariat, Chennai - 600 009.
- 2.The Chief Engineer (General),
Highways,
Chepauk, Chennai - 600 005. Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, directing the Respondents to call for the records of first Respondent in G.O.(3D) No.162 PWD (HR1) Department dated 28.07.1995 and in G.O. (3D) No.168 PWD (HR1) Department dated 31.07.1995 issued by the first respondent and quash the same in respect of the petitioner and direct the respondents to permit the petitioner to retire from service retrospectively subject to Rule 9(1)(a) of the Tamil Nadu Pension Rules as in the cases of Thiru.S.Perumal Pillai (A-18) formerly Assistant Engineer (Highways) as ordered in G.O.(2D) No.2 Highways (HL1)

Department dated 17.01.2006 and in the case of Thiru.M.Sahul Hameed (A-17) formerly Divisional Engineer (Highways) project, Tirunelveli as ordered in G.O.(3D) No.1 Highways (HL1) Department dated 04.01.2008 and also in the case of Thiru.H.Ayoob formerly Superintending Engineer, Highways as directed by this Court in W.P.No.7830 of 2008 dated 24.11.2008.

For Petitioner : Mr.M.Nagoor Meeran

For Respondents : Mr.V.Shanmugasundar
Government Advocate

O R D E R

The short facts of the case are as follows:

The petitioner submits that he is working as Chief Engineer (Highways) mechanical, Chennai (Under suspension) and states that he was on promotion as Chief Engineer (Highways) on 31.07.1994 and deputed to the Tamil Nadu State Construction Corporation Limited, as Managing Director for the period from 31.07.1994 to 31.03.1995 and thereafter reverted back to parent department and posted as Chief Engineer (Highways) Mechanical at Chennai.

2.He submits that he was arbitrarily placed under suspension based on a disciplinary proceedings initiated by Government in its letter No.1449/HR1/95-13 dated 28.07.1995 three days before his attaining age of superannuation that is on 31.07.1995. After the lapse of five years a criminal case in Crime No.2 of 2001 was registered against 29 persons vide F.I.R. dated 19.01.2001. He was also included as one of the accused (A2) as he held the post of Managing Director from 31.07.1994 to 30.09.1994 during the period for which he is accountable as per F.I.R. The allegations in the F.I.R. and the charges in the disciplinary proceedings are the same regarding construction of bye pass road at Tirunelveli. He further submits that he was placed under suspension in G.O. (3D) 162 Public Works (HR1) department dated 28.07.1995 for an enquiry into grave charges against him is pending and he was not permitted to retire on attaining the age of superannuation. He further submits that in pursuance of the above said orders, he was placed under suspension and not permitted to retire from service on the date of attaining the age of superannuation on 31.07.1995 without any fault of mine.

3.He is to state the laying of bye pass road connecting Madurai-Tirunelveli road with NH-7 Kanniyakumari road was entrusted to the Tamil Nadu State Construction Corporation Limited, by the Government. This project was initiated in the year 1990 and the execution of the same was completed during 1991 to October 1994. He was posted as

Managing Director in the said corporation on 31.07.1994 and the project was completed on 01.10.1994 and the bye pass road after completion of work had been handed over to the Highways Department on 01.10.1994 itself and vehicle traffic was allowed for public use from that date onwards. He submits that a charge was framed against him on certain allegation that he has mismanaged and allowed excess payment against the norms fixed by the Tamil Nadu State Construction Corporation Limited and thereby the Corporation had incurred loss of interest for the value of Rs.46 lakhs. For the above charge, he has given a detailed explanation stating that he was in the Corporation as Managing Director from 31.07.1994 to 31.03.1995 only. During his tenure as Managing Director, he has ordered to carryout the remaining portions of the work for Rs.6 lakhs only from 01.08.1994 to 30.09.1994 therefore the question of excess payment of Rs.46 lakhs did not arise during the above said period as alleged by the Government. The payment of Rs.46 lakhs would be for the works which were carried out by his predecessor Thiru.N.Manimozhi as Managing Director and completed even before himself assuming office and on verification of work report sent by the Regional Office, the payment was effected only on the strength of records and on the report of the Regional Office. Therefore, there is no fault of mine as contemplated and as such he has submitted that no further action is called for and on this no further enquiry is required except to accept his explanation dated 10.02.1997. He submitted his explanation to the Government in his letter dated 10.02.1997 stating "First let us take the Tirunelveli Bypass work. The Regional Engineer III and Regional Manager (South) Madurai in their letter R.E-III/MDU/F44(E)/94-95 dated 03.08.1994 recommended an amount of 23.47 lakhs and requested to restrict the payment to 15 lakhs. But M/s.Thiagarajan Enterprises in their letter dated 03.08.1994 addressed to the Managing Director requested to pay for the cost of Bitumen also which had to be remitted to Indian Oil Corporation. Hence, he added 5 lakhs to the recommended value of 15 lakhs in view of urgency and paid 20 lakhs on 04.08.1994 just four days after his taking charge. By releasing this 20 lakhs he was well within the eligible amount recommended by the Regional Engineer and Regional Manager (South) of 23.47 lakhs. Again on 08.08.1994 the Regional Engineer III and Regional Manager (South) in their letter No.RE-III/MDU/F-44 (F)/94-95 recommended a payment of 29.30 lakhs, whereas he paid only 20 lakhs. The Regional Engineer III and Regional Manager (South) Madurai in their letter No.RE/MDU/F.44(F)/94-95 recommended on 27.09.1994 for a payment of 35.90 lakhs. Hence he verified the value of works on going. He stopped further payment after 01.10.1994 as the regularized bills were not forthcoming".

4.He further submits that on the above explanation no action so far taken by the Government. So he has reasonably believed that his explanation has been accepted by the first respondent. He is to state that he is now under prolonged suspension for about 13 years from 31.07.1995. His retirement benefits have been arbitrarily withheld by the respondents over 13 years, he is experiencing untold sufferings and hardships spending sleepless nights for want of retirement benefits to

settle family commitments after superannuation at the age of 72 years. He submits that when his case of disciplinary case is pending disposal, with the Government his successors in office as Managing Director namely Thiru.Suresh Babu (A13 in FIR), Chief Engineer against whom disciplinary proceedings and Criminal case in Crime No.2 of 2001 pending was allowed to retire on the date of his attaining the age of superannuation without prejudice to the disciplinary case pending against him. Thiru.Manimozhi predecessor in office as Managing Director who worked in the project for a longer period of one year and two months for the construction of bye pass road against whom the same departmental charges and Criminal case is pending as A1, he was also allowed to retire on the date of his superannuation and received all his terminal benefits. In short, he submits that his predecessors and successors in office as Managing Directors have received all their retirement benefits whereas he is denied for the last 13 years for which the respondents took double standards in the case of similarly placed person which is illegal.

5.He submits that while he was working as Managing Director in the Tamil Nadu State Construction Corporation Limited, during the period from 31.07.1994 to 31.03.1995 the formation of a bye pass road starting from KM 146/8 of Madurai-Kanniyakumari road to join at KM 155/4 of the same road was about to be completed and the same work was completed within two months and the project was hand over to Government as it was under taken by the Corporation as turn key project. On 31.03.1995, he was reverted to his parent department and posted as Chief Engineer (Highways) mechanical with effect from 01.04.1995. After the lapse of 6 years, he has left from the Corporation, the Vigilance and Anti Corruption Department, Tirunelveli has filed F.I.R. in Crime No.2 of 2001 on 19.01.2001 against 29 persons alleging that the Government funds have been misappropriated allowing substandard work by the accused officer A1-A29, the said Criminal case was filed by the Vigilance and Anti Corruption Department. In the F.I.R. there is no specific allegation against him for mismanagement or excess payment without following the norms and procedure hitherto followed in the Tamil Nadu State Construction Corporation Limited. The payment made by him only is so far as for the project work which has already been completed based on the recommendation of the Regional Office.

6.He submits that it is seen from the F.I.R. in paragraph 6 that four set of people are figuring with the execution of Tirunelveli bye pass road construction. They are as follows:-

- | | |
|--|--------------|
| a.Tamil Nadu State Construction Corporation Ltd. Engineers (13 Nos) | A-11 to A-23 |
| b.Tamil Nadu State Construction Corporation Ltd. Managing Director (2 Nos) | A-1 to A-2 |
| c.Tamil Nadu State Construction Corporation Ltd. Administrative And Accounts staff (6 Nos) | A-3 to A-8 |

d.Tamil Nadu Urban Development
Project Engineer (Highways) (7 Nos) A-24 to A-28
e.Sub-Contractor (1 No.) A-29

7.He submits that the Vigilance and Anti Corruption Department in the F.I.R. has alleged that Government funds have been misappropriated allowing substandard work by some of the accused officers. He is no way involved in the commission of offence as alleged by the Vigilance and Anti Corruption department as the corporation has handed over the project to the Government for public usage and vehicle traffic within two months from the date that he has assumed office as a Managing Director in the said corporation. So far as the payments are concerned he has instruction to pay to the contractor only of those items of work which were completed as on that date and no adhoc payment was paid during his tenure in the said project work.

8.He submits that those who were involved in the alleged commission of irregularities and misappropriation of funds were placed under suspension and some of them were permitted to retire from service without prejudice to the disciplinary proceedings pending against them namely,

a.Thiru.Na.Manimozhi who worked as Managing Director of Tamil Nadu State Construction Corporation Limited, (A1 in FIR) for a period from 31.05.1993 to 31.07.1994 was permitted to retire from service on the date of his attaining superannuation.

b.Thiur.P.Suresh Babu who worked as Regional Engineer in Tamil Nadu State Construction Corporation Limited, (A-13 in FIR) for the period from 03.03.1991 to 01.09.1992 was permitted to retire as Chief Engineer (Highways) mechanical, Chennai without prejudice to disciplinary proceedings pending against him vide G.O.M.S.No.83, Highways HR1/Department dated 31.05.2001 on attaining the age of superannuation.

c.Thiru.A.Ramasamy who worked as Project Engineer of Tamil Nadu State Construction Corporation Limited, (A-15 in FIR) for the period from 08.02.1989 to 20.04.1993 was permitted to retire from service on 31.05.1999 by the Government.

d.Thiru.S.Perumal Pillai who worked as Assistant Engineer in the Tamil Nadu State Construction Corporation Limited, (A-18 in FIR) for the period from 31.03.1990 to 20.04.1993 approached the State Administrative Tribunal and the said Tribunal in its order dated 25.10.2002 in O.A.No.4921 of 2001 has set aside the suspension order. Further the Tamil Nadu Administrative Tribunal directed the respondent to permit S.Perumal Pillai to be retired retrospectively with effect from 30.04.1997 that is from the actual date of his attaining the age of superannuation. Consequently based on above directions that the Government also issued orders to this effect vide G.O.(3D) No.2 Highways (HL1)

dated 17.01.2006.

e.Thiru.M.Shahul Hameed who worked as Divisional Engineer in Tamil Nadu State Construction Corporation Limited, (A-17 in FIR) for the period from 01.02.1990 to 28.02.1992 was placed under suspension in G.O.(3D) No.59, Highways Department dated 29.04.2005 and not permitted to retire from service in G.O.(3D) No.60, Highways Department dated 29.04.2005 against these orders he has filed before this Court in W.P.No.4763 of 2006 for immediate remedy. This Court in its order dated 06.03.2007 allowed the Writ Petition and set aside the impugned order and permitted to retire from service retrospectively from the actual date of his retirement subject to Rule 9(1)(a) of the Tamil Nadu Pension Rules.

f.Thiru.H.Ayoob who worked as a Superintending Engineer (Highways) (A-24 in FIR) for the period from 20.05.1993 to December 1996 was placed under suspension in G.O.(3D) No.168, Highways Department dated 29.06.2001 and not permitted to retire from the service in G.O. (3D) No.169, Highways Department dated 29.06.2001 by the Government and approached this Court in W.P.No.7830 of 2008. This Court in its order dated 24.11.2008 allowed the writ petition and set aside the impugned orders and permitted him to retire from service retrospectively from the actual date of his retirement subject to Rule 9(1)(a) of the Tamil Nadu Pension Rules.

9.In view of the above facts that the total arbitrariness in initiating disciplinary action against him in Lr.No.1449/HR1/95-13 dated 27.07.1995 for which he is not responsible as explained by him in his explanation dated 10.02.1997 for no reason whatsoever he has been kept under suspension and have not permitted him to retire for over 13 years which is illegal and contrary to law, with malafide intention and also a Criminal case foisted against 29 persons in which no specific allegation is made out by the Vigilance and Anti Corruption Department against him and no charge sheet has so far been framed and in view of the fact that the similarly placed above mentioned persons (a-f) were allowed to retire subject to disciplinary cases and a Criminal case filed by the Vigilance and Anti Corruption Department which are pending against them. They were all permitted to retire from service without prejudice to taking action under Rule 9(1)(a) of the Tamil Nadu Pension Rules. He submits that he was placed under suspension 3 days before attaining the age of superannuation which is quite contrary to the conclusion reached in respect of cases referred to above.

10.The highly competent counsel Mr.N.Nagoormeeran appearing for the petitioner submits that the petitioner was working as Chief Engineer under the respondents Department. Under the circumstances, the respondent placed him under suspension without assigning any reason, before attaining his superannuation retirement period. The petitioner retired on 31.07.1995 and after five years, a criminal case

has been registered against the petitioner and 28 others, under Section 120(b), 420, 909, 167, 218, 474A and 109 of I.P.C. and under Section 13 (2) read with 13(1)c and d of Prevention of Corruption Act, 1988, stating that the petitioner worked as Managing Director with the State Government. The learned counsel further submits that the respondent had suspended the petitioner in the last hour before the actual date of retirement. Further, there is no criminal court findings against him. As such, the impugned order is prejudiced to the petitioner. The respondents have withheld retirement benefits over the past 13 years stating that disciplinary proceedings is pending and also criminal case is pending. As per the allegation of the respondent that the petitioner had committed misappropriation of funds in the year 1994. But, no speedy action has been taken on the said allegations as of now. The highly competent counsel further submits that the suspension order was issued with malafide intentions without assigning any valid reasons. The co-accused A18, A17 and A24 in the same criminal case No.2 of 2001, were permitted to retire from their actual date of retirement on condition that if and when they are convicted in a criminal case pending, then the respondents could proceed against them under Rule 9(1)(a) of the Tamil Nadu Pension Rules. Similar decision is applicable to the petitioner also.

11.The learned counsel Mr.V.Shanmugasundar appearing for the respondents submits that the petitioner had committed misappropriation of funds. Hence, criminal case and departmental proceedings were initiated against him. Therefore, the petitioner is not permitted to retire on superannuation. However, the petitioner is permitted to get provisional pension which would have been admissible to him. The co-accused were permitted to retire from their actual date of retirement on the strength of judicial order passed in W.P.No.4763 of 2007 and in W.P.No.7830 of 2008. Further, the petitioner was holding highest position as Chief Engineer as well as Managing Director in the respondents Department.

12.On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on either side and on perusing the typed set of papers, this Court is of the view that the Inspector of Police, Vigilance, who is attached to the Anti-corruption Department, Tirunelveli had registered a criminal case in Crime No.2 of 2001 on his file, for alleged offence under Sections 120(b), 420, 409, 167, 218, 477(A) and 109 of I.P.C. and under Sections 13(2) read with 13(1) c(D) of Prevention of Corruption Act. As per F.I.R., the incident had happened between the year 1990 to 1994 but the case has been registered on 19.01.2001 i.e. After a lapse of 7 years. Further, the co-accused A17 namely Shahul Hameed, A18 namely Mr.Perumal Pillai and A24 namely Mr.H.Ayoop were permitted to retire from their actual date of retirement. They were also holding posts as Project Engineer, Site Engineer and Divisional Engineer respectively. This Court is of the further view that the respondents Department had not extended their fullest co-operation with the prosecution as well as the respondents have not conducted speedy departmental enquiry on the petitioner's

case. The alleged offence initially had happened in the year 1990. As of now, there are no findings on the said proceedings. Now, the petitioner is aged about 80 years. The co-accused have received their retirement benefits. Similarly, the petitioner also is entitled to receive the retirement benefits from the respondents on condition that if and when he is convicted in a criminal case pending on the file of Inspector of Police, Vigilance, Anti-corruption Wing, Tirunelveli and on the file of the judicial forum, then the respondents could proceed against him under Rule 9(1)(a) of the Tamil Nadu Pension Rules and also subject to departmental proceedings. Hence, this Court directs the respondents to settle the retirement benefits of the petitioner within a period of 30 days without any further delay. Hence, the impugned order dated 28.07.1995 and 31.07.1995 passed by the respondents are quashed.

13. In the result, the writ petition is allowed. No costs.

-sd/-

ASSISTANT REGISTRAR

/ TRUE COPY /

SUB-ASSISTANT REGISTRAR

vs

To

1. The Secretary to Government
Of TamilNadu,
Highways Department,
Secretariat, Chennai - 600 009.

2. The Chief Engineer (General),
Highways,
Chepauk, Chennai - 600 005.

+2 CC to MR. A.NAGOOR MEERAN ADVOCATE. SR.NO. 42835
+1 CC to Govt.Pleader. SR.NO.42070

Pre-Delivery Order made in
W.P.No.30663 of 2008

CO-SVI
JD 07/10/2015