IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.31434 of 2014

K.Mohan .. Petitioner

-vs-

1. The Government of Tamil Nadu
   rep.by its Secretary
   Commercial Taxes and
   Registration Department
   Fort St.George, Secretariat,
   Chennai 600 009

2. The Government of Tamil Nadu
   rep.by its Secretary
   Public Service Commission
   Fort St.George, Secretariat,
   Chennai 600 009

3. The Inspector General of Registration
   No.100, Santhome High Road
   Mylapore, Chennai 600 004

4. The Deputy Inspector General of Registration
   Thiruvanthipuram Road
   Cuddalore-2

5. The Enquiry Officer
   District Registrar of Cuddalore
   Thiruvanthipuram Road
   Cuddalore-2

6. The Audit Registrar of Cuddalore
   Thiruvanthipuram Road
   Cuddalore-2
7. The Sub Collector (Stamps)
   Collectorae, Manjakuppam,
   Cuddalore-1

8. The Guide Line Sub Registrar
   O/o the District Registrar of Cuddalore
   Thiruvanthipuram Road
   Cuddalore-2 .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records relating to the order in first impugned order in Na.Ka.No.3701/A1/2004 dated 22.06.2004 passed by the fourth respondent and confirmed the second impugned order in No.35660/R2/2004 dated 10.11.2004 passed by the third respondent and the revision order by way of third impugned order in G.O.(2D) No.116 dated 22.08.2013 passed by the first respondent and quash the same as illegal, improper, unreasonable, natural justice and against the rule of law and thereby direct the respondents to payback all the increment of salary benefits for three years as per the impugned orders to the petitioner.

For Petitioner :: Mr.K.Mohan
Petitioner-in-person

For Respondents :: Mr.S.Gunasekaran
Additional Government Pleader

ORDER

Mr.K.Mohan, who was appointed as a Junior Assistant on 1.1.71, became Assistant and finally promoted as Sub Registrar, suffered a departmental proceeding initiated under Rule 17(a) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules. After receiving the charge memo dated 3.6.2004 containing seven charges for committing certain lapses, the petitioner gave his reply on 18.6.2004 denying all the charges. But the fourth respondent, not satisfied with the explanation, found him guilty in respect of all the charges and imposed the punishment of stoppage of increment for a period of three years without cumulative effect by an order dated 22.6.2004. As against the said order, the petitioner preferred an appeal before the third respondent. In the meanwhile, the petitioner reached the age of superannuation on 30.6.2004. Finally the third respondent/appellate authority, finding that the explanation of the petitioner was not satisfactory, confirmed the order of the fourth respondent/disciplinary authority for the proven charges by his order dated 10.11.2004. However, since the petitioner reached the age of superannuation on 30.6.2004, the punishment of stoppage of increment for three years could not be implemented. Therefore, by the proceedings dated 22.6.2014, an order of recovery was passed by the fourth respondent to recover the monetary amount of three years increment in one lumpsum from the petitioner and accordingly, he also remitted a sum of Rs.7,200/-. As against the said order, the petitioner preferred a review petition before the first respondent/Government. After going through the facts of the case, the first respondent concluded that the recovery of the monetary amount of three years increment was an error and accordingly quashed the order dated 22.6.2014 by the G.O.(2D) No.33, Commercial Taxes and

Registration Department dated 13.3.2007 with a further direction to initiate disciplinary proceedings under Rule 9(2)(b) of the Tamil Nadu Pension Rules. In the light of the above, the third respondent framed the charges under Rule 9(2)(b) of the Tamil Nadu Pension Rules against the petitioner in charge memo No.4586/R2/2005-1 dated 26.3.2007 and thereafter the petitioner was directed to give his explanation to the enquiry officer. After concluding the enquiry, the enquiry officer submitted his report dated 16.11.2009 holding that in respect of the lapses for the audit period 5/2003 pertaining to document Nos.1220/2003 & 1221/2003 covered under the first charge stood proved; in respect of the lapse for the audit period 4/2003 pertaining to document No.872/2003 covered under the fourth charge stood proved; in respect of the lapses for the audit period 2/2003, 3/2003 pertaining to document Nos.455/2003, 518/2003 & 1362/2003 covered under the second charge stood proved; in respect of the lapse for the audit period 4/2003 pertaining to document No.101/2003 covered under the fifth charge stood proved; in respect of the lapses for the audit period 5/2003 pertaining to registration of marriages in Nos.25/2003 & 26/2003 covered under the sixth charge stood proved and in respect of the lapses for the audit period 5/2003 pertaining to registration of marriages in Nos.182/2003 & 200/2003 covered under the seventh charge stood proved. Based on the findings of the enquiry officer, the first respondent by G.O.(2D) No.116, Commercial Taxes and Registration Department dated 22.8.2013 has imposed the punishment of reduction of Rs.1,000/- from the monthly pension of the petitioner for a period of one year. Aggrieved by the said order, the petitioner is before this Court with the present writ petition.

2. The petitioner, who is appearing in person, submitted that the impugned order has been passed by the first respondent under Rule 9(2)(b) of the Tamil Nadu Pension Rules without application of mind, since the respondents have not followed the procedure contemplated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules. He also submitted that the punishment of reduction of Rs.1,000/- from the monthly pension of the petitioner for a period of one year is excessive and therefore the same is liable to be interfered with.

3. In reply, the learned Additional Government Pleader appearing for the respondents submitted that the opinion given by the Tamil Nadu Public Service Commission to proceed against the petitioner in terms of Rule 9(2)(b) of the Tamil Nadu Pension Rules in tune with the procedure contemplated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules have been duly complied with by the respondents, as he was granted sufficient opportunity. Adding further, he submitted that when the enquiry officer was appointed to enquire into the charges framed against the petitioner under Rule 9(2)(b) of the

Tamil Nadu Pension Rules, the enquiry officer, after conducting enquiry, has submitted his report to the third respondent holding the lapses committed by the petitioner as proved. Since the third respondent has no authority to pass orders on the disciplinary proceeding, as the petitioner retired from service, he forwarded the report to the first respondent to pass final orders on the departmental proceedings initiated against the petitioner. The first respondent, accepting the report of the enquiry officer holding the petitioner guilty of the charges covered under charge Nos.1,2,4,5,6 & 7, imposed the punishment of reduction of Rs.1,000/- from the monthly pension of the petitioner for a period of one year. Therefore, he pleaded that there is no illegality or infirmity in the impugned order.

4. I find merits in the submissions made by the learned Additional Government Pleader for the respondents. It is an admitted case of the petitioner that he was issued with a charge memo on 3.6.2004 under Rule 17(a) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules for the alleged lapses committed by him while serving as Sub Registrar. On receipt of the same, the petitioner also submitted his explanation on 18.6.2004. But the fourth respondent, dissatisfied with the same, imposed the punishment of stoppage of increment for a period of period of three years without cumulative effect for the proven charges and the said order was also confirmed by the third respondent. However, since the petitioner was due to retire on 30.6.2004, the punishment of stoppage of increment could not be implemented. Therefore, the fourth respondent ordered for recovery of the monetary amount of three years increment in one lumpsum. Pursuant thereto, the petitioner also remitted a sum of Rs.7,200/-. However, assailing the said order, when the petitioner preferred a review petition before the first respondent, the first respondent, finding that there was an error in the order of recovery, quashed the same with a further direction to the third respondent to initiate fresh disciplinary proceedings under Rule 9(2)(b) of the Tamil Nadu Pension Rules against the petitioner and accordingly the third respondent issued the charge memo dated 26.3.2007 in Proceedings No.4586/R2/2005-1. In this context, it is relevant to find out whether the first respondent has rightly passed the impugned order for reduction of Rs.1,000/- from the monthly pension of the petitioner for a period of one year for the proven charges. Under Rule 9(1)(a) of the Tamil Nadu Pension Rules, the Government have got a right to withhold or withdraw pension in respect of a Government servant found guilty of grave misconduct or negligence during the period of his service. However, the right of the Government to withhold or withdraw pension is circumscribed with a condition that before passing the order under the said sub-rule, the Tamil Nadu Public Service Commission shall be consulted if the pensioner does not agree to such withholding or withdrawal of the pension. But the Tamil

Nadu Public Service Commission need not be consulted where the pensioner agrees to withholding or withdrawal of the pension. In the present case, the explanation dated 18.6.2004 given by the petitioner indicates that he had denied all the charges. That shows that the petitioner has not agreed to the withholding or withdrawal of his pension. Therefore, on this premise, the first respondent has rightly sought the opinion of the Tamil Nadu Public Service Commission and only after obtaining the opinion of the second respondent, the first respondent has finally imposed the punishment of reduction of Rs.1,000/- from the monthly pension of the petitioner for a period of one year for the proven charges in G.O.(2D) No.116, Commercial Taxes and Registration Department dated 22.8.2013. It is also seen that the petitioner has been provided with sufficient opportunity before passing the impugned order. Moreover, the petitioner, who appeared in person, has also failed to demonstrate before this Court any of the defects in the impugned order. Therefore, this Court does not find any merits in the challenge to the impugned order. Accordingly, the writ petition fails and it is dismissed. Consequently, M.P.Nos.1 & 2 of 2014 are also dismissed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government
Commercial Taxes and Registration Department
Fort St.George
Chennai 600 009

2. The Secretary
Tamil Nadu Public Service Commission
Chennai

3. The Inspector General of Registration
No.100, Santhome High Road
Mylapore, Chennai 600 004

4. The Deputy Inspector General of Registration
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5. The Audit Registrar of Cuddalore
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O/o the District Registrar of Cuddalore
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8. The Enquiry Officer, District Registrar of Cuddalore
Thiruvanthipuram Road, Cuddalore.

+ 1 cc to Mr.K. Mohan, Advocate Sr.27890

W.P.No.31434 of 2014

PUR(CO)
Eu 12.05.16