

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.14944 of 2014

and M.P.No.2 of 2014

Rama Jothi ... Petitioner

Vs.

- 1.The Secretary to the Government  
of Tamil Nadu,  
Department of Social Welfare,  
Secretariat, Chennai-9.
- 2.The Director,  
Department of Social Welfare,  
Directorate of Noon Meal Social  
Welfare,  
Government of Tamil Nadu,  
Chindadripet, Chennai-2. ... Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of certiorarified mandamus to call for the records pertaining to the impugned G.O.(D) No.28 Social Welfare and Nutritious Meal Programme (SW-1) Department dated 25.3.2013 and quash in so far as the condition viz., " without prejudice

to initiation of disciplinary proceeding for recovery of amount due/ settlement of Public Accounts Committee etc." and consequently directing the respondents to pay all the retirement benefits including the differential amount of monthly pension of Rs.73,458/-, the commutation amount for a sum of Rs.5,42,340/- and DCRG for a sum of Rs.8,01,776/- all together for a sum of Rs.14,37,979/- along with interest at the rate of Rs.10% pa for the delayed payment.

For Petitioner : Mr.U.Karunakaran  
For Respondents : Mr.K.Dhananjayan,  
Spl. Govt. Pleader

ORDER

The petitioner has come up with the present writ petition, challenging the impugned G.O.(D) No.28 Social Welfare and Nutritious Meal Programme (SW-1) Department dated 25.3.2013 in so far as the condition i.e., " without prejudice to initiation of disciplinary proceeding for recovery of amount due / settlement of Public Accounts Committee etc." and consequently, to direct the respondents to pay all the retirement benefits including the differential amount of monthly pension of Rs.73,458/-, the commutation amount for a sum of Rs.5,42,340/- and DCRG for a sum of Rs.8,01,776/- all together for a sum of Rs.14,37,979/- along with interest at the rate of Rs.10% p.a. for the delayed payment.

2. The case of the petitioner, in brief, is as follows:-

(a) The petitioner was originally appointed as Child Development Project Officer in the department of Social Welfare. Subsequently, she was promoted as Assistant Director in the year 1993 and Deputy Director and she continued to work in the said post till her superannuation.

(b) While she was working as District Social Welfare Officer, Tiruchirappalli District, she executed the work in the scheme of distributing free school uniform to the school children benefiting under the Noon Meal Scheme. The Government of Tamil Nadu allotted 3,86,100 metres of cloth for the said purpose and the same were stitched and duly distributed to the students within the stipulated time. Absolutely, there is no flaw in distributing the same to the children.

(c) While so, during the year 2003, the second respondent issued a charge memo dated 4.8.2003 based on the audit report under Public Accounts Committee for causing loss to the Government to the tune of Rs.15,83,010/- for the shortage of 77,220 metres of cloth. For the said charge memo, the petitioner has given a detailed explanation and despite the same, an enquiry was ordered. After enquiry, the enquiry officer held that the charge levelled against the petitioner was not proved and she has not caused any loss to the Government. However, the respondents, disagreeing with the finding of the enquiry officer, awarded punishment of stoppage of increment for six months without cumulative effect vide G.O.(D) No.138 Social

Welfare and Nutritious Meal Programme Department and the punishment period was also over by 30.9.2009.

(d) The Additional Director General of Police, Crime Branch, CBCID, Chennai, vide his communication dated 27.12.2011, had categorically stated that when there is no misappropriation or falsification of records as reported in the second respondent's letter, no cognizance could be taken for the complaint of procedural errors which would entitle only departmental disciplinary action. Hence, it is clear that no criminal action could be initiated against the petitioner. While so, at the verge of retirement, the petitioner was served with a suspension order vide G.O.(D) No.48 dated 29.5.2012. Further, vide G.O. (2D) No.17 dated 31.5.2012, the petitioner was not allowed to retire from service.

(e) Aggrieved over the same, the petitioner preferred a writ petition before this Court in W.P.No.14335 of 2012 and this Court, allowed the said writ petition with a direction to the respondents to permit her to retire from service. Further, in the said order, it has been observed that if any amount is recoverable, the Government is at liberty to initiate appropriate proceedings to recover the same. Even though the petitioner had retired on 31.5.2012, no action has been initiated till date by the department for the reason that disciplinary proceedings were already initiated and completed for the same cause. Hence, the present petition.

3. Learned counsel appearing for the petitioner submitted that though the enquiry officer submitted his report holding that the charge levelled against the petitioner was not proved, the respondents, disagreeing with the finding of the enquiry officer, awarded punishment of stoppage of increment for six months without cumulative effect vide G.O.(D) No.138 Social Welfare and Nutritious Meal Programme Department. However, the said punishment period was also over by 30.9.2009. Further, he has submitted that as per the communication sent by the Additional Director General of Police, Crime Branch, CBCID, Chennai, no criminal proceeding could be initiated against the petitioner. Insofar as the settlement of Public Account Committee is concerned, it has no implication of his retirement debar the initiation of disciplinary proceedings for recovery of amount due and filing of criminal case. Learned counsel further submitted that it is settled legal position that the pension and gratuity amount cannot be withheld. Therefore, the impugned order passed by the first respondent is liable to be quashed. In this connection, the learned counsel appearing for the petitioner has also relied upon the order of the learned Single Judge of this Court dated 27.11.2015 made in W.P(MD)

No.17838 of 2015 - A.Muthuiruvakkal v. The State Bank of India, Stressed Assets Recovery Branch (SARB) & others, and submitted that it is well settled legal principle that pension and gratuity amount should not be attached under the provisions of Civil Procedure Code. In fact, in the said order, the learned Single Judge of this Court has relied upon the judgment of the Hon'ble Supreme Court reported in (2009) 1 SCC 379 - Radhey Shyam Gupta v. Punjab National Bank and another, to quash the order passed by the respondent in that case with regard to the deduction of pension. The relevant portion from the said judgment is usefully extracted:-

" 33. However, we are also of the view that having regard to proviso (g) to Section 60(1) of the Code, the High Court committed a jurisdictional error in directing that a portion of the decretal amount be satisfied from the fixed deposit receipts of the appellant held by the Bank. The High Court also erred in placing the onus on the appellant to produce the Matador in question for being auctioned for recovery of the decretal dues. In order words, the High Court erred in altering the decree of the trial Court in its revisional jurisdiction, particularly, when the pension and gratuity of the appellant, which had been converted into fixed deposits, could not be attached under the provisions of the Code of Civil Procedure. The decision in Jhothi Chit Fund case has been considerably watered down by later decision which have been indicated in para 22 hereinbefore and it has been held that gratuity payable would not be liable to attachment for satisfaction of a court decree in view of proviso (g) to Section 69(1) of the code."

By relying upon the said decision, the learned counsel appearing for the petitioner sought for quashing the impugned G.O.(D) No.28 Social Welfare and Nutritious Meal Programme (SW-1) Department dated 25.3.2013 in so far as the condition viz., "without prejudice to initiation of disciplinary proceeding for recovery of amount due / settlement of Public Accounts Committee etc." and consequently seeking a direction to the respondents to pay all the retirement benefits including the differential amount of monthly pension of Rs.73,458/-, the commutation amount for a sum of Rs.5,42,340/- and DCRG for a sum of Rs.8,01,776/- all together for a sum of Rs.14,37,979/- along with interest at the rate of Rs.10% p.a. for the delayed payment.

4. Learned Special Government Pleader appearing for the respondents by filing a detailed counter, submitted that the petitioner was allowed to retire from service only subject to

the outcome of the pending Public Accounts Committee remarks. Therefore, now the petitioner cannot seek to quash the impugned order. Thus, he sought for dismissal of the writ petition.

5. Keeping the submissions made on either side, I have carefully gone through the entire materials available on record including the judgment of the Hon'ble Supreme Court relied on by the learned counsel appearing for the petitioner.

6. Though very many contentions have been raised by either side, the only question involved in this writ petition is, whether the retirement benefits of the petitioner can be withheld by the respondents. From the perusal of the decision of the Hon'ble Supreme Court reported in (2009) 1 SCC 379 - Radhey Shyam Gupta v. Punjab National Bank and another, it is clear that the retirement benefits cannot be withheld by the respondents. Therefore, the impugned order of the first respondent is liable to be set aside.

7. Accordingly, the impugned GO in G.O.(D) No.28 Social Welfare and Nutritious Meal Programme (SW-1) Department dated 25.3.2013 in so far as the condition viz., " without prejudice to initiation of disciplinary proceeding for recovery of amount due / settlement of Public Accounts Committee etc." is quashed and the writ petition is allowed. The respondents are directed to pay all the retirement benefits of the petitioner including the differential amount of monthly pension of Rs.73,458/-, the commutation amount for a sum of Rs.5,42,340/- and DCRG for a sum of Rs.8,01,776/- all together for a sum of Rs.14,37,979/- along with interest at the rate of 10% p.a. for the delayed payment within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
सत्यमेव जयते

Assistant Registrar

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Sub Assistant Registrar

sbi

To

1.The Secretary to the Government  
of Tamil Nadu,  
Department of Social Welfare,  
Secretariat, Chennai-9.

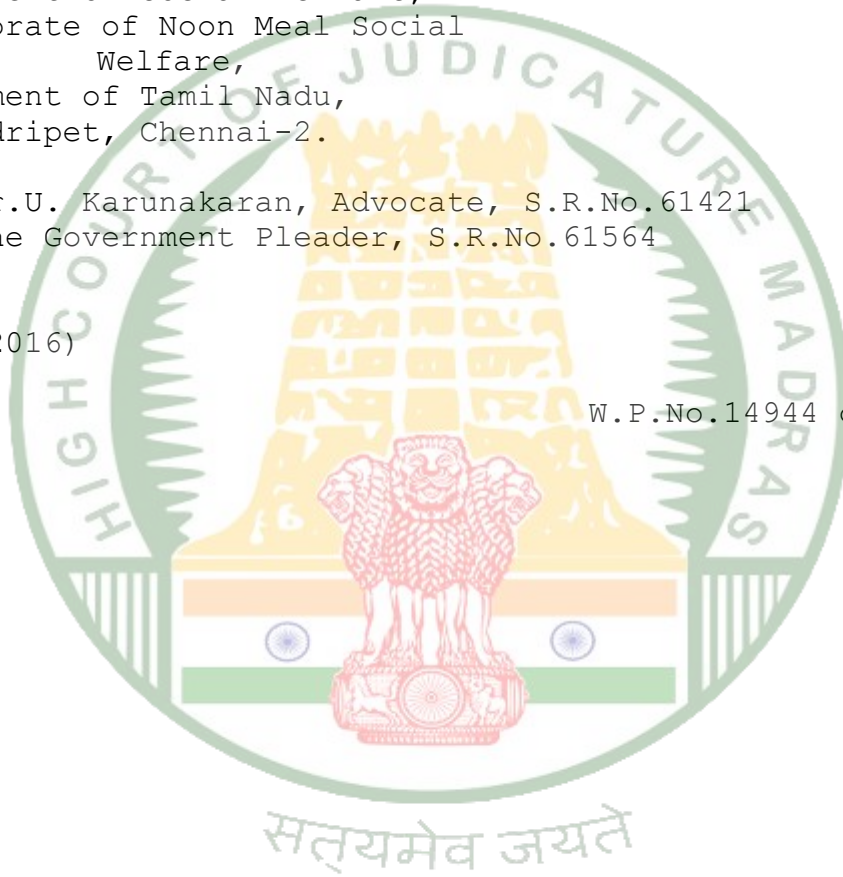
2.The Director,  
Department of Social Welfare,  
Directorate of Noon Meal Social  
Welfare,  
Government of Tamil Nadu,  
Chindadripet, Chennai-2.

+lcc to Mr.U. Karunakaran, Advocate, S.R.No.61421

+lcc to the Government Pleader, S.R.No.61564

nm(CO)  
md(29/11/2016)

W.P.No.14944 of 2014



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