

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2016

CORAM

THE HON'BLE MR. JUSTICE B.RAJENDRAN

WP.No.26616 of 2016

and

W.M.P.Nos. 22807 to 22809 of 2016

N.M.Ahmed Ali

.. Petitioner

Vs.

1.The Commissioner of Municipal
Administration
Chepauk
Chennai-600 005.

2.The Commissioner
Kadayanallur Municipality
Tirunelveli District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the Commissioner of Municipal Administration issued in Na.Ka.No.87634/2002/C2, dated 25.05.2016 and quash the same and consequently, to direct the respondents to settle the DCRG amount and pension eligible to the petitioner without any recovery.

For Petitioner : Mr.T.Ranganathan

For Respondents: Mr.A.Kumar

Special Govt.Pleader for R.1

Mr.P.Srinivas for R.2

ORDER

By consent, this Writ Petition is taken up and disposed of at the admission stage itself.

2. This Writ Petition is filed to issue Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the Commissioner of Municipal Administration issued in Na.Ka.No.87634/2002/C2, dated 25.05.2016 and quash the same and consequently, to direct the respondents to settle the DCRG amount and pension eligible to the petitioner without any recovery.

3. The petitioner was working as Municipal Engineer in Kadayannallur Municipality and he attained the age of superannuation on 31.03.2014. The petitioner was placed under suspension on the date of his retirement by the 1st respondent, by proceedings, dated 28.03.2014, and he was not allowed to retire from service. Pursuant to the order passed by this Court in M.P.Nos.1 and 2 of 2015 in W.P.No.9896 of 2015, dated 28.04.2015, the suspension of the petitioner was revoked and he was allowed to retire from service. The 1st respondent has passed the final order, dated 29.05.2015, imposing penalty of pension cut of Rs.2,500/- per month for five years, which according to the petitioner is unsustainable, as it is a non-speaking order and it was passed without issuing statutory notice. Hence, challenging the same, the petitioner has filed a Writ Petition in W.P.No.16780 of 2015 and this Court by order dated 12.06.2015 has quashed the impugned order of punishment dated 29.05.2015 and remanded the matter. The 1st respondent has issued the show cause notice to the petitioner, repeating the same decision of imposing the penalty of pension cut of Rs.2,500/- per month for five years, which was not accepted by the petitioner, vide letter dated 13.05.2016. A copy of the same was also sent by speed post on 20.05.2016, which was delivered to the 1st respondent on 23.05.2016. However, the 1st respondent has again issued the impugned order of punishment, dated 25.05.2016, which was served on the petitioner on 16.06.2016. Alleging that the impugned order of punishment issued by the 1st respondent is arbitrary and illegal, the present Writ Petition has been filed.

4. Mr.T.Ranganathan, the learned counsel for the petitioner would submit that the 1st respondent has issued a show cause notice to the petitioner repeating the same decision of imposing the same punishment, which was not accepted by the petitioner vide letter dated 13.05.2016 and a copy of the same was also sent by speed post on 20.05.2016, which was delivered to the 1st respondent on 23.05.2016, but, the same was not considered and the present impugned order was passed and hence, challenging the same, the present Writ Petition has been filed.

5. Mr.A.Kumar, the learned Special Government Pleader appearing for the 1st respondent would bring to the notice of this Court that as against the impugned order, an appeal lies to the Principal Secretary and in the appeal, the question as to whether the letter sent by the petitioner dated 13.05.2016 and a copy of the same which was sent by speed post on 20.05.2016, was received by the 1st respondent on 23.05.2016 or not can be decided.

6. Having regard to the above submissions made, as there is an interim order of this Court still in force restraining the respondents from effecting any recovery from the pension of the

petitioner, the petitioner is permitted to prefer an appeal before the Appellate Authority within a period of one week from the date of receipt of a copy of this order. In the appeal, the question as to whether the letter sent by the petitioner dated 13.05.2016 and a copy of the same which was sent by speed post on 20.05.2016, was received by the 1st respondent on 23.05.2016 or not, shall be decided. It is made clear that till the disposal of the appeal, the respondents are restrained from effecting any recovery from the pension of the petitioner. It is made clear that if the appeal is not preferred within a period of one week from the date of receipt of a copy of this order, the interim order shall stand automatically vacated and the respondents are permitted to effect recovery of the due amount from the pension of the petitioner.

7. The Writ Petition is disposed of accordingly. Consequently, connected Miscellaneous Petitions are closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

paa
To

1. The Commissioner of Municipal Administration
Chepauk, Chennai-600 005.

2. The Commissioner
Kadayanallur Municipality
Tirunelveli District.

+lcc to Mr.T. Ranganathan, Advocate, S.R.No.45076
+lcc to Mr.P. Srinivas, Advocate, S.R.No.45561
+lcc to the Government Pleader, S.R.No.45192

SCD(CO)
EU(16/08/2016)

W.P.No.26616 of 2016