

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2016

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P.No.18037 of 2010

and

M.P.No.1 of 2010

A.Thanga Thirupathi,

...Petitioner

..Vs..

1.The State of Tamil Nadu,
Represented by Secretary to Government,
Highways Department,
Secretariat, Chennai - 600 009.

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

....Respondents

Prayer: : Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus by calling for records relating to G.O.(3D) No.57 Highways (HL1) department dated 30.05.2003 and G.O.(3D) No.58 Highways (HL1) dated 30.05.2003 and quash the same and consequently direct the first respondent to permit the petitioner to retire from service as Assistant Divisional Engineer Highways and grant consequential benefits accordingly.

For petitioner : Mr.Nagoor Meeran

For Respondents : Mr.P.Sanjay Gandhi, AGP

ORDER

The prayer in the Writ Petition is for issuance of a Writ of Certiorarified Mandamus by calling for records relating to G.O.(3D) No.57 Highways (HL1) department dated 30.05.2003 and G.O.(3D) No.58 Highways (HL1) dated 30.05.2003 and quash the same and consequently direct the first respondent to permit the petitioner to retire from service as Assistant Divisional Engineer Highways and grant consequential benefits.

2. The case of the petitioner is that the petitioner was on deputation as Site Engineer, from 19.11.1993 to 16.05.1994 at the Tamil Nadu State construction Corporation, Tirunelveli. During which time, the petitioner was placed under suspension based on the criminal case registered in Crime No.2 of 2001 i.e., on the date of the petitioner attaining the age of superannuation on 31.05.2003 and the above said impugned G.Os. were served on the petitioner on 31.05.2003 on the date of superannuation in the night at 8.00P.M at his residence and the petitioner was not permitted to retire from service on 31.05.2003.

3. Heard both sides.

4. The learned counsel appearing for the petitioner would submit that for the said criminal case, there are 29 accused and the petitioner is A22. In respect of some of the other persons covering under the said FIR, the Government has permitted to retire those persons. It was also brought to the notice of this Court by the learned counsel appearing for the petitioner that the Hon'ble Tamil Nadu Administrative Tribunal has also passed orders, permitting some of the persons covering under the said FIR to retire and the said order of the Tribunal was also implemented by the Government through G.O.No.(2D) No.2 Highways (HL1) Department dated 17.01.2008 in respect of one Perumal Pillai, who is none other than A18.

5. The learned counsel appearing for the petitioner also brought to the notice of this Court that orders were passed by this Court in W.P.No.4763 of 2006 filed by one M.Shahul Hameed, who is none other than A17. In the said order of this Court, dated 06.03.2007, in respect of the said M.Shahul Hameed, the following orders were passed:-

"6. Taking note of the submission and having permitted the similar placed persons the petitioner is also entitled to retire subject to Rule 9(1)(a) of the Tamil Nadu Pension Rules. Hence, the impugned orders to be set aside and the petitioner is deemed to be retired from service from 30.04.2006. Necessary orders shall be passed by the first respondent within four weeks from the date of receipt of a copy of this order".

6. It is also further stated by the learned counsel appearing for the petitioner that the said orders of this Court, dated 06.03.2007 made in W.P.No.4763 of 2006 was implemented by the Government in G.O.(3D)No.1, Highways (HL1) Department, dated

24.11.2008. In respect of one Mr.H.Ayoob, who is none other than A24, also it was implemented by the Government and the said person was permitted to retire from service by G.O.(3D)No.88 by revoking the suspension against the said person. In the above background, since almost all the co-accused covering in the said FIR who have been permitted to retire from service, of course, on series of orders by this Court as well as the earlier orders of the Administrative Tribunal, there is no gain saying that the petitioner should not be permitted to retire from service. Therefore, the impugned orders dated 30.05.2003 and made in G.O. (3D)No.57 and G.O.(3D)No.58 passed by the respondents not permitting the petitioner from retiring service are liable to be set aside and the same gesture shown in respect of others at the instance of orders referred to above should also be extended to the petitioner.

7. The learned Additional Government Pleader appearing for the respondent by quoting the averments made in the counter affidavit on behalf of the respondents would submit that as against the petitioners and others a case in Tirunelveli Vigilance and Anti-corruption Department in Crime No.2 of 2001 under Sections 120(B), 420, 409, 167, 218, 406, 477-A and 109 of Indian Penal Code and under Sections 13(2) read with 13(1) (c) and (d) of the Prevention of corruption Act 1988 was filed and the said case is still pending.

8. I have considered the rival submissions made by the learned counsel appearing for the parties and also perused the various orders of this Court referred to above and the implementation of such orders by the respondent. In a number of cases, who are none other than, the co-accused along with the petitioner orders have been passed by this Court at their instances, directing the respondent to permit them to retire from the service. Those orders were accepted by the respondent and necessary orders permitting those persons to retire from service were issued. Since a number of co-accused in the said FIR and the Crime No. have been permitted to retire from service, keeping the petitioner alone for a prolonged period from the order dated 31.05.2003 is unjustifiable. The mere pendency of the criminal case for years together would not stand in the way in permitting the Government servant to retire on superannuation as these persons already entered into the category of senior citizen. Moreover since these issues have already been considered and number of orders have been passed by this Court as has been referred to above and the said orders having been implemented by the respondent, there is no justification on the part of the respondents in keeping the petitioner under suspension and in that view of the matter, this Court feels that the present impugned orders in so far as the petitioner is concerned is liable to be quashed and accordingly the impugned orders are quashed.

9. In the result, the Writ Petition is allowed and the impugned orders are quashed. The respondents are directed to pass suitable orders permitting the petitioner to retire from service, of course, subject to the outcome of the criminal case pending against him while permitting the petitioner to retire. The respondents shall also disburse the retirement benefits and other service benefits which are due to the petitioner. The needful shall be done within three months from the date of receipt of a copy of this order.

10. The Writ Petition is allowed in terms as indicated above. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

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

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

+2cc to M/S.A.Nagoor Meeran, Advocate SR.60741
+1cc to the Government Pleader SR.61582

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srg 25/11/2016

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