

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2016

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THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.42053 of 2016

A.Ganesan

... Petitioner

versus

1. State of Tamil Nadu,
Rep. by its Secretary to Government,
Municipal Administration and
Water Supply Department,
Fort St. George,
Chennai - 600 009.

2. The Accountant General,
D.M.S.Complex,
Teynampet, Chennai - 600 018.

3. The Pay and Accounts Officer,
Office of Pay and Accounts Office,
Chennai (South), Nandanam,
Chennai - 35.

... Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of mandamus, to direct the respondents to sanction retirement benefits, such as, pension provident fund, gratuity and all other attendant benefits to the petitioner forthwith by considering the representation made by the petitioner dated 07.09.2016 within the time to be stipulated by this Court.

For Petitioner : Mr.R.Chandrasekaran

For R1 and R3 : Mr.K.Dhananjayan

Special Govt. Pleader

For R2 : Mr.V.Vijayshankar

ORDER

By consent, the main writ petition itself is taken up for final disposal.

2. The petitioner has come up with the present writ petition for a mandamus, directing the respondents to sanction retirement benefits, such as, pension provident fund, gratuity and all other attendant benefits to him forthwith by considering his representation dated 07.09.2016 within a time limit to be fixed by this Court.

3. It is the case of the petitioner that initially, he was appointed as Municipal Commissioner of Thuraiyur Municipality in the year 1976. Subsequently, he was transferred to various places. While, he was working as Municipal Commissioner of Thiruppur, he was promoted as Selection Grade Municipal Commissioner and subsequently, he was promoted as Regional Director of Municipal Administration of Tirupur Region. Further, he was promoted as Director of Tamil Nadu Institute of Urban Studies, Coimbatore, for the period from 1997 to 1999 and finally, he was transferred and posted as Regional Director of Municipal Administration, Salem.

4. According to the petitioner, he was due to retire from service on 30.06.2004. On the date of his retirement, he was issued with a suspension order. Thereafter, the petitioner was issued with a charge memo, by a Memorandum dated 04.12.2008, framing charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, against the petitioner. The petitioner also filed his defence statement on 26.09.2011. The Enquiry Officer, after conducting enquiry, filed a report dated 30.12.2013, holding that the charge framed against the petitioner is not proved. After receiving the enquiry report, the first respondent accepted the same and dropped the charge of the petitioner, by G.O.(D) No.520, dated 03.08.2015.

5. During the pendency of the disciplinary proceedings, the petitioner filed an appeal/representation before the first respondent on 12.09.2013. Since the said appeal was not considered by the first respondent, the petitioner filed a writ petition in W.P.No.14907 of 2014. This Court, by an order dated 30.10.2014, directed the respondents to consider the representation dated 12.09.2013, within a period of two weeks. Since there was no response from the respondent, the petitioner made a representation dated 07.09.2016 to the first respondent requesting them to disburse his retirement benefits. Till date, there was no response on the said representation. Hence, the petitioner has filed the present writ petition.

6. The learned counsel appearing for the petitioner submitted that once the charges framed against the petitioner are dropped, the respondent has no power to withhold the retirement of the petitioner and all retirement benefits should have been granted to the petitioner. The petitioner, after dropping of charges, made a representation dated 07.09.2016 to the first respondent, but, the same has not been considered by the respondent. Furthermore, the learned counsel appearing for the petitioner submitted that the Hon'ble Supreme Court, in the case of Dev Prakash Tewari vs. U.P.Co-op. Institutional Service Board, reported in 2014 (2) SCC (L&S), has held that the Corporation had no legal authority to make any deduction in the

retiral benefits of the appellant and there is also no provision for conducting a disciplinary enquiry after retirement of the appellant. Further, even if the misconduct is established, a deduction could not be made from retiral benefits. It is further held that in the absence of such an authority, it must be held that the entire proceedings had lapsed and the appellant is entitled to get benefits. Based on the said decision, the petitioner is entitled to get his retirement benefits.

7. Mr.K.Dhananjayan, learned Special Government Pleader, who has taken notice on behalf of the first and third respondents submitted that the petitioner may be permitted to submit a fresh representation and the same would be considered by the Government, on merits and in accordance with law.

8. In view of the said submission made by the learned Special Government Pleader, appearing for the first and third respondents, the petitioner is directed to submit a fresh representation to the first respondent along with a copy of this order within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the first respondent is directed to consider and dispose of the same on merits and in accordance with law, in the light of decision of Hon'ble Supreme Court cited supra, within a period of six weeks thereafter.

This Writ Petition is disposed of accordingly. No costs.

-Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

1. Secretary to Government,
Municipal Administration and
Water Supply Department,
Fort St. George,
Chennai - 600 009.

2. The Accountant General,
D.M.S.Complex,
Teynampet, Chennai - 600 018.

3. The Pay and Accounts Officer,
Office of Pay and Accounts Office,
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Chennai - 35.

+1 cc to Mr.R.Chandrasekaran Advocate sr 70303
+1 cc to the Government Pleader sr 77045

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