



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.03.2016

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P (MD) No.10239 of 2015

Dr.G.Kannan

... Petitioner

Vs.

1.The Secretary to Government,
State of Tamil Nadu,
Municipal Administration and
Water Supply Department,
Secretariat,
Chennai - 600 009.

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

3.The Commissioner,
Madurai City Municipal Corporation,
Tallakulam, Madurai.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent herein in Government Order in G.O.No.136, Municipal Administration and Water Supply Department, dated 27.02.2015 and consequential order passed by the third respondent herein in his proceedings in Ma.Ni.4(H1)/22670/2006, dated 28.02.2015 and quash the same and consequently direct the respondents herein to regularize the service of the petitioner for the period from 22.04.2004 to 21.02.2008 with all monetary benefits including promotion and other accrued benefits in accordance with law.

For Petitioner : Mr.K.Hema Karthikeyan

For R1 & R2 : Mr.S.Satheeshkumar
Additional Government Pleader

For R3 : Mr.M.Murali

**ORDER**

This writ petition is filed seeking issuance of Writ of Certiorarified Mandamus to quash the Government Order in G.O.No.136, Municipal Administration and Water Supply Department, dated 27.02.2015 and consequential order passed by the third respondent herein in his proceedings in Ma.Ni.4(H1)/22670/2006, dated 28.02.2015 for a direction to the respondents herein to regularize the service of the petitioner for the period from 22.04.2004 to 21.02.2008 with all monetary benefits including promotion and other accrued benefits in accordance with law.

2. Heard the learned counsel appearing on either side.

3. The petitioner was working as Medical Officer in the third respondent Corporation having been appointed in the year 1986. While so, in the year 2004, he was placed under suspension and a charge memo was issued for not properly discharging his duties. After enquiry, he was dismissed from service by the third respondent in his proceedings in Ma.Na.208282/2003, dated 20.04.2004. Against the order of dismissal, the petitioner had filed a writ petition in W.P.(MD) No.920 of 2008. In this writ petition, this Court was pleased to grant an order of interim stay on 06.02.2008. Finally, the said writ petition was allowed by setting aside the impugned order therein.

4. Pursuant to the order of this Court, the petitioner was re-instated into service by the third respondent Corporation on 22.02.2008. Though he was re-instated, his back wages and other benefits were not given by the third respondents. As the respondents were delaying the payment of back wages, the petitioner filed Cont.P.(MD) No.582 of 2011. However, the same was dismissed on the ground of limitation.

5. While so, the first respondent has issued a Government Order in G.O.No.583, Municipal Administration and Water Supply dated 26.11.2010 wherein the Government has considered the claim of the Doctors, who had completed 20 years of service in the local bodies and those Doctors have to be given promotion as the Chief Medical Officer. Accordingly, the petitioner was given promotion as the Chief Medical Officer on 20.06.2011. Though the pay scale was not fixed for the post of the Chief Medical Officer, the petitioner attained the age of superannuation as the Chief Medical Officer on 28.02.2015. There is no proceeding pending against the petitioner. However, on 27.02.2015, a Government Order in G.O.Ms.No.136, Municipal Administration and Water Supply was passed wherein it was ordered that the petitioner was permitted to retire from service on 28.02.2012 and the disciplinary proceeding which was taken up by the third respondent Corporation in Ma.Na.No.1/8252/2003 dated 12.08.2003 against the petitioner will



be proceeded as per Rule 9 of Tamil Nadu Pension Rules, 1978 and based on the outcome of the disciplinary proceedings regularization from 22.04.2004 to 21.02.2008 will be decided by the third respondent Corporation and if any audit objection that may arise in future will be recovered from the petitioner. Based on the said Government Order, the first respondent passed an order in his proceedings in Ma.Ni.4(H1)/22670/2006, dated 12.08.2003, 28.02.2015 permitting the petitioner to retire from service with the above said three conditions.

6. The learned counsel for the petitioner by assailing the order impugned argued that the disciplinary proceedings referred to in the impugned order has already been considered by this Court in W.P.(MD) No.920 of 2008 and was set aside on 13.02.2009. As the said proceedings have already been reached finality, the respondent has got no right to re-open the same by simply changing the date.

7. The order of dismissal was set aside by this Court and the petitioner was again re-instated into service pursuant to the order of this Court. The impugned order has been passed without any justifiable reason only with the intention not to disburse the pension benefits to the petitioner. As stated earlier, the petitioner had attained the age of superannuation as early as on 28.02.2015.

8. The learned counsel for the respondents has also filed a common counter affidavit contending that only the order of dismissal was set aside by this Court earlier, which was the penalty imposed and that the authorities have got the powers to proceed with the departmental enquiry.

9. In the considered opinion of this Court, the said defense is unacceptable.

10. Considering the above stated facts and circumstances of the case and the order passed by this Court in the earlier writ petition, this Court is of the view that the petitioner is entitled to succeed in this writ petition. Accordingly, the writ petition is allowed. The impugned order passed by the third respondent is set aside. No costs. Consequently, connected M.P is closed.

Sd/-

Assistant Registrar

/True copy/

Sub Assistant Registrar



To

- 1.The Secretary to Government, State of Tamil Nadu,
Municipal Administration and Water Supply Department,
Secretariat, Chennai - 600 009.

WEB COPY

- 2.The Commissioner of Municipal Administration,
Chepauk, Chennai - 600 005.
- 3.The Commissioner,
Madurai City Municipal Corporation, Tallakulam, Madurai.

+two cc's to M/s.K.Hema Karthikeyan, Advocate in SR.No.17543

+one cc to M/s.R.Murali, Advocate in SR.No.17186

CM

CSL/GSV-PM/07.04.2016:4P/7C

W.P. (MD) No.10239 of 2015
28.03.2016