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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.07.2016

CORAM :

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO

and

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Writ Appeal (MD) No.931 of 2016

and

C.M.P (MD) No.5531 of 2016

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

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

... Appellants/Respondents

Vs.

1.Dr.G.Kannan

...1st Respondent/Petitioner

2.The Commissioner,
Madurai Corporation,
Madurai.

...2nd Respondent/Respondent

Appeal filed under Clause 15 of the Letters Patent against the Order dated 28.03.2016 made in W.P.(MD).No.10239 of 2015 on the file of this Court.

Prayer in WP(MD)No.10239/2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st 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 3rd respondent herein in his proceedings in Ma.NI4(H1)/22670/2006 dated 28.02.2015 and quash the same and consequently direct the respondents herein to regularise 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 and to pass such further or other orders.

For Appellants : Mr.A.K.Baskarapandian,
Special Government Pleader.

For Respondents : No appearance

JUDGMENT

(Judgment of the Court was delivered by **NOOTY.RAMAMOHANA RAO,J**)

<https://hcservices.ecourts.gov.in/hcservices/>

THIS writ appeal is directed against the judgment and order rendered by the learned single Judge who allowed the writ petition instituted by the first respondent herein.



2.It is no doubt true that the learned single Judge has not assigned detailed reasons as to why the defense offered on behalf of the appellants herein is found not acceptable. It is true that every judicial and quasi judicial authority is required to assign reasons which alone reflect the application of mind and bring forth clarity to the order. But nonetheless when we bear the following background facts, it becomes clear that the stand adopted by the appellants herein before the learned single Judge could not have been accepted at all.

3.The first respondent/writ petitioner was initially appointed as a Medical Officer with the Madurai Municipal Corporation, Madurai. He was subjected to disciplinary proceedings which ultimately culminated in an order of punishment of dismissal imposed on him on 22.04.2004. That order of punishment of dismissal from service has led to institution of W.P.(MD)No.920 of 2008 before this Court by the first respondent herein. After considering the competence of the authority who passed the order of punishment of dismissal from service, the Court came to the conclusion that it is the Government only which can impose any such penalty against the first respondent but not by Commissioner. In that view of the matter, W.P(MD)No.920 of 2008 was allowed and the order of dismissal dated 22.04.2004 was set aside. Pursuant thereto, the first respondent/writ petitioner stood reinstated back as Medical Officer and earned a promotion as Chief Medical Officer as well and ultimately attained the age of superannuation and then required to be retired from service on the afternoon of 28.02.2015. It is, at that stage, the impugned order is passed by the Government holding that the first respondent/writ petitioner is permitted to retire from service pending action to be taken against him under Rule 9 of the Tamil Nadu Pension Rules, 1978.

4.The first respondent/writ petitioner has been subjected to disciplinary proceedings which culminated in the order of punishment of dismissal from service on 22.04.2004. That was however, set aside by this Court by its judgment rendered on 13.02.2009. Therefore, there were no disciplinary proceedings which can be said to be pending against the first respondent/writ petitioner as on the date of his retirement namely, 28.02.2015. In such circumstances, the question of allowing the first respondent/writ petitioner to be retired from service pending completion of the proceedings under Rule 9 of the Tamil Nadu Pension Rules, 1978 would not simply arise.

5.Rule 9 of the Tamil Nadu Pension Rules, 1978 would only enable the disciplinary proceedings which are initiated or pending against the servant at the time of his retirement which could be deemed to have been continued under the said Rules. In the present case, the disciplinary proceedings ended with the imposition of the punishment of dismissal from service on 22.04.2004. That order was set aside by this Court in W.P(MD)No.920 of 2008 by order dated 13.02.2009. Therefore, other than those proceedings, we are informed that there is no other proceeding pending against the first respondent/writ petitioner as on 28.02.2015, the date on which he has been eventually permitted to retire from service on attaining the age of superannuation. When once there are no disciplinary proceedings pending as on that date, the question of continuing such proceedings thereafter under Rule 9 of the Tamil Nadu



Pension Rules, 1978 would not simply arise. Hence, for this reason, we find no merit in this appeal and we accordingly dismiss this writ appeal. No costs. Consequently, C.M.P(MD)No.5531 of 2016 is closed.

Sd/

Assistant Registrar(CS-II)

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Sub Assistant Registrar

To

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

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

3. The Commissioner,
Madurai Corporation,
Madurai.

+1cc to Special Government Pleader in SR.No.36476

+1cc to M/S.K.Hemakarthiskeyan, Advocate in SR.No.36393

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and

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sms

PA/NGM-MP/SAR I/19.07.2016/3P/6C