



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P. (MD) No.13103 of 2011

and

M.P. (MD) No.2 of 2011

D.Koodalingam

... Petitioner

-vs-

1.The Principal Secretary to the
Government, Health and Family
Welfare Department, Secretariat
Chennai-600 006

2.The Director of Medical and Rural
Service (ESI)
Chennai-600 006

3.The Regional Administrative Officer
(ESI), Madurai-20

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records of the third respondent order, dated 18.06.2008, in Na.Ka.No.8044/51/2006 and the appeal order passed by the second respondent in Ref.No.3733/ESI/SCHEDULE/1/07, dated 21.04.2009 and the review order passed by the first respondent, dated 23.08.2011 in G.O.(D) No.972 and quash the same and direct the respondents allot to retire the petitioner and to pay arrears of salary with all monetary benefits, including DCRG (Death-cum-retirement Gratuity) and other retirement benefits to the petitioner with interest.

For Petitioner : Mr.C.Jegannathan

For Respondents : Mr.S.Kumar, Addl. Govt. Pleader

O R D E R

The prayer in this writ petition is for issuance of a writ of certiorarified mandamus to quash the order, passed in Ref.No.3733/ESI/SCHEDULE/1/07, dated 21.04.2009, by the second respondent and the review order, passed in G.O.(D) No.972, dated 23.08.2011, passed by the first respondent and to direct the respondents to allow the petitioner to retire from service and to



pay arrears of salary with all monetary benefits, including D.C.R.G. (Death-cum-retirement Gratuity) and other retirement benefits to the petitioner with interest.

2. According to the petitioner, he was appointed as a Peon, on 12.07.1971, in the respondent Department and he attained the age of superannuation on 30.06.2008. While he was in service, he was placed under suspension, on 02.02.2007, by the third respondent. During his tenure, an F.I.R., was registered against him, on 16.12.2006, by the Inspector of Police, C.C.I.W., for having submitted documents with forged signatures for securing loan of a sum of Rs.55,000/-. The Department had initiated disciplinary action by issuing a charge memo to him and after enquiry, it was found that the charges framed against him were proved and he was, therefore, removed from service. Against which, he filed an appeal, before the second respondent and the same was came to be dismissed.

3. In the meanwhile, the criminal case was ended in acquittal and the the learned Judicial Magistrate No.III, Madurai, acquitted the petitioner under Section 4(3) of the Probation of Offenders Act, by vide Judgment, dated 17.02.2010, in C.C.No.49 of 2009. The criminal Court, in its finding, has stated that the pensionary benefits would not be affected by the payment of costs to be paid under Section 5(1)(b) of the Probation of Offenders Act. Based on the said Judgment, the petitioner filed a review application before the first respondent and requested for payment of pension. But, the first respondent, by the impugned order, dated 23.08.2011, had rejected the review application as devoid of merits. Aggrieved by the same, the petitioner is before this Court.

4. The respondents have filed a counter affidavit denying the averments made in the affidavit filed in support of the writ petition by the petitioner. It has been stated that the petitioner was imposed with the major penalty and the appeal filed by him was also rejected on 21.04.2009. Thereafter, he made a review before the first respondent, on 03.07.2009. The first respondent had considered the review filed by the petitioner and found that the petitioner was arrested and was in prison for more than 48 hours and therefore, he was placed under suspension. Enquiry was conducted giving all opportunities to the petitioner and the contention of the petitioner that he was not given opportunity for cross-examination of the witnesses was not acceptable. The Enquiry Officer allowed him to cross-examine the witnesses and the petitioner was also defended himself. He had accepted the charges and stated that he had no defence witness and after completion of the enquiry proceedings, he had stated that he was given reasonable opportunities and the enquiry was satisfactory. Thereafter only, following the Rules, punishment was imposed on him.



5. The learned counsel appearing for the petitioner submitted that the petitioner was acquitted by the criminal Court and he was given benefit under Section 4(1)(a) of the Act. While passing Judgment, the criminal Court has categorically held that the cost to be paid by the petitioner would stand in the way of getting pensionary and other benefits.

6. The learned counsel appearing for the petitioner vehemently submitted that the petitioner is entitled to the benefit of Section 12 of the Act, which reads as follows:

"12. Removal of disqualification attaching to conviction.- Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of section 3 or section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law; Provided that nothing in this section shall apply to a person who, after his release under section 4, is subsequently sentenced for the original offence."

7. According to the learned counsel for the petitioner, the reviewing authority must have considered the points of the petitioner and must have set aside the impugned order.

8. Heard both sides and perused the materials produced.

9. From the perusal of the enquiry proceedings, it is seen that the Department has categorically proved that the petitioner had fabricated documents and used it for obtaining loan. The document, which was sent to Forensic Science Department was also proved to be bogus. There was a categorical statement by the Medical Officer, whose signature was forged, that she has not signed any certificate nor issued any certificate in favour of the petitioner. Even the petitioner, during his examination, has not specifically denied the charges and he has stated that he has secured the loan of Rs.55,000/- from the Bank using the certificates issued by the officers. Before the criminal Court also the petitioner has pleaded guilty and was given benefit of Section 4 of the Act on the ground that he had repaid the entire loan amount. Charges, which were framed for the misconduct of the petitioner and the charges framed by the criminal Court were different. Incident may be same, but the charges remain separate and distinguished. The contention of the petitioner that the acquittal in the criminal case will exonerate him from the charges framed by the Department is not sustainable. According to him, the reviewing authority should have considered the points raised by him in the order passed by him. The representation of the petitioner, dated 03.05.2010, was also considered by the first respondent while reviewing the case and it was rejected. In such circumstances, this Court does not find any infirmity in the order



passed by the first respondent and the petitioner is not entitled to the relief sought for.

10. In the result, the writ petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub-Assistant Registrar

To:

- 1.The Principal Secretary to the
Government, Health and Family
Welfare Department, Secretariat,
Chennai-600 006.
- 2.The Director of Medical and Rural
Service (ESI),
Chennai-600 006.
- 3.The Regional Administrative Officer,
(ESI), Madurai-20.

+1 CC TO MR.VEERA ASSOCIATES, ADVOCATE, SR NO.78364

+1 CC TO SPECIAL GOVERNMENT PLEADER SR NO.78980

Krk
MAS/SV-MMS:24.04.2017:4P-6C

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