IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2017

CORAM :

THE HONOURABLE Mr.JUSTICE T.RAJA

W.P.No.6007 of 2017

M.Suceela Bai ... Petitioner

Vs.

1.The Government of Tamil Nadu
rep. by its Principal Secretary to Government,
Revenue Administration, Fort St.George,
Chennai-600 009.

2.The District Collector,
Dharmapuri District.

3.The Commissioner of Revenue Administration,
Chepauk, Chennai-600 005.

4.The Principal Accountant General (A & E),
Chennai-600 018. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the 1st respondent to fix the petitioner's last drawn pay-scale in the cadre of 'Tahsildar' and accordingly calculate the 'Gratuity', 'Commutation' etc and get it approved from the 3rd respondent and disburse to the petitioner her retiral pensional benefits in full, together with simple interest at the rate of 18% per annum for the outstanding payments for delayed disbursement from 01.05.2013 upto date of payment in full and continued disbursing full pension forthwith.

For Petitioner : Mr.A.Amal Raj
For Respondents : Mr.R.A.S.Senthilvel, AGP (For R1 to R3)
Mr.S.Balaji (For R4)

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ORDER

This writ petition has been filed seeking for issuance of a writ of mandamus directing the 1st respondent to fix the petitioner's last drawn pay-scale in the cadre of 'Tahsildar' and accordingly calculate the 'Gratuity', 'Commutation' etc and get it approved from the 3rd respondent and disburse to the petitioner her retiral pensional benefits in full, together with simple interest at the rate of 18% per annum for the outstanding

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payments, for delayed disbursement from 01.05.2013 upto date of payment in full and continue to disburse full pension.

2.It is submitted by the learned counsel appearing for the petitioner that after entering the service of the respondents as Typist in the year 1976 through Tamil Nadu Public Service Commission, the petitioner was gradually promoted to the post of Deputy Tahsildar and then Tahsildar. After serving as PA to Sub-Collector, Dharmpauri District, which is a post equivalent to the cadre 'Tahsildar', on 05.09.2011, the petitioner was posted as Tahsildar at Harur Taluk, then she was transferred to the office of the 2nd respondent on 15.03.2012, where she attained the age of superannuation on 30.04.2013. She was also permitted to retire from service without prejudice to the disciplinary action initiated against her.

3.The learned counsel for the petitioner would further submit that when the petitioner was permitted to retire from service on 30.04.2013, without prejudice to the disciplinary action contemplated against her, till date the respondents have not come forward to issue any charge-memo, as a result, she has been getting only provisional pension, without enjoying full pension, as such she has been put to a great hardship. Adding further, the learned counsel for the petitioner submitted that in view of the lapse of four years from the date of attaining age of the superannuation on 30.04.2013, the respondents cannot issue any charge-memo even under Rule 9(2) of the Tamil Nadu Pension Rules.

4.The counter affidavits filed by the respondents 2 & 4 also show that it is not possible to proceed with the departmental action against the petitioner even under Rule 9(2)(b) of the Tamil Nadu Pension Rules, as four years have lapsed from the date of the alleged incident. Para 9 in the counter filed by the 2nd respondent shows that as per the report of the Tahsildar, Dharmapuri necessary charge-sheet was filed by the Inspector of Police, Town Police Station, Dharmapuri in Cr.NO.223/2012 under Section 465, 468, 471 and 420 IPC r/w Section 34 IPC against two private persons and two retired government servants viz., 1)D.S.Irfan S/o.Sye Salib Beeran, 2) P.Manvannan, S/o.Perumal, Village Administrative Officer, K.Ndhuhali, 3)M.Chinasamy S/o.Matha Gounder -Pennagaram (Formerly dealing Assistnat of the Taluk Office, Dharmapuri) and 4)KThamilarasan S/o.D.C.Krishnan, Kottail Kovil Street, Dharmapuri. Although the 3rd respondent, Commissioner of Revenue Administration, Chepauk, in his letter in Roc.No.Ser.3 (3)/35619/2014, dated 21.03.2017, has requested the 2nd respondent, District Collector, Dharmapuri, to analyze the possibility of taking criminal action against the petitioner, since it is not possible to proceed departmental disciplinary action under Rule 9(2)(b) of the Tamil Nadu Pension Rules, as 4

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years have lapsed from the date of the incident, but, till date, no action has been taken and admittedly, no charge-memo has also been issued against the petitioner either at the time of her retirement or immediately after her retirement.

5.The learned Additional Government Pleader appearing for the respondents has also submitted that while the petitioner was serving as Deputy Tahsildar during the year 2007, she only passed an order on 26.09.2007 to transfer the land patta in the name of one Thiru.Irban in respect of Dry Lands in Survey No.153/1, 153/2, 154/1 and Survey No.154/2 of K.Naduhalli by deleting the existing name of Thiru.Rizhwan. Only on account of transfer of patta in the name of Thiru.Irfan, changes were carried out in the Village accounts by the Village Administrative Officer, K.Naduhalli Village of Dharmapuri Taluk. Whereas no changes were carried out in the Taluk Account of the Taluk Office, Dharmapuri, which factor disclosed through the report of the Tahsildar, Dharmapuri in Roc.No.A1/19731/2011, dated 05.11.2011.

6.Although the alleged occurrence took place as early as on 26.09.2007 for transfer of land patta in the name of Thiru.Irban in respect of Dry Lands in Survey No.153/1, 153/2, 154/1 and Surve No.154/2 of K.Naduhalli Village and this was noticed in the year 2011 itself, the respondents have not taken action against the petitioner till she reached the age of superannuation on 30.04.2013. Moreover, she was also permitted to retire from service by the 2nd respondent vide his order in Roc.No.3664/2012/A1, dated 30.04.2013. Now, as four years have gone by from the date of the incident, the respondents cannot even proceed with the departmental action under Rule 9(2)(b) of the Tamil Nadu Pension Rules, which reads as follows_

> "The departmental proceedings, if not instituted while the Government service was in service, whether before his retirement or during his re-employment,-
>
> (i)shall not be instituted save with the sanction of the Government;
>
> (ii)shall not be in respect of any event which took place more than four years before such institution; and
>
> (iii)shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service."

In the meanwhile, the learned Additional Government Pleader submitted that the respondents themselves have come forward to

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consider the payment of DCRG as per Section 7(3) of the Payment of Gratuity Act.

7.Hence, considering the fact that as four years have lapsed from the date of the incident, the respondents cannot proceed against the petitioner, this Court directs the respondents to pay full pension and other consequential benefits to the petitioner, by fixing her last drawn pay-scale in the cadre of Tahsildar, within a period of four weeks from the date of receipt of a copy of this order.

8.At this juncture, the learned counsel for the petitioner requested this Court to direct the respondents to pay interest for the belated disbursement of the terminal benefits. But, in view of the adverse records against the petitioner and inability of the respondents to proceed with the departmental proceedings under Section 9(2)(b) of the Tamil Nau Pension Rules, due to the lapse of time, this Court is not inclined to direct the respondents to pay interest on the belated disbursement of the terminal benefits.

With the above terms, the writ petition is allowed. No costs.

Sd/-
Deputy Registrar

/true copy/

Sub Asst. Registrar

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To

1.The Principal Secretary to Government,
Government of Tamil Nadu
Revenue Administration, Fort St.George,
Chennai-600 009.

2.The District Collector,
Dharmapuri District.

3.The Commissioner of Revenue Administration,
Chepauk, Chennai-600 005.

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4.The Principal Accountant General (A & E),
Chennai-600 018.

+ 1 cc to Mr.S.Balaji Advocate,SR.84067

+ 1 cc to Mr.A.Amal Raj Advocate,SR.84179

+ 1 cc to The Govt.Pleader, SR.84353

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