IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.A.Nos.1169 to 1171 of 2017
and
CMP Nos.16223, 16225 & 16227 of 2017

The Additional Chief Secretary/
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005. ... Appellant in all W.As

Versus

1.L.Ramachandran ... Respondent in W.A.1169 of 2017
2.K.Viswalingam ... Respondent in W.A.1170 of 2017
3.B.Suthakaran ... Respondent in W.A.1171 of 2017

Writ Appeals filed against the common order dated 01.09.2016 made in W.P.Nos.30539 to 30541 of 2016, praying to call for the records in Memo Ref.No.E1/37458/2013 and E1/37456/2013 dated 2.8.2016 and quash the same as being contrary to the principle laid down by Supreme Court of India in the judgment reported in (2013) 12 SCC 2010 and direct the respondent to arrange to issue the payment of all outstanding pension benefits.

For Appellant in all W.As. : Mr.Kanmani Annamalai
Special Government Pleader(Taxes)

For Respondent in all W.As. : Mr.R.Senniappan

JUDGMENT
(Order of the Court was made by S.MANIKUMAR, J.)

With the consent of the learned counsel appearing for both parties, writ appeal is heard.

2. Material on record discloses that Directorate of Vigilance and Anti Corruption recovered unaccounted money from the office of the Commercial Tax Officer, Tiruchengode on 01.11.2013 and based on the report of the Directorate of Vigilance and Anti Corruption, disciplinary proceedings have been initiated against the respondents herein, and pending before the Tribunal for Disciplinary Proceedings, Coimbatore.

Respondents have been suspended and not allowed to retire. They have also attained the of superannuation. They have requested for revocation of suspension and sanction of retirement benefits. Vide order dated 02.08.2016, the Additional Chief Secretary / Commissioner of Commercial Taxes, Chennai, has turned down the request.

3. Challenging the same, W.P.Nos.30539 to 30541 of 2016, have been filed to quash the said order and consequently, the respondents have prayed for a direction to grant pension and other retirement benefits, vide representation dated 31.05.2016. After hearing the learned counsel for the parties, the writ Court vide common order, made in W.P.Nos.30539 to 30541 of 2016, dated 01.09.2016, directed the Additional Chief Secretary / Commissioner of Commercial Taxes, Chennai, the appellant herein to pay 75% of the terminal benefits to the writ petitioners / respondents herein, within a period of one month from the date of receipt of a copy of this order and to retain 25% of the terminal benefits, till the disposal of the disciplinary proceedings initiated against them. Assailing the correctness of the order, instant writ appeals have been filed.

4. In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India and all other powers hereunto enabling and in supersession of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules 1948, the Government have framed Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955. The said rules have come into effect from 1st January 1955.

5. As per Rule 5(a) of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955, is also relevant for the instant case, which is as follows:

"5(a) In every case referred to in clause (a) of sub-rule (1) and sub-rule(2) of rule 4, on completion of investigation, the Directorate of Vigilance and Anti-Corruption or any other Branch of the Police or other departmental authority concerned, shall forward to the Government all the records of the case.

Provided that the Directorate of Vigilance and Anti-Corruption shall forward its records to the Government through the Vigilance Commissioner, Madras.

6. As per Rule 4 Government shall subject to the provisions of rule 5, refer the following cases to the tribunal.

(a) cases relating to officers of the State Services in respect of matter involving corruption on the part of such officers.

7. As per sub Rule 2 of Rule 4, the Government may subject to the provisions of rule 5, also refer to the

tribunal any other case or class of cases which they consider should be dealt with by the Tribunal and the Government, in exercising the power conferred by this sub-rule, shall have regard to the nature and gravity of the charge, the grade or rank of the officer charged and the organisational strength of the department concerned in handling cases interpretation of rules regulating condition of service of Government servants.

8. As per Rule 8 of the said rules, notwithstanding anything contained in rule 17 of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules, the Tribunal shall adopt the procedure in conducting enquiries in cases of corruption and also in cases of corruption combined with other charges.

9. In the case on hand, all the respondents are officers of the Commercial Tax Department and on 01.11.2013, unaccounted money has been recovered by the officers of the Directorate of Vigilance and Anti Corruption, from the office of the Commercial Tax Officer, Tiruchengode. During the course of hearing of the instant appeals submission was made by the learned counsel appearing for both parties that so far the Tribunal for Disciplinary Proceedings, Coimbatore, has not framed charges.

10. Facts prima facie discloses that there was no challenge to the reference made to the Tribunal for Disciplinary Proceedings, Coimbatore. On the request of the respondents to consider the revocation of suspension and sanction of retirement benefits, the Additional Chief Secretary / Commissioner of Commercial Taxes, has rejected the request for revocation of suspension and sanction of retiral benefits.

11. Though the respondents had attained the age of superannuation in the year 2014 and 2015 respectively, in our considered view, they have no right to seek for sanction of retiral and other benefits, pending proceedings before the tribunal for disciplinary proceedings. On charges to be framed under Rule 8 of the said rules, and if finally held against the respondent, there could be even a penalty for dismissal, removal or any other penalty, commensurate with gravity of the charges. At this juncture, it is to be seen that the officials of the Directorate, have recovered unaccounted money, in the office of the Commercial Tax Officer, Tiruchengode, and in the above circumstances, we do not either suggest or observe, as to what should be the charges to be framed. We can only observe that the Tribunal for Disciplinary Proceedings, Coimbatore, has to consider as to why reference was made to the Tribunal.

12. Granting terminal benefits, to persons facing proceedings before the Tribunal for Disciplinary Proceedings, Coimbatore, constituted to deal with cases relating to

corruption and corrupt practices, in our view is erroneous and would open flood gates of all those, alleged to have indulged in corrupt practices, to seek for disbursement of retiral / pensionary benefits, pending disposal of the charges framed or yet to be framed by the Tribunal. For the reasons stated supra, we are of the view that the orders impugned before us, deserve to be set aside and accordingly, set aside.

13. Let us see what Rule 9 of the Tamilnadu Pension Rules, 1978, on the aspect of pension and retirement benefits states,

> Rule 9. Right of Government to withhold or withdraw pension,- (1) (a) The Government reserve to themselves the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, if, in any departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement, and such withholding or withdrawing the pension may be effected irrespective of the fact whether or not any pecuniary loss on account of such grave misconduct or negligence was caused to the Government, to any local body or to any Co-operative Society comprising of Government Servants and registered under the Tamil Nadu Co-operative Societies Act,1961;
>
> Provided that before passing an order under this sub-rule withholding or withdrawing the pension of a person the Tamil Nadu Public Service Commission shall be consulted if the pensioner does not agree to such withholding or withdrawal of the pension. The Tamil Nadu Public Service Commission need not be consulted in cases where the pensioner agrees to withholding or withdrawal of the pension, but a copy of the order passed by the Government in such cases shall be sent to the said Commission;
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> Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the limit specified in sub-rule (5) of Rule 43.
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> (b) In case there is any pecuniary loss caused to the Government or to any local body to any co-operative society comprising of Government servants and registered under the Tamil Nadu Co-operative Societies Act,1961; and if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement, the Government shall also have the

right of ordering recovery from the pension or Death-cum-Gratuity of the whole or part or part of the pecuniary loss caused by such grave misconduct or negligence;

Provided that the Tamil Nadu Public Service Commission shall be consulted before any final orders under this clause are passed.

Explanation,- "Judicial Proceedings" shall include proceeding before any Tribunal constituted by an Act of Parliament or the State Legislature or by a Rule.

(2) (a) The departmental proceeding referred to in sub-rule (1), if instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall after the final retirement of the Government servant be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service;

Provided that where the departmental proceedings are instituted by an authority subordinate to the Government, that authority shall submit a report regarding its findings to the Government.

(b) The departmental proceedings, if not instituted while the Government servant 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 clarify 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.

(3) Omitted

(4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental proceedings are continued under sub-rule (2), or any enquiry is

being conducted by Director of Vigilance and Anti-Corruption a provisional pension as provided in rule 60 and rule 69, as the case may be, shall be sanctioned.

(5) Where the Government decide not to withhold or withdraw pension but order recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule -

(a) departmental proceedings shall be deemed to include the enquiry pending before the Tribunal for Disciplinary Proceedings,

(b) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioned or if the Government servant has been placed under suspension from an earlier date, on such date : and

(c) judicial proceedings shall be deemed to be instituted -

(i) in the case of criminal proceedings, on the date of the complaint or report of a police officer, of which the Magistrate take cognizance, is made, and

(ii) in the case of civil proceedings, on the date on which plaint is presented in the court.

Note (1) - As soon as proceedings, of the nature referred to in the above rule are instituted, the authority which institutes such proceedings should without delay, intimate the fact to the Accountant-General concerned.

Note (2) - If an officer against, whom an enquiry is held is unable to satisfactorily account for possession by himself or by any other person on his behalf, e.g., dependants, or pecuniary resources or property disproportionate to his known sources of income, a charge of corruption should be presumed to have been proved against him and the case will come within the purview of this rule. The position is that the term “grave misconduct” used in this rule is wide enough to include corrupt practices. In cases where the charge of corruption is proved only after pension has been sanctioned, and it is not therefore possible to invoke the provisions of rule 6, action to withhold or withdraw pension may be taken under this rule. In this connection the provisions of Rule 9(2) is to be noted carefully. In accordance with these provisions the property or pecuniary resources in respect of which the departmental proceedings are instituted under rule 9 should have been acquired by the person concerned or any other person on his behalf any time within the period of four years before the institution of such proceedings if not instituted while the officer was on duty either before retirement or during re-employment.

14. Though writ petitions have been disposed of on 01.09.2016, with a direction to complete the enquiry within a period of six months, from the date of receipt of a copy of the order made in the writ petitions, we are informed that so far charges have not been framed by the tribunal under Rule 8 of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955, or under Section 17 of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules.

15. Having regard to the fact that the respondents have attained the age of superannuation, the Tribunal for Disciplinary Proceedings, Coimbatore, is directed to complete the proceedings within a period of four months, from today. As observed earlier, by the writ Court, the respondents are directed to extend their fullest cooperation to the completion of the enquiry before the Tribunal for Disciplinary Proceedings, Coimbatore. Additional Chief Secretary / Commissioner of Commercial Taxes, Chennai, is directed to make a request to the Tribunal for Disciplinary Proceedings, Coimbatore, to complete the enquiry.

16. On the facts and circumstances of the case on hand, we are of the view that the directions of the writ Court, in the common order made in W.P.Nos.30539 to 30541 of 2016, dated 01.09.2016, directing the Additional Chief Secretary / Commissioner of Commercial Taxes, Chennai, the appellant herein to pay 75% of the terminal benefits to the writ petitioners / respondents herein, within a period of one month from the date of receipt of a copy of this order and to retain 25% of the terminal benefits, till the disposal of the disciplinary proceedings initiated against them, requires to be interfered with.

17. Appellant has made out a case, on facts and on the statutory provisions, which we have extracted supra. That apart, when the Directorate of Vigilance and Anti Corruption has recovered, unaccounted money, in the office the Commercial Tax Officer, Tiruchengode, where the respondents worked, would it be right to order, disbursement of 75% of the retirement benefits, even before framing and conclusion of the charges, by the Tribunal for Disciplinary Proceedings, Coimbatore, our answer is 'No'. Writ Court, with due respect, has failed to consider the very purpose of the constitution of the Tribunal, i.e. to enquire into charges, for corrupt or corrupt practices, more so, on the facts and circumstances of the case, unaccounted money has been recovered by the officials of the Directorate of Vigilance and Anti Corruption.

18. With the above observations and directions, the writ appeals are allowed. No costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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Copy To

The Commissioner,
Tribunal for Disciplinary Proceedings,
Coimbatore.

+1cc to the Special Government Pleader(T), S.R.No.68016

W.A.Nos.1169 to 1171 of 2017
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CS IV
CA(22/09/2017)