

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2017

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THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.10909 of 2014

and

M.P.No.1 of 2014

P.Thiyagarajan

.. Petitioner

Vs.

1.Secretary to Govt.
Highways and Rural Works Dept,
Fort St.George, Chennai.

2.The Director General,
Highways and Rural Works,
Chepauk, Chennai-5.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of Certiorarified mandamus to call for the records in G.O,.3(D) No.275 dated 27.12.1995 and G.O. (3D)No.278 dated 29.12.1995 issued by the first respondent and to quash the same and to consequently direct the first respondent to permit the petitioner to retire from service and to settle all the retirement benefits with interest within a stipulated time limit.

For Petitioner .. Mr.Malarvizhi Udayakumar

For Respondents .. Mr.R.A.S.Senthilvel,
Additional Government Pleader.

ORDER

Challenging the order of the first respondent dated 27.12.1995 and 29.12.1995 and for a consequential direction to the first respondent to permit the petitioner to retire from service and to settle all the retirement benefits with interest, the present writ petition has been filed.

2. The case of the petitioner is that he was working as an Assistant Chief Engineer, Designs & Investigation National Highways, Perundurai, Coimbatore Division. Whiles, he was implicated in a criminal case along with several accused for certain acts of misconduct, while discharging his official duty.

According to the petitioner, he has been arrayed as A.20 and the criminal case was lodged in the year 2000 and charge sheet was filed in the year 2003. Thereafter, there was no progress in the criminal proceedings. According to the learned counsel appearing for the petitioner, the case is still pending on the file of the competent criminal court.

3. Simultaneously, the petitioner was placed under suspension on 27.12.1995, vide G.O.Ms.(3D)No.275 Public Works (HL-1) Dept, dated 27.12.1995. On 29.12.1995, G.O.Ms.(3D)No.278, Public Works (HL-1) Dept. was issued by the first respondent not permitting the petitioner to retire from service on reaching the age of superannuation. However, the said order was passed subject to the final orders of the Government to be passed, based on the outcome of the criminal case and the disciplinary proceedings pending against the petitioner which shall be continued under Rule 9 of the Tamil Nadu Pension Rules, 1978.

4. The learned counsel appearing for the petitioner submitted that the other part of the prayer viz., settlement of the retirement benefits due to the petitioner is required to be adjudicated. Though the petitioner retired as early as on 31.12.1995, since he has been under the continued prolonged suspension for the past 18 years, he was not receiving any retirement benefits due payable to him, in view of the pendency of the disciplinary action and the criminal proceedings, even the pension has not been paid to him. It is needless to mention that non-payment of any retirement benefits payable to the petitioner, has caused sufferings and hardship to the petitioner and his family.

5. The learned counsel appearing for the petitioner in support of his contention relied upon the orders passed by the Division Bench of this Court dated 16.09.2014 in W.P.No.13596 of 2014 and dated 30.11.2015 in W.A.No.1594 of 2015, wherein the learned Division Bench while disposing the appeal, has issued the following direction, are extracted hereunder.

" Appellants shall grant provisional pension to the respondent in accordance with the Tamil Nadu Pension Rules, 1978.

1. Appellants shall disburse the gratuity amount to the respondent less Rs.2,68,159/-.

2. The said amounts will carry 12% interest p.a. from the date of writ petition till the date of realisation.

3. It is made clear that the said exercise shall be completed.

5. Settlement of full gratuity amount and grant of regular pension shall be determined in the final orders to be passed by the Government

based on the outcome of the criminal case and departmental proceedings pending against the respondent.”

6. The learned counsel would submit that even in the present petition, even assuming the petitioner, he was guilty of the offence alleged against him to the tune of Rs.2,68,159/-, the respondents ought to have deducted the said amount and disburse the remaining amount, payable to the petitioner along with provisional pension and arrears thereon from the date of retirement and till date and continue to pay the pension.

7. The learned Additional Government Pleader appearing for the respondents would oppose for allowing the writ petition in respect of grant of retirement benefits to the petitioner.

8. After having considered the rival submissions of the counsels and having perused the materials and the pleadings, this Court is of the considered view that the petitioner is entitled to grant of the retirement benefits minus the amount of Rs.2,68,159/-, which is said to have been misappropriated by the petitioner, while disbursing the dues payable to the petitioner. The petitioner is also entitled to provisional pension i.e. admissible pending on the file of criminal proceedings and the disciplinary action against the petitioner.

9. In the light of the above narrative, this Court has no hesitation to issue a direction to the respondents to grant retirement benefits including pension along with arrears payable from the date of superannuation to till date and also the other benefits payable to the petitioner, subject to the outcome of the criminal proceedings and the disciplinary action pending against the petitioner. सत्यमेव जयते

10. It is made clear that except Rs.2,68,159/-, remaining part of the amount which is otherwise due and payable to the petitioner, shall be paid to the petitioner. The respondents are directed to comply with the direction within a period of one month from the date of receipt of a copy of this order. It is also made clear that the amounts payable to the petitioner shall carry interest at 12% p.a. from the date of writ petition till the date of realisation, in terms of the order passed by the Divisional Bench as stated supra.

With the above directions, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

kkd

To

1. Secretary to Govt.
Highways and Rural Works Dept,
Fort St.George, Chennai.
2. The Director General,
Highways and Rural Works,
Chepauk, Chennai-5.

+ 1 cc to Mrs. Malarvizhi Udayakumar, ADvocate Sr.49615
+ 1 cc to Government Pleader Sr.50166

W.P.No.10909 of 2014
and M.P.No.1 of 2014

CS-V
EU 29.08.17

सत्यमेव जयते

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