

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2017

CORAM

THE HON'BLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR. JUSTICE RMT. TEEKAA RAMAN

W.A.No.876 of 2017

N.Paraman .. Appellant /Petitioner

Vs.

1 The Agricultural Production Commissioner
and Secretary to Government
Agriculture Department
Fort St. George
Chennai - 600 009.

2 The Commissioner
Tribunal for Disciplinary Proceedings
Coimbatore - 641 045. .. Respondents/Respondents

PRAYER: Appeal under Clause 15 of the Letters Patent
against the order dated 06.07.2017 in W.P.No.17111 of 2017.

W.P.No.17111 of 2017:

Writ Petition filed under Article 226 of the
Constitution of India seeking writ of Mandamus directing
the 1st respondent herein to consider the representation of
the petitioner dated 05.06.2017 by permitting him to retire
from service on 31.08.2017 without prejudice to the
pendency of TDP case No.18/2011 on the file of the 2nd
respondent herein in the light of Similar orders issued n
the case of similarly placed officials facing TDP
proceedings and to continue the proceedings under Rule 9-A
of the Tamil Nadu Pension Rules 1978.

For Appellant

: Mr.C.Prakasam

For Respondents

: Mr.V.Jayaprakash
Narayanan
SpecialGovernment Pleader

JUDGMENT
(Delivered by HULUVADI G. RAMESH, J.)

Heard the learned counsel for the appellant and the learned Special Government Pleader appearing on behalf of the respondents.

2.1. The facts in a nutshell are as under: The appellant sent a representation dated 5.6.2017 to the first respondent requesting him to permit the appellant to retire from service on 31.8.2017 without prejudice to the pendency of the TDP Case No.18 of 2011 on the file of the second respondent.

2.2. As the above said representation did not evoke any response from the first respondent, the appellant filed W.P.No.17111 of 2017 seeking a direction against the first respondent to consider the representation of the appellant dated 5.6.2017 and permit him to retire from service on 31.8.2017 without prejudice to the pendency of the TDP Case No.18 of 2011 on the file of the second respondent in the light of similar orders issued in the case of similarly placed officials facing TDP proceedings and to continue the proceedings under Rule 9A of the Tamil Nadu Pension Rules, 1978.

2.3. The learned Single Judge, vide the order under challenge, dismissed the writ petition holding that it is for the appellant to participate in the enquiry and prove his innocence, and that only after establishing innocence, an employee should be permitted to retire from service and all terminal benefits should be paid.

2.4. Assailing the order passed by the learned Single Judge dated 6.7.2017 in W.P.No.17111 of 2017, the unsuccessful writ petitioner has filed this appeal.

3. The learned counsel for the appellant contended that co-employees of the appellant, who are facing disciplinary proceedings along with the appellant in TDP Case No.18 of 2011, have been permitted to retire despite pendency of identical charges and non-consideration of the case of the appellant on the same lines amounts to discrimination.

4. Per contra, the learned Special Government Pleader appearing on behalf of the respondents supported the impugned order and contended that no ground is made out to interfere with the impugned order.

5. We have heard the learned counsel on either side and perused the documents filed in support of this appeal.

6. A perusal of the documents shows that the appellant is the third accused officer in TDP Case No.18 of 2011 on the file of the second respondent. One P.N.Loganathan is the first accused officer in the said TDP Case. The said individual was permitted to retire from service by proceedings dated 27.4.2016 of the first respondent, pursuant to an order dated 28.3.2016 passed by a learned Single Judge in W.P.(MD) No.5357 of 2016, wherein identical relief was sought for. Likewise, the sixth accused officer - S.Prakash, was also permitted to retire from service by proceedings dated 24.2.2017 of the first respondent, pursuant to an order dated 7.12.2016 passed by a learned Single Judge in W.P.No.42736 of 2016. When the first accused officer and sixth accused officer in respect of the very same TDP Case have been permitted to retire from service during the pendency of disciplinary proceedings, we find no good reason to adopt a stance which is different from the one adopted in respect of the co-employees of the appellant.

7. In such view of the matter, we direct the first respondent to consider the case of the appellant herein on a par with similarly placed persons, referred supra, and permit him to retire from service on 31.8.2017. It is made clear that the disciplinary proceedings pending against the appellant shall be continued under Rule 9 of the Tamil Nadu Pension Rules, 1978, as in the case of his co-employees. It is open to the first respondent to withhold the pension payable to the appellant to the extent of his delinquency, as mentioned in the charge sheet in TDP Case No.18 of 2011, and disburse the balance amount. The amount withheld will be disbursed or appropriated subject to the result of the disciplinary proceedings. It is made clear that the appellant shall cooperate in the enquiry proceedings.

In the result, the appeal is allowed and the order of the learned Single Judge is modified the above directions. No costs. Consequently, C.M.P.No.12221 of 2017 is closed.

-s/d-

Assistant Registrar(CS-IV)

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Sub-Assistant Registrar

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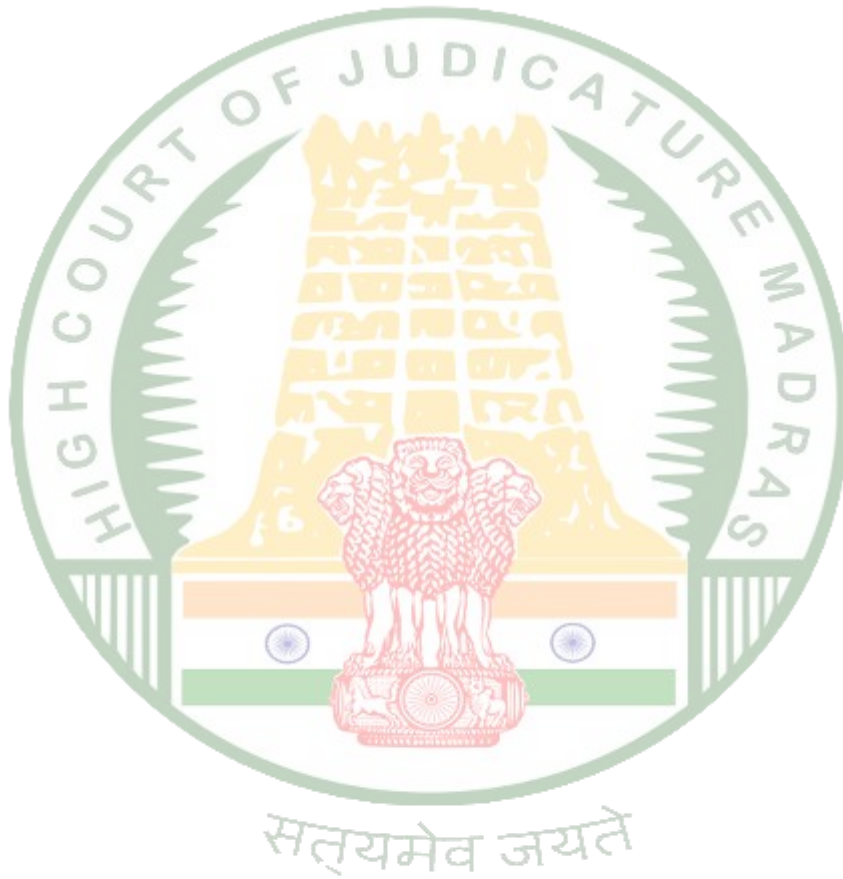
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+1 CC to Mr.C. Prakasam, advocate sr 60264.

W.A.No.876 of 2017

SP(22/08/2017)



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