

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2017

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.18674 of 2017

J.D.Solomon Dayakarunakaran

... Petitioner

Versus

The Director of Medical and Rural Health,
Service (ESI) I/C
DMS Complex, Teynampet,
Chennai 600 006

... Respondent

Writ petition filed under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus calling for the records relating to the order dated 30.03.2017 vide Ref.No.13791/ESI/SC/2/2006 on the file of the Respondent quash the same and direct the Respondent to allow the petitioner to retire as he already attained superannuation on 31.03.2017.

For Petitioner : Mr.S.Dhassaiya

For Respondents : Mr.K.Dhananjayan
Special Government Pleader

ORDER

The writ petitioner was placed under suspension on 22.09.2006 on account of his involvement in a criminal case in relation to swindling of Government Drugs worth around Rs.37 lakhs.

2. The learned counsel appearing for the writ petitioner contented that the criminal case is posted for trial and the writ petitioner is ready to proceed with the trial. Under these circumstances, the order of retention retaining the service of the writ petitioner in service was issued on 30.03.2017. In view of the fact, that the writ petitioner has attained the age of superannuation, no employee can be relieved from service when the criminal case is pending against him, more specifically,

when the allegations are grievous in nature. Thus, retaining the service of the writ petitioner under FR 56(1)(C) is in order and there is no infirmity. But, the learned counsel for the petitioner raised a contention that the writ petitioner has not received even the subsistence allowance. In the event of retaining a Government employee in service after the date of superannuation, the authorities has to pay the subsistence allowance not exceeding the provisional pension. This being the rule, the writ petitioner is eligible to receive the subsistence allowance not exceeding the provisional pension in accordance with rules and on submitting proper application and the required certificates. Thus, this Court is of the view that the writ petitioner has to make an application in this regard along with the required certificates and the competent authority shall consider the same in accordance with rules. In this view of the matter, the question of quashing the retention order does not arise at all and only after passing of final judgment in the criminal case, the remedy will lie to the writ petitioner and not before that. Thus, no further adjudication in this writ petition at this point of time is required.

3. Accordingly, the writ petition stands dismissed. However, no order as to cost.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The Director of Medical and Rural Health,
Service (ESI) I/C
DMS Complex, Teynampet,
Chennai 600 006

+1cc to the Government Pleader, S.R.No.52009

W.P.No.18674 of 2017

RR(CO)
CA(03/08/2017)