

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2017

CORAM :

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No. 31354 of 2012

A.V. Vijayarangan (Deceased)

2. Mr. V. Kesavan

3. Mrs. Gunavathi

4. Mrs. Jayanthi ..Petitioners

Vs.

The District Collector

Salem

Salem District. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondent herein in his proceedings bearing No. Roc.29812/99 (A7) dated 18.10.2004 and quash the same and direct the respondent to pay all retirement benefits, pensionary and consequential benefits to the petitioner herein and issue such further orders.

For Petitioners : Mr. Jenkins Williams

For Respondent : Mr. S. Diwakar,
Spl.Govt. Pleader

ORDER

The petitioners have filed the present writ petition, seeking to quash the proceedings bearing No. Roc.29812/99 (A7) dated 18.10.2004 issued by the respondent and direct the respondent to pay all retirement and pensionary benefits to the petitioners.

2. Learned counsel for the petitioner would submit that the petitioner joined the Revenue Department as Lower Division Clerk and on promotion reached the post of Special Tahsildar, with unblemished service. Whiles, on 02.09.1989, the petitioner along with other officials intercepted a lorry, seized the limestone carried without valid permit and handed over the same to Sankari Police Station. A case was also

registered against one Sekaran, who was carrying out illegal mining. It is submitted by learned counsel for the petitioner that in order to wreak vengeance the said Sekaran lodged a complaint of demand of bribe, for release of his lorry, against the petitioner and other officials. Pursuant to the same, a case in Cr.No.11/AC/89 was registered by the Deputy Superintendent of Police, Vigilance and Anti Corruption and the petitioner was placed under suspension on 12.09.1989. Although the petitioner was reinstated and posted as a Special Tahsildar, Ponni Sugars and Chemicals Ltd., pursuant to the stay order granted by the Tamilnadu Administrative Tribunal in the Original Application, he was not permitted to retire, on reaching his age of superannuation on 31.08.1991.

3. In the meantime, the petitioner was convicted and sentenced for offences under Section 7 and 13 (2) r/w Section 13 (1)(d) of the Prevention of Corruption Act, 1988 on 23.09.2002 in SCC No.139/1992 by the 1st Additional District Judge cum Chief Judicial Magistrate, Salem. Aggrieved by the said order, the petitioner preferred an appeal in CrI.A. No.1445 of 2002. Consequent to the order of conviction and sentence, the respondent issued a show cause notice dated 04.12.2002, calling for explanation. In his reply to the show cause notice, the petitioner had stated that an appeal has been preferred before this Court, against the order of conviction. Without considering the said explanation, the respondent has passed an order on 18.10.2004, dismissing the petitioner from service, wholly on the ground of conviction and sentence in the criminal case. Subsequently, the appeal preferred by the petitioner in CrI.A. No.1445 of 2002 was allowed by this Court on 30.11.2009, setting aside the order of conviction. Thereafter, the petitioner made several representations to against the dismissal order dated 18.10.2004 and grant all pensionary and consequential benefits. But, no orders have been passed by the respondent on the representations and so the petitioner has filed the present Writ Petition challenging the impugned order of dismissal from service passed by the respondent in his proceedings No.29812/99/(A7) dated 18.10.2004. Learned counsel for the petitioner further submitted that subsequently the Government preferred an appeal before the Hon'ble Supreme Court in CrI.M.P. No. 7675 of 2012 against the judgment passed by this Court in the CrI. A. No. 1445 of 2002, but the same got dismissed on 02.04.2012, on the ground of delay. Even thereafter, the respondent has not chosen to pass any orders on the impugned order of dismissal. Pending this writ petition, the petitioner died and his legal representatives have been substituted as per the order of this Court dated 04.10.2016.

4. Learned Special Government Pleader, relying on the counter affidavit filed by the respondent, would submit that the said impugned order of dismissal has been passed by the

respondent, only based on the conviction issued against the petitioner, in the criminal case in SCC No.139/1992 by the 1st Additional District Judge cum Chief Judicial Magistrate, Salem. Since the appeal filed by the petitioner before this Court was allowed and the order of conviction was set aside, the petitioner has filed his representation, claiming his retirement benefits. If the said representation of the petitioner is still pending with the respondent, the same would be considered and disposed of, in accordance with law.

5. Heard learned counsel for the petitioner and learned Special Government Pleader for the respondent.

6. It is clear from the above that the petitioner was convicted for offences under Section 7 and 13 (2) r/w Section 13 (1)(d) of the Prevention of Corruption Act, 1988 on 23.09.2002, registered in SCC No.139/1992 by the 1st Additional District Judge cum Chief Judicial Magistrate, Salem on 23.09.2002. Due to the order of conviction, the impugned order has been passed by the respondent, dismissing the petitioner from service. The petitioner has also filed an appeal in Crl.A. No. 1445 of 2002, against the order of conviction, which has been allowed by this Court on 30.11.2009. Pursuant to the said judgment, the petitioner has made a representation seeking settlement of all his retirement and pensionary benefits, but the same is still pending. Now, since the petitioner had expired, the legal representatives of the petitioner have been substituted as writ petitioners. Further, it is submitted by learned counsel for the petitioners that there is no disciplinary proceedings initiated against the petitioner (deceased) as on today. In spite of the representation of the petitioner dated 11.06.2012, stating that he has been acquitted in the criminal case, it is surprising that the department has not taken any final action on the departmental proceedings. The appeal filed by the respondent before the Hon'ble Apex Court has also been dismissed as early as 02.04.2012, on the ground of delay. In the light of the judgment passed by this Court in the appeal, the respondent department ought to have passed necessary orders. However, learned counsel for the petitioners would submit that it would be suffice if the representation of the petitioners is considered by the respondent within a stipulated time.

7. Therefore, in the interest of justice, considering the facts and circumstances of the case, this Court is inclined to pass an order permitting the petitioners to submit a fresh representation, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such representation the respondent shall consider the same, in accordance with law and pass appropriate orders, as expeditiously as possible, within a period of twelve weeks thereafter.

8. Therefore, the impugned proceedings of the respondent bearing No. Roc.29812/99 (A7) dated 18.10.2004 is quashed and the writ petition is allowed, on the above observation. No costs.

Sd/-
Asst.Registrar (CS II)

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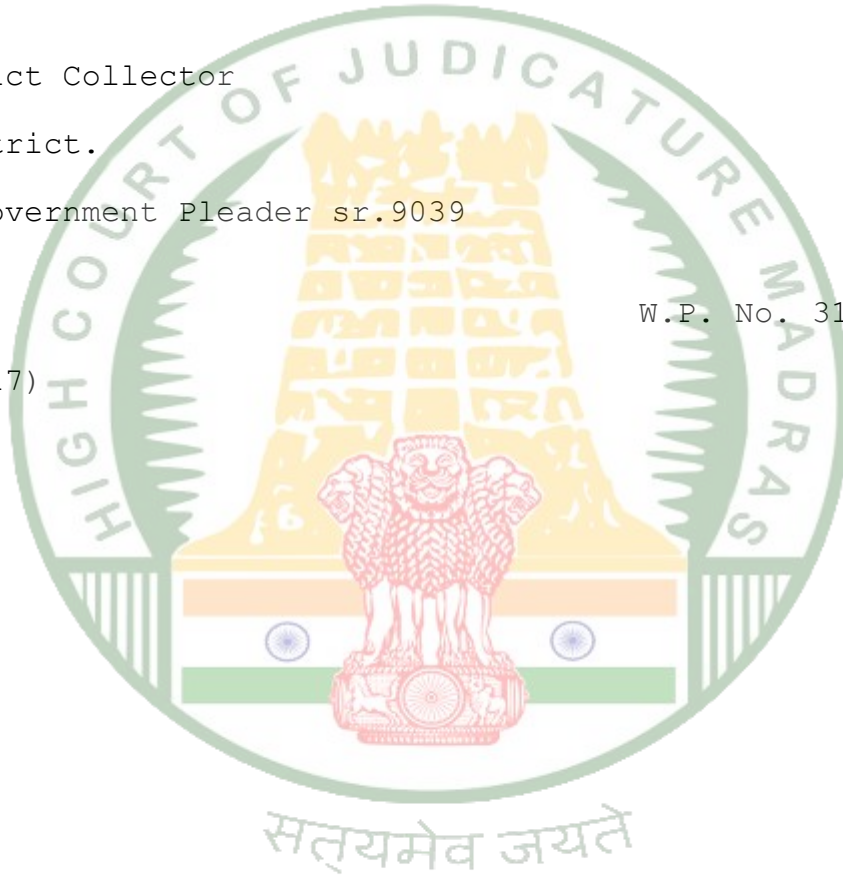
Sub Asst. Registrar

avr
To
The District Collector
Salem
Salem District.

+1cc to Government Pleader sr.9039

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ss(4/4/2017)

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