

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2017

CORAM

THE HON'BLE MR. JUSTICE V. PARTHIBAN

W.P.No.13746 of 2013
and
M.P.Nos.1 & 2 of 2013
& M.P.No. 1 of 2014
and M.P.No.1 of 2015

K.Rajachandran

...Petitioner

Vs.

1. The Government of Tamil Nadu
Represented by its Principal Secretary
Handlooms, Handicrafts, Textiles and Khadi (G1) Department
Secretariat, Chennai 600 009.

2. The Commissioner of Sericulture
Foulkes Compound
Anaimedu
Salem 638 001.

.... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus by calling for the records relating to the first respondent herein in G.O.Ms.No.57 Handlooms, Handicrafts, Textiles and Khadi (G1) Department dated 25.03.2013 and quash the same and consequently direct the respondents herein to confer all the attendant and retirement benefits with due regards to the petitioner's seniority along with interest.

For Petitioner : Mr.L.Chandra kumar for
Mr.R.S.Anandan

For Respondents: Mr. T.M.Pappiah, Spl.Govt.Pleader

O R D E R

The prayer in the writ petition is for issuance of writ of certiorarified mandamus by calling for the records relating to the first respondent herein in G.O.Ms.No.57 Handlooms, Handicrafts, Textiles and Khadi (G1) Department dated 25.03.2013 and quash the same and consequently direct the respondents

herein to confer all the attendant and retirement benefits with due regards to the petitioner's seniority along with interest.

2. The case of the petitioner is as follows:-

The petitioner joined the Government Service as an Inspector of Sericulture in the year 1978 and subsequently in the year 1985 he was promoted to the post of Assistant Director of Sericulture. The petitioner was permitted to retire from service on attaining the age of superannuation without prejudice to the disciplinary proceedings pending against him, as per the order of first respondent herein in G.O.Ms.No.174 Handlooms, Handicrafts, Textiles and Khadi (G1) Department dated 31.12.2010. The said order was served on the petitioner only on 07.01.2011. During the year 2000 to 2003, alleging that the petitioner demanded and accepted bribe from a Sericulturist, disciplinary action was initiated against him in TDP Case No.15/2004. After enquiry, the same was dropped in the year 2005. Then another disciplinary proceedings were initiated against the petitioner in the year 2007 in TDP Case No.4/2007. Though enquiry was over in March 2010 and an explanation was submitted by the petitioner in June 2010 itself, no final order was passed. Without considering his explanation, the first respondent passed the impugned order in G.O.(Ms) No.57 Handlooms, Handicrafts, Textiles and Khadi (G1) Department dated 25.03.2013 awarding the punishment of cut in pension of a sum of Rs.15,000/- for five years. Hence this writ petition.

3. The learned counsel for the petitioner submitted that order of recovery of a sum of Rs.15,000/- from the pension payable to the petitioner is a violation of Rule 9 (5) of the Tamil Nadu Pension Rules, since the amount ordered to be recovered is more than 1/3rd than what is prescribed in the said pension rules for the purpose of pension. Rule 9 (5) of the Tamil Nadu Pension Rules is extracted as follows:-

"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), a provisional pension as provided in Rule 60 or 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 pensioner 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"

4. According to the learned counsel for the petitioner, the pension which was due and payable to the petitioner was only 16,390/- at the relevant point of time and therefore the order of recovery of Rs.15,000/- is contrary to the provisions of the pension rules as indicated above. Moreover the amount ordered to be recovered will result in loss of livelihood to the petitioner during his period of retirement, which not only affects him but also his family members. With a very meager amount left after recovery, the petitioner would not be able to survive. In any event the learned counsel submitted that since there is a bar under Sub rule (5) of rule 9 for recovery of more than 1/3rd the contention raised by the petitioner has considerably force.

5. It is submitted by the learned counsel for the petitioner that at the time of admitting the writ petition, this Court has granted an interim order directing the respondent to recover only Rs.5,000/- per month from the pension payable to the petitioner. According to the learned counsel for the petitioner the same has been deducted and the period of deduction is to be over by March 2018. He would submit that the petitioner would be satisfied if that recovery alone is confirmed and not the original order of recovery as per in the impugned order.

6. The learned Special Government Pleader for the respondents opposed the grant relief to the petitioner, in view of the proved charges against him. A counter affidavit has also been filed.

7. Heard both sides.

8. This Court is of the view that the view taken by this Court while granting interim order is liable to be confirmed in view of the peculiar facts and circumstances of the case. Hence, without going into merits and demerits of the rival submissions, this Court is of the view that the interim order passed by this Court directing the respondent to deduct Rs.5,000/- instead of Rs.15,000/- as ordered by the authority vide the impugned order is therefore confirmed.

9. In the above circumstances, the impugned order dated

25.03.2013 is set aside and the writ petition is partly allowed on the above terms. Connected Miscellaneous petitions are also closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

dpq

To

1. The Government of Tamil Nadu
Represented by its Principal Secretary
Handlooms, Handicrafts, Textiles and Khadi (G1) Department
Secretariat, Chennai 600 009.
2. The Commissioner of Sericulture
Foulkes Compound
Anaimeedu
Salem 638 001.

+1cc to Mr.L.Chandra Kumar, Advocate, S.R.No.53881

+1cc to the Government Pleader, S.R.No.54346

W.P.No.13746 of 2013
and M.P.Nos.1 & 2 of 2013
& M.P.No. 1 of 2014
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PVS (CO)
GN(31/08/2017)

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