

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2017

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THE HONOURABLE MR.JUSTICE T.RAJA

Writ Petition No.40091 of 2016

M.Udhyakumar

...Petitioner

Vs.

1.Government of Tamil Nadu
Rep by its Principal Secretary
Food and Civil Supplies Department
Secretariat, Fort St. George
Chennai - 600 009.

2.The Commissioner
Civil Supplies and Consumer Protection Department
Ezhilagam, Chempauk
Chennai - 5.

3.The Deputy Commissioner (1)
Civil Supplies and Consumer Protection Department
Ezhilagam, Chempauk
Chennai- 5.

...Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the third respondent to consider the representation dated 19.09.2016 and re-joinder dated 22.09.2016 and pass appropriate order within a period stipulated.

For Petitioner : Mr.R.Rajesh Kumar

For Respondents : Mr.T.Girija
Government Advocate [For R1]
Mr.L.P.Shanmugasundaram
Special Government Pleader [For R2&R3]

ORDER

The writ petition has been filed by the writ petitioner seeking for issuance of writ of Mandamus directing the Deputy Commissioner, Civil Supplies and Consumer Protection department, Ezhilagam, Chempauk, Chennai to consider his representation dated 19.09.2016 and reminder to the representation dated 22.09.2016.

2.The learned counsel appearing for the writ petitioner submitted that the writ petitioner was appointed as Office Assistant on 30.11.1981 and he was promoted as Driver in the respondents-department. While so, on 31.10.2015, he reached the age of superannuation. He was asked to submit all the relevant records pertaining to his family and other personal particulars. Accordingly, he has submitted all the relevant documents prior to the date of reaching the age of superannuation. While so, on 03.09.2015 he had serious illness due to High Blood Pressure and High Sugar and he handed over the keys of vehicle to colleague Akbar Khan. After going home, his health condition further deteriorated. He was taken to nearby hospital. The Doctor also advised him to take bed rest as he was fully immobilized in the month of November and December, 2015 and his family, residing at No.5/35, Bajanai Koil Street, Ramapuram, Chennai, was also under "Heavy Flood" and he was not able to attend the office. But, on enquiry, he was informed that he has been implicated in a Criminal case bearing Criminal O.P.No.13769 of 2016 and this Court also enlarged the petitioner on anticipatory bail.

3.Subsequently, the petitioner made a representation dated 19.09.2016 requesting the department to pay his entire retirement benefit, gratuity, provident fund and other amounts and sent a reminder to the representation dated 22.09.2016. The respondents have not come forward to consider the same. Therefore, the writ petitioner was constrained to file this writ petition seeking for a direction that may be issued in this regard.

4.The learned counsel appearing for the respondents would submit that while he was serving as Driver he stayed away from duty without any intimation from 04.09.2015. He has not even reported to duty without any reason whatsoever and no prior information has been given. The Inspector of Police, Law and Order, E4, Abiramapuram Police Station, Chennai - 18 has sent a letter dated 10.09.2015 reporting the department that the petitioner was involved in a boy missing case and a case was filed under Section 366 of IPC and based on the above police report, since the petitioner also has been stayed and absconded away from duty from 04.09.2015, the department initiated action against him and he was also placed under suspension vide order dated 10.09.2015 and a charge memo was also issued on 29.10.2015 against him under Section 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and the same was sent to petitioner's address through post, but it was returned from the postal department with remarks as "door locked".

5.In view thereof, the charge memo was displayed prominently on the door of the petitioner's residence for information. Since the petitioner is facing serious charges, he was not permitted to retire from service on reaching the age of superannuation on

31.10.2015, by issuing the proceedings No.A3/18418/2015 dated 29.10.2015 that was also displayed prominently at the petitioner's residence for information. Since the petitioner was not allowed to retire, for the purpose of disbursing the subsistence allowance, he was asked to furnish the non-employment certificate.

6.After a lapse of almost one year, the petitioner sent two letters dated 19.09.2016 and 22.09.2016 without any reference to the respondent communications, requesting to settle all the retirement benefits, for which the petitioner is not eligible.

7.However, the learned counsel appearing for the petitioner submitted that the writ petitioner is ready to co-operate with the enquiry after the charge memo is issued and if the respondents are not satisfied with the explanation, the respondents can also proceed against the petitioner after issuing the charge memo under Section 17(b) without waiting for the conclusion of the criminal case.

8.I also fully agree with the stand taken by the respondents. When the petitioner is facing serious charges that he is one of the accused in a boy missing case on the file of the Inspector of Police, Law and Order, E4, Abiramapuram Police Station, Chennai, filed under Section 366 IPC, the petitioner is not entitled to get the retirement benefits.

9.Accordingly, the writ petition is dismissed. No costs.

10.The respondents are hereby directed to furnish the charge memo and other relevant records relied upon in the charge memo, within a period of one week from the date of receipt of a copy of this order to the same address as mentioned in the affidavit of the petitioner filed in support of the writ petition.

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sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The Principal Secretary
Food and Civil Supplies Department
Secretariat, Fort St. George
Chennai - 600 009.

2.The Commissioner
Civil Supplies and Consumer Protection Department
Ezhilagam, Chepauk
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3.The Deputy Commissioner (1)
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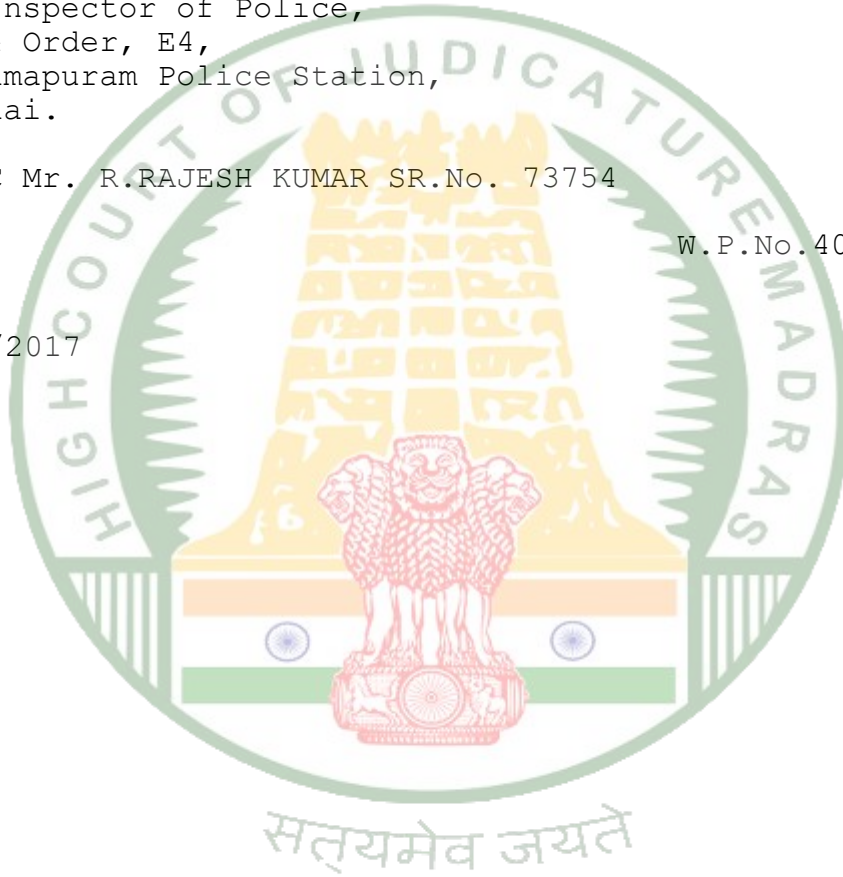
Copy to:

The Inspector of Police,
Law & Order, E4,
Abiramapuram Police Station,
Chennai.

+1 CC Mr. R.RAJESH KUMAR SR.No. 73754

W.P.No.40091 of 2016

SR (CO)
MLT 21/11/2017



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