BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.12.2017

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.(MD)No.12081 of 2014

Vallinayagam ... Petitioner

-Vs-

1.The District Revenue Officer,
Thoothukudi District,
Korampallam,
Thoothukudi - 628 101.
Thoothukudi District.

2.The District Collector,
Thoothukudi District,
Korampallam,
Thoothukudi - 628 101.
Thoothukudi District.

3.The Commissioner of Revenue Administration,
Chepauk, Chennai - 5.

4.The Government of Tamilnadu,
Represented by its Secretary,
Department of Revenue,
Secretariat, Chennai. ... Respondents

(Respondents 3 and 4 are impleaded as per order of this Court dated 12.12.2017, made in M.P(MD)No.1 of 2015)

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents to grant pensionary benefits, retirement benefits, arrears of salary, arrears by salary revision, leave salary and other all other consequential monetary benefits to the petitioner by regularizing the period of the petitioner's suspension i.e. From 25.05.1994 to 18.05.1999 and 06.11.2002 to 31.01.2003 and the period of the petitioner dismissal i.e. From 01.02.2003 to 24.02.2008 as period on duty.

For Petitioner : Mr.V.Kannan
For RR 1 & 2 : Mr.S.Kumar
Additional Government Pleader

ORDER

This writ petition has been filed by the petitioner seeking a writ of mandamus directing the respondents to grant pensionary benefits, retirement benefits, arrears of salary, arrears by salary revision, leave salary and other all other consequential monetary benefits to the petitioner by regularizing the period of the petitioner's suspension i.e. From 25.05.1994 to 18.05.1999 and 06.11.2002 to 31.01.2003 and the period of the petitioner dismissal i.e. From 01.02.2003 to 24.02.2008 as period on duty.

2.The case of the petitioner is that he was working in the Revenue Department from 15.04.1983 as Junior Assistant in the Taluk Office. He was promoted to the Post of Assistant during 1991. When, he was working as Revenue Inspector at Alwarthirunagiri, Tiruchendur Taluk on 12.05.1993, his wife committed suicide by consuming poison. A case was registered under Section 174 of Cr.P.C in Crime No.337 of 1993, pursuant to which, the petitioner was arrested and subsequently, he was placed under suspension from service with effect from 25.05.1994 until further orders by proceedings of the District Revenue Officer, Thoothukudi, the respondent No.1 herein in A5/49612/94 dated 26.05.1994.

3.It is the further case of the petitioner that the police laid a charge sheet against the petitioner under Sections 304 B and 498 A of I.P.C and the said case has been pending before the Sessions Court, Thoothukudi in S.C.No.128 of 1996. The petitioner moved the Taminadu Administrative Tribunal, Chennai by filing an application in O.A.2125/95 challenging the order of suspension. The said application was dismissed on 22.06.1998. However, the Tribunal directed the first respondent/District Revenue Officer to review the order of suspension in the light of the G.O.Ms.No.40, dated 30.01.1996 and taking into account the other rules within a period of four weeks.

4.It is also stated by the petitioner that the second respondent/District Collector revoked the order of suspension and reinstated him into service with immediate effect in and by his proceedings in R.O.C.No.A5/49612/94, dated 26.04.1999. The Additional Sessions Court, Thoothukudi, by judgment dated 06.11.2002 convicted the petitioner and sentenced him to undergo Rigorous Imprisonment for seven years for an offence under Section 304(B) of I.P.C and Rigorous Imprisonment for three years and imposed a fine of Rs.3,000/- in default to undergo imprisonment for six months for the offence under Section 498 A of I.P.C. On account of his conviction, while he was working as Assistant in Taluk Office at Srivaikuntam, the respondent placed him again under suspension from service with immediate effect until further orders in and by his proceedings No.A5/49612/94-1 dated 11.11.2002.

5.It is the further case of the petitioner that the petitioner preferred an appeal against the judgment passed in S.C.No.128 of 1996 before Sessions Court, Thoothukudi by filing a petition for suspension of the sentence imposed on him. By order dated 11.11.2002 made in Cr.M.P.No.2615 of 2002 in C.A.No.66 of 2002, he was granted bail and the sentence was suspended till the disposal of the said Appeal in C.A.No.66 of 2002. The first respondent sent a show cause notice in R.O.C.No.A5/49612/94-2 dated 11.11.2002 directing him to submit representation. Pursuant to the same, the petitioner sent his explanation on 21.11.2002 by registered post. However, by proceedings of the first respondent dated 01.02.2003, he was dismissed from service. The Revision, was filed against the judgment in C.A.No.66 of 2002 before this Court and in the said Criminal Revision in Crl.R.C.No.193 of 2004 by the order dated 01.11.2006, the conviction and sentence imposed in S.C.No.128 of 1996 by the Assistant Sessions Court, Thoothukudi were set aside. The first respondent by the proceedings Roc.A5/91731/2006-1 dated 25.01.2008 set aside the order of dismissal dated 01.02.2003. Hence, the petitioner was reinstated and he was working as Revenue Assistant in Taluk Officer at the time filing petition.

6.The petitioner has further submitted that since he was acquitted from the criminal proceedings, he is entitled to full pay and allowances by taking his period of dismissal or removal from service or under suspension, as period on duty as if he has not been dismissed or removed or suspended from his service. The leave with medical certificate from 19.03.2009 to 02.05.2009 (45 days), 03.11.2009 to 27.12.2009 (55 days) and un-earned leave with medical certificate from 26.11.2010 to 23.01.2011 (59 days) have not been taken into account by the respondents so far. The petitioner retired from service on attaining the age of superannuation on 31.05.2013 and no pensionary benefits and retirement benefits has been so far paid to the petitioner. Hence, he approached this Court by way of filing this writ petition.

7.The counter of the respondents 1 and 2 would show that the petition has been acquitted from the criminal proceedings and he is entitled to full pay and allowance by taking this period of dismissal or removal from service or under suspension, as period on duty as if he has not been dismissed or removed or suspended from his service. The respondent also would submit that since the period of regularization requested was more than ten years, a proposal has been sent to the Commissioner of Revenue Administration, Chennai, vide Office Lr.No.A5/26639/08, dated 19.11.2008 and subsequently, reports have been submitted on 06.05.2011, 24.07.2012, 21.10.2013, 28.02.2014 and 08.05.2014 as requested by the Commissioner of Revenue Administration, Chennai. The orders of the Additional chief Secretary/Commissioner of Revenue Administration, Chennai are still awaited.

8.It is further stated in the counter affidavit that the petitioner filed a Writ Petition in W.P.No.4534 of 2012 on earlier occasion, to regularise the said period of his suspension and period of dismissal with consequential benefits and to consider his representation dated 17.02.2012, and the said writ petition was disposed of by this Court with direction for consideration. On the basis of which, the regularization of petitioner's suspension and dismissal period is under consideration of the Additional Chief Secretary/Commissioner of Revenue Administration, Chennai. The Pension proposals will be sent to the concerned department after getting necessary orders from the Commissioner of Revenue Administration. The pensionary benefits will be considered as per pension rules. The papers could be processed only after getting necessary orders from the Additional Chief Secretary/Commissioner of Revenue Administration, Chennai, regarding the regularization of his suspension and dismissal periods and since the matter is under consideration of the Additional Chief Secretary/Commissioner of Revenue Administration, Chennai, the respondents are awaiting orders.

9.At this juncture the learned counsel for the petitioner would submit that it would suffice if the request of the petitioner is considered and appropriate orders are passed within a time frame

10.The respondents 3 and 4 namely Commissioner of Revenue Administration and the Government of Tamil Nadu, Secretary, Department of Revenue were impleaded as parties to this writ petition today.

11.Under such circumstances, this Court, directs the respondents 1 to 3 to forward necessary papers regarding regularization of the services of the petitioner to the fourth respondent, within a period of two weeks from the date of receipt of a copy of this order and on such receipt, the fourth respondent is directed to pass suitable orders thereon within a period of four weeks, thereafter. Since the matter is pending from 1994 and the petitioner was retired from service in the year 2013 without any benefits, after receiving orders from the third and fourth respondents, the respondents 1 and 2 are directed to place the pensionary papers before the concerned authorities for passing necessary orders, within a period of four weeks of receipt of such orders.

14. This writ petition is disposed of on the above terms. No costs.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To
1.The District Revenue Officer,
Thoothukudi District,
Korampallam, Thoothukudi - 628 101.
Thoothukudi District.

2.The District Collector,
Thoothukudi District,
Korampallam,
Thoothukudi - 628 101.
Thoothukudi District.

3.The Commissioner of Revenue Administration,
Chepauk, Chennai-5.

4.The Secretary,
Government of Tamilnadu,
Department of Revenue,
Secretariat, Chennai.

+1CC to Mr.V.Kannan, Advocate, SR.No. 92279
+1CC to the Special Government Pleader SR.No.92495

W.P.(MD)No.12081 of 2014
12.12.2017

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TE/SV MMS/SAR 4/13.04.2018/5P/7C