



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.02.2017

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THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.(MD) No.1371 of 2017

and

W.M.P(MD)No.1126 of 2017

P.Vairamani

... Petitioner

Vs.

1.The Government of Tamil Nadu,
represented by its Secretary,
Rural Development and Local Administration Department,
Government Estate,
Chennai.

2.The Commissioner and Director of Rural Development,
Ezhilagam, Esplanade,
Chennai.

3.The Principal,
Rural Extension Training Centre,
T.Kallupatti,
Madurai District.

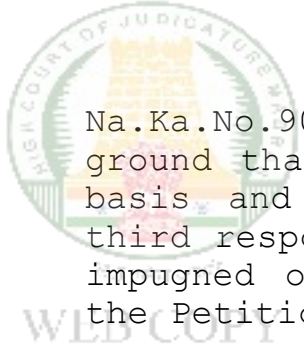
... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the third respondent in Na.Ka.No.90/2009/A1, dated 09.12.2016 and to quash the same on the ground that the same is arbitrary, illegal and without any legal basis and without jurisdiction and consequently to direct the third respondent to drop all further proceedings pertaining to the impugned order to recover any amount from the monthly salary of the Petitioner.

For Petitioner : M/s.R.Aravindan
For Respondents : Mr.K.P.Krishnadoss,
Govt.Advocate

O R D E R

This Writ Petition has been filed seeking for issuance of a writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the third respondent in



Na.Ka.No.90/2009/A1, dated 09.12.2016 and to quash the same on the ground that the same is arbitrary, illegal and without any legal basis and without jurisdiction and consequently to direct the third respondent to drop all further proceedings pertaining to the impugned order to recover any amount from the monthly salary of the Petitioner.

2.Heard the learned counsel on either side and perused the materials placed before this Court.

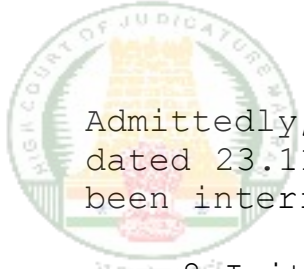
3.According to the Petitioner, he joined the services of the third respondent-Institute in the year 1988 and he was made permanent. Thereafter, a charge-memo was issued in the year 2003 and after a detailed departmental enquiry, he was placed under compulsory retirement on 2.5.2005 and the same was challenged before this Court in W.P(MD)No.10532 of 2010 and this Court interfered with the said order by order, dated 23.11.2011, with a direction to the respondent to consider the request of the Petitioner afresh.

4.The Petitioner submitted a detailed reply after the orders passed in the Writ Petition mentioned supra and as per G.O.528 dated 9.10.2012., the punishment order was interfered with and he was directed to be reinstated in service. The Petitioner pursuant to the order, dated 24.11.2015 of the second respondent, the Petitioner joined the service on 21.12.2015 and to his shock and surprise, received a communication which is the subject-matter of the Writ Petition that the pensionary amount granted pursuant to the order of compulsory retirement would be recovered from him and that according to him, the respondents have no authority to pass such an order when the charges have already been held as not proved and he has been reinstated in service.

5.Even though no reply has been filed by the learned counsel for the respondents, Mr.K.P.Krishnadoss, learned Government Advocate appearing for the respondents vehemently contended that the Petitioner has committed serious misconduct, for which compulsory retirement was imposed and the order impugned herein is not an erroneous one and that the Petitioner has admitted that he is willing to pay a sum of Rs.2.5 lakhs approximately which was received by him towards terminal benefits including the pensionary benefits in 15 instalments at the rate of Rs.15,000/- per month as the Petitioner has received nearly Rs.7 lakhs while he was in service based on the orders of compulsory retirement imposed on him.

6.Heard the submissions on either side and perused the materials placed before this Court.

7.The facts mentioned supra are not in dispute. The only issue raised in this Writ Petition is as to whether the respondents are correct in imposing the order of recovery on the Petitioner.



Admittedly, there is no order of reinstatement and the order dated 23.11.2011 is a compulsory retirement order and the same has been interfered by this Court.

8. Initially, the petitioner was placed under suspension. Once the order has been interfered with by this Court and the matter is remitted back, he has to be put back in service as he is under suspension. From the date of the order in the Writ petition stated supra, the Petitioner would be entitled for payment of subsistence allowance or for the pay, as the case may be. In order to avoid the disputed question of fact, he can be treated as an suspended employee till final order of reinstatement is passed. But however, after the orders of re-instatment, dated 23.11.2011, he was reinstated only in the year 2015. The Petitioner would be entitled to subsistence allowance from the date of order in the above Writ Petition till the order of re-instatment. Once order of reinstatement is passed, it is the duty cast upon the Government to reinstate him in service, which is not done, and it is not due to the fault of the employee and he is entitled to wages from the date of order of reinstatement I.e., from 9.10.2012. The Petitioner has been reinstated only in the year 2015 and he is working from that date onwards. Hence for no fault of the Petitioner, he cannot be deprived of wages. Hence the respondents concerned is bound to pay wages for the period after the orders of reinstatement made in W.P.(MD)No.10532 of 2010, dated 23.11.2011, along with allowances as mentioned supra, after adjusting the amount as per order dated 23.11.2011 till the order of reinstatement passed by the department and from the date of order of reinstatement till the date on which actually the Petitioner has been reinstated and the monetary benefits may be extended after deducting the amount which is payable to the department by the Petitioner, which can be paid in instalments, which may be determined within a period of one month from the date of receipt of a copy of this order. As on date, no action has been initiated and this Court not prevented the respondents from initiating disciplinary action against the Petitioner and this order will not entitle the respondents to deprive the monetary benefits due to the employee, if he is otherwise eligible.

9. With the above directions, the Writ Petition stands disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(C)

/True copy/



To:

1.The Secretary, Government of Tamil Nadu,
Rural Development and Local Administration Department,
Government Estate, Chennai.

2.The Commissioner and Director of Rural Development,
Ezhilagam, Esplanade,
Chennai.

+1 cc to M/s.R.Aravindan, Advocate in SR.No. 8300

+1 cc to The Special Government Pleader in SR.No.8350

vsn

CSL/JM/02.03.2017 : 4P/5C

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