BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.(MD) No.5261 of 2017
&
W.M.P.(MD)No.4235 of 2017

K.Sundaram .. Petitioner

Versus

1. The District Collector,
   Sivagangai District,
   Sivagangai.

2. The District Revenue Officer,
   Sivagangai District,
   Sivagangai.

3. The Revenue Divisional Officer,
   Sivagangai District,
   Sivagangai.

4. The Tahsildar,
   Sivagangai Taluk,
   Sivagangai District. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking for issuance of a Writ of Mandamus, directing the respondents herein to settle the retirement and other monetary attendant benefits payable by the respondents 1 to 4 herein on the basis of the petitioner's representation, dated 06.03.2017, to him, within a time that may be stipulated by this Court.

For Petitioner : Mr.K.P.Ramesh
For Respondents : Mr.R.Karthikeyan
Additional Government Pleader

ORDER

The petitioner after serving as Village Administrative Officer at Nenjathur, Ilayangudi Taluk, was placed under suspension temporarily by the third respondent, on 04.06.2010 pursuant to registration of a criminal case. However, as he was reaching the age of superannuation on 29.02.2012, he made repeated requests and finally, he was reinstated into service from 07.02.2011. Once again, he was placed under suspension in respect of the criminal case, by the third respondent on 28.02.2012, as he was going to reach the age of superannuation on the next date, *viz.,* on 29.02.2012, citing two reasons, that in view of the pendency of the criminal case filed against him in P.R.C.No.4 of 2010, he was not permitted to retire from service as per F.R.56(1)(c) and he was retained in service until the above criminal and disciplinary proceedings with grave charges pending against him is concluded and final orders passed by the competent authority.

2.The learned counsel for the petitioner submitted that after disposal of the criminal case, which ended in his favour, the fourth respondent - Tahsildar, Sivagangai Taluk, passed an order on 18.10.2016, permitting the petitioner to retire from service citing the reason that the petitioner was acquitted in the criminal case registered against him. Therefore, it is the claim that when the petitioner was permitted to retire from service, by an order dated 06.10.2016, the respondents cannot retain his pension and other retiral benefits and the same should be disbursed immediately and accordingly, he sought for a direction to the respondents by allowing the Writ Petition.

3.In support of his submissions, the learned counsel appearing for the petitioner has referred to Section 11 of the Pension Act, 1871 stating that the said Section has given exemption of pension amount from attachment. Therefore, when no pension granted or continued by the Government on political considerations or on account of past services or present infirmities or as a compassionate allowance, and no money due or to become due on account of any such pension or allowance, shall be liable to seizure, attachment or sequestration by process of any Court at the instance of the creditor, for any demand against the pensioner or in satisfaction of a decree or order of any such Court. The respondents cannot raise any objection for disbursement of the pension, to which, he is legally entitled to.

4.The learned counsel for the petitioner also brought to the notice of this Court the Note (2) of Rule 70 of the Tamil Nadu Pension Rules and submitted that the gratuity shall not be liable for attachment in accordance with the provision of clause (g) of the proviso to sub-section (1) of Section 60 of the Code of Civil Procedure, 1908.

5.Mr.R.Karthikeyan, learned Additional Government Pleader appearing for the respondents by placing reliance on Note (1) of Rule 70 of the Tamil Nadu Pension Rules, 1978, would submit that it is the duty of every retiring Government servant to clear all Government dues before the date of his retirement. Therefore, whenever a retiring Government servant does not clear the Government dues and such dues as ascertainable, an equivalent cash deposit may be taken from him. Even as per Note (1) of Rule 70 of the Tamil Nadu Pension Rules, ascertainable Government dues, which includes balance of house building or conveyance advance, arrears of rent and other charges pertaining to occupation of Government accommodation, over-payment of pay and allowances and arrears of income tax deductable at source under the Income Tax Act and also includes dues to the local bodies or to the Staff of Co-operative Societies comprising of Government servant and registered under the Tamil Nadu Co-operative Societies Act, 1961, can also be retained.

6.No doubt, Section 11 of the Pension Act, 1871 shows that an exemption can be granted to pensioners from attachment. It is pertinent to extract the said Section as under:

> "11. Exemption of Pension from Attachment.- No pension granted or continued by the Government on political considerations or on account of past services or present infirmities or as a compassionate allowance, and no money due or to become due on account of any such pension or allowance, shall be liable to seizure, attachment or sequestration by process of any Court at the instance of the creditor, for any demand against the pensioner or in satisfaction of a decree or order of any such Court.
>
> This Section applies also to pensions granted or continued, after the separation of Burma from India, by the Government of Burma."

7. A close reading of the said Section shows that exemption of pension granted or continued by the Government on political considerations shall be liable to seizure, attachment or sequestration by process of any Court at the instance of a creditor, for any demand against the pensioner or in satisfaction of a decree or order of any such Court. No doubt, the said Section applies to pension granted or continued. But, in the present case, the petitioner has not been granted pension. Therefore, Section 11 of the Pension Act, 1871 relied upon by the learned counsel for the petitioner, cannot be pressed into service, for the reason that Rule 70(1) of the Tamil Nadu Pension Rules, shows that it shall be the duty of every retiring Government servant to clear all Government dues before the date of his retirement, failing which, an equivalent cash deposit may be taken from him, where a retiring Government servant does not clear the Government dues, which includes dues to the local bodies or to the Staff of Co-operative Societies comprising of Government Servant and registered under the Tamil Nadu Co-operative Societies Act, 1961.

8.It is relevant to extract Section 70 of the Tamil Nadu Pension Rules read with Note (1) as under:

> "70.Recovery and adjustment of Government dues.-(1) It shall be the duty of every retiring Government servant to clear all Government dues before the date of his retirement.
>
> (2) Where a retiring Government servant does not clear the Government dues and such dues as ascertainable -
>
> (a) an equivalent cash deposit may be taken from him; or
>
> (b) out of the gratuity payable to him an amount equal

to that recoverable on account of ascertainable Government dues shall be deducted therefrom.

[Note.(1) – The expression "ascertainable Government dues" includes balance of house building or conveyance advance, arrears or rent and other charges pertaining to occupation of Government accommodation, over-payment of pay and allowances and arrears of income tax deductable at source under the Income-tax Act, 1961 (43 of 1961). It also includes dues to the local bodies or to the Staff Co-operative Societies comprising of Government Servant and registered under the Tamil Nadu Co-operative Societies Act, 1961 or to the Tamil Nadu Housing Board or to the Corporation owned/controlled by the State Government."

9.In the present case, the petitioner has admitted in paragraph 8 of the affidavit filed by him that he has borrowed a loan of Rs.3,70,000/- on 31.03.2010 from Sivagangai Regional Village Administrative Officers and Village Assistants Co-operative Thrift Society. But, nowhere, it is mentioned how much he has repaid and how much is the balance amount liable to be paid by the petitioner. Therefore, the petitioner is under bounden duty as per Note (1) of Rule 70 of the Tamil Nadu Pension Rules, to repay the loan amount borrowed by him from the Sivagangai Regional Village Administrative Officers and Village Assistants Co-operative Thrift Society. The respondents by virtue of Note (1) of Rule 70 of the Tamil Nadu Pension Rules, shall adjust the abovesaid amount along with interest, if any.

10. In the result, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. It is needless to mention that since the respondents are going to adjust the loan amount along with interest payable by the petitioner to the Sivagangai Regional Village Administrative Officers and Village Assistants Co-operative Thrift Society from the retirement and other monetary benefits payable to him, the petitioner may be paid the balance amount, if any, after adjusting his liability. The District Collector / 1st respondent herein is directed to initiate suitable action against the Tahsildar, Sivagangai Taluk, who had relieved the petitioner from service without even ascertaining the pendency of dues payable by the petitioner, if he is in service.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
   Sivagangai District,
   Sivagangai.

2. The District Revenue Officer,
   Sivagangai District,
   Sivagangai.

3. The Revenue Divisional Officer,
   Sivagangai District,
   Sivagangai.

4. The Tahsildar,
   Sivagangai Taluk,
   Sivagangai District.

+ 2 CC TO Mr.K.P.RAMESH, ADVOCATE IN SR No. 63905
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 64035

SMN2
TE/KK/SAR-II : 11/09/2017 : 5P/8C

W.P.(MD)No.5261 of 2017 and
W.M.P.(MD)No.4235 of 2017
06.07.2017