IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1690 of 2017

and CMP No.21758 of 2017

1. The Government of Tamil Nadu
Rep. By the Principal Secretary to Govt.,
Revenue Department,
Secretariat, Chennai 600 009.

2. The Assistant director of Survey & Land Records,
Theni, Theni District

... Appellants

versus

V.Muniasamy ... Respondent

Appeal filed against the order passed by this Court dated 22.03.2017 passed in W.P.No.35115 of 2013.

W.P.No.35115 of 2013.

Writ of certiorarified mandamus, calling for the records on the file of the 1st respondent herein in G.O.(2D) No.632 Revenue (Ser.2(1)) Department dated 22.10.2013 and to quash the same and to consequently direct the respondents herein to reinstate the petitioner in service and to treat the entire period from 28.5.2009 till the date of reinstatement as duty period for all purposes and to grant the petitioner all consequential service and monetary benefits with due interest on the delayed payment of the monetary benefits

For appellants : Mr.M.Manikandan
Government Advocate

For Respondent : Mr.M.Ravi

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The Challenge in this Intra Court appeal is to the order of the learned Single Judge dated 22.03.2017 made in WP No.35115 of 2013, in and by which, the appellants were directed to pay 50% of the salary of the petitioner after deducting the subsistence allowance, if any paid to him from the date of suspension till the date of superannuation.

2. The respondent, who was working as Frica Surveyor was compulsorily retired from service for certain delinquencies committed by him during the year 1995, pursuant to disciplinary proceedings that were initiated against him on 28.05.2009. The said order of compulsory retirement came to be challenged by the respondent in WP No.12976 of 2009. This Court by an order dated 16.07.2009 allowed the Writ Petition, setting aside the order of compulsory retirement and remitted the matter to the Disciplinary Authority for fresh disposal, in a manner known to law, by giving an opportunity to the respondent herein. In and by the same order this Court had also directed the appellant herein to reinstate the petitioner in service and to proceed with the enquiry. The said order dated 16.07.2009 was challenged by the first appellant herein in WA No.775 of 2010. A Division Bench while affirming the order setting aside the compulsory retirement and the direction to conduct fresh enquiry, observed that the order directing reinstatement should be construed as one passed with a view to continue the suspension. Upon such conclusion, the Division Bench clarified the order of the learned Single Judge dated 16.07.2009 as follows:

> "Accordingly, we only clarify that the direction for reinstatement ordered by the learned Single Judge is only to enable the appellant to keep the respondent under suspension till the enquiry is completed."

3. While confirming the other portions of the order of the learned Single Judge, the Division Bench had directed the appellants to conclude the fresh enquiry within a period of four months. It was also made clear that the time limit fixed by the Court should be strictly adhered to by the appellant. Though the above directions were issued by the Division Bench on 23.03.2011, the appellant herein did not conduct a fresh enquiry as per the directions of this Court. However, on 22.10.2013, the appellant issued an order compulsorily retiring the respondent from service. It this order dated 22.10.2013 that was impugned in WP No.35115 of 2013.

Before passing the order on 22.10.2013 imposing the punishment, the respondent was placed under suspension by an order dated 10.04.2013. The sole ground projected by the respondent for assailing the order dated 22.10.2013 is that despite the directions of this Court made in WA No.775 of 2010, the appellants have not conducted any fresh enquiry. Therefore, according to the respondent the impugned G.O.(2D)No.632 dated 22.10.2013 imposing a punishment of compulsory retirement is liable to be set aside.

4. The learned Single Judge, who heard the Writ Petition concluded that the action of the appellants in passing the impuged G.O.(2D) No.632 dated 22.10.2013 imposing the punishment of compulsory retirement on the respondent without conducting any further enquiry, as per the directions of the Division Bench made in the order dated 23.03.2011 in WA No.775 of 2011, is wholly unsustainable and resultantly quashed the said order allowing the Writ Petition. However, as regards the period spent by the respondent under suspension, the learned Single Judge taking note of the fact that the earlier suspension order passed prior to the imposition of punishment on 28.05.2009 had merged with the order of the compulsory retirement dated 28.05.2009 and the said order of compulsory retirement was in fact set aside by this Court and the fact that the respondent was placed under suspension, subsequently only on 10.04.2013 i.e. after the period of 4 months granted by this Court for completion of enquiry concluded that the entire period has to be treated as period on duty.

5. After observing so, the learned Single Judge also concluded that the respondent would be entitled to only 50% of the salary for the period, after deducting the subsistence allowance that had been paid to him during the period. The Division Bench had made it clear that the direction of the learned Single Judge made in WP No.12976 of 2009 to reinstate the respondent was only with a view to continue him service by keeping under suspension in order to complete the disciplinary enquiry, which was directed to be conducted afresh.

6. We have heard Mr.M.Manikandan, learned Government Advocate appearing for the appellants and Mr.M.Ravi, learned counsel appearing for the respondent.

7. Mr.M.Manikandan, learned Government Advocate appearing for the appellants would contend that in view of the clarification made by the Division Bench in Writ Appeal No.775 of 2010, the learned Single Judge was not right in treating the period from the date of the original suspension order till date of superannuation as one spent on duty.

Therefore, according to him, the learned Single Judge was not right in directing payment of 50% of the salary less the subsistence allowance already paid.

8. Per contra, Mr.M.Ravi, learned counsel appearing for the respondent would submit that there had been a flagrant violation of the order of this Court by the appellants. When the learned Single Judge as well as the Division Bench of this Court had earlier directed the appellants to conduct a fresh enquiry and complete the disciplinary proceedings within the time frame fixed by this Court they not only breached the said order, but chose to pass an wholly unsustainable order imposing a punishment of compulsory retirement on the respondent without conducting enquiry. It is also brought to our notice by Mr.M.Ravi, that the respondent was not suspended till 10.04.2013, even after the orders of this Court made in Writ Appeal No.775 of 2010 dated 23.03.2011. Therefore, according to him, the learned single Judge was justified in directing payment of 50% of the salary to the respondent.

9. We have considered the rival submissions. The order dated 28.05.2009 imposing punishment of compulsory retirement on the respondent was quashed by this Court solely on the ground that the disciplinary proceedings were not conducted as per the law and there was no opportunity given to the respondent in the disciplinary proceedings. The order of the learned Single Judge setting aside the order imposing punishment was also confirmed by the Division Bench, of course, with certain clarifications. It was well open to the appellants to suspend to the respondent immediately after the orders passed by this Court in Writ Appeal No.775 of 2010 dated 23.03.2011. They did not chose to do so, on the other hand, they waited till 10.04.2013 for more than two years to suspend the respondent again and on 22.10.2013 they chose to pass the impugned G.O. imposing punishment of compulsory retirement without conducting any fresh enquiry as directed by this Court.

10. While the challenge to the said order imposing the punishment of compulsory retirement was pending, the respondent had attained the age of superannuation. The learned Single Judge had taken note of the fact that the appellants had committed breach of the directions of this Court and had chosen to compulsory retire the respondent without conducting an enquiry and had rightly set aside the order imposing punishment.

11. While considering, as to how the period between the suspension in the year 2009 and the superannuation in the year 2014 should be treated, the learned Single Judge taking note of the fact that there was a considerable delay on the part of the appellants in concluding the disciplinary proceedings, which

were ultimately set aside by this court, held that the respondent should have been treated on duty for the entire period and issued a further direction to the appellants to pay 50% on the salary. Even assuming that the respondent is treated to have been under suspension for the entire period as contended by the learned Government Advocate, the appellants would have been liable to pay subsistence allowance to the respondent. The quantum of subsistence allowance would be more or less equal to 50% of the salary that has been directed to be paid by the learned Single Judge.

12. In the light of the above, we are of the considered opinion that interest of justice would be met if we clarify the position with regard to payment of the salary. Hence, we confirm the order of the learned Single Judge, with a clarification that the 50% of the salary directed to be paid by the learned Single Judge will be in lieu of the subsistence allowance payable to the respondent as if he had been under suspension for the entire period. In all other respects, the order of the learned Single Judge is confirmed and the Writ Appeal will stand dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

jv

To

1. The Principal Secretary to Govt.,
Government of Tamil Nadu
Revenue Department,
Secretariat, Chennai 600 009.

2. The Assistant director of Survey & Land Records,
Theni, Theni District

+1cc to Mr.M.Ravi,Advocate,S.R.No. 36958
+1cc to the Government Pleader, S.R.No.36999

W.A.No.1690 of 2017
and CMP No.21758 of 2017

KAN(CO)
BM 28/06/2018