

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2018

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THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.15494 of 2011 and
M.P.No.2 of 2011

T.V.Shanmugasundaram

... Petitioner

Vs

1.The Director of Public Health and Preventive Medicine,
No.359, Annasalai, Chennai 600 006.

2.The Deputy Director of Health Services,
Tirupur, Coimbatore District. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records relating to the proceedings in impugned order in R.No.089205(1)/DA,03/S2 dated 13.12.2010 issued by the 1st respondent imposing a punishment of compulsory retirement and consequential impugned order dated 13.12.2010 imposing a penalty of 10% cut in eligible pension and death cum retirement Gratuity on the file of the 1st respondent and quash the entire proceedings and consequentially direct the respondents to settle the terminal and monetary benefits accrued to the petitioner on his superannuation on 31.07.2003 with interest at 12% within a time frame to be fixed by this Court.

For Petitioner : Mr.N.S.Nanda Kumar

For Respondents : Ms.K.Bhuvaneshwari
Additional Government Pleader

O R D E R

Heard Mr.N.S.Nanda Kumar, learned counsel for the petitioner and Ms.K.Bhuvaneshwari, learned Additional Government Pleader appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief,

"To issue a writ of Certiorarified Mandamus, to call for the records relating to the proceedings in impugned order in R.No.089205(1)/DA,03/S2 dated 13.12.2010 issued by the 1st respondent imposing a

punishment of compulsory retirement and consequential impugned order dated 13.12.2010 imposing a penalty of 10% cut in eligible pension and death cum retirement Gratuity on the file of the 1st respondent and quash the entire proceedings and consequentially direct the respondents to settle the terminal and monetary benefits accrued to the petitioner on his superannuation on 31.07.2003 with interest at 12% within a time frame to be fixed by this Court."

3. The case of the petitioner is as follows:-

The petitioner entered into service as Basic Health Worker in the year 1966 and after several promotions, he finally held the post of Health Inspector Grade I. He was due for retirement on attaining the age of superannuation on 31.07.2003, while working in Primary Health Centre, Velmapalayam, Tiruppur District. While so, by proceedings dated 25.06.2003, the petitioner was placed under suspension on the premise of a complaint of criminal offence, which was under investigation. Thereafter, an order was passed, not to permit the petitioner to retire from service. The criminal case was registered under the provisions of Prevention of Corruption Act for alleged demand of illegal gratification of Rs.1,000/- from one S.Manoharan, for allowing him to run his business without licence.

4. However, it appears that subsequently, the criminal case ended in acquittal. The said acquittal, according to the petitioner, has become final. The first respondent had initiated a departmental action much after the acquittal by the criminal Court on 18.12.2007, vide charge memo dated 03.06.2008 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The charge was in relation to the demand of illegal gratification by the petitioner, which formed the basis for the criminal complaint.

5. According to the petitioner, an enquiry was conducted and on the basis of the enquiry report, an order of compulsory retirement was imposed on the petitioner by proceedings dated 13.12.2010 and further order was issued on the same day, sanctioning only 90% of eligible pension and DCRG as an additional penalty.

6. The learned counsel for the petitioner would submit that the initiation of disciplinary action subsequent to the acquittal by the criminal Court on the same set of charges is not maintainable. Although, the charge memo itself was put to challenge in W.P.No.22593 of 2009 and no interim order was

passed in that writ petition, an enquiry had been completed and final orders have been passed, imposing the punishment of compulsory retirement and 10% cut in pension for indefinite period. In the said circumstances, the present writ petition has been filed, challenging the punishment.

7. The learned counsel for the petitioner would submit that apart from challenging the charge memo, the impugned punishment is also invalid for the reason that two punishments have been imposed on the petitioner viz., the compulsory retirement and also cut in pension, which amounted to double jeopardy and not permissible under the rules. Moreover, he would submit that no period has been fixed for cut in pension which means that the punishment to run for the entire lifetime of the petitioner.

8. Upon notice, learned Additional Government Pleader appearing for the respondents entered appearance and filed a counter affidavit. The learned counsel for the respondents would contend that the punishment imposed on the petitioner is valid for all the purpose and the same need not call for interference from this Court.

9. Having considered the rival submissions and having perused the materials and pleadings placed on record, this Court is of the view that two punishments imposed on the petitioner is not valid as no person can be punished twice for the same offence. In the instant case, the petitioner having suffered from a penalty of compulsory retirement, cannot be made to suffer a loss of 10% pension for his entire lifetime. The punishment of compulsory retirement itself is a major penalty and therefore, an additional penalty of cut in pension cannot be imposed for proving single set of charges. Therefore, learned counsel for the petitioner has rightly contended that the punishment amounted to double jeopardy and the same is unsustainable in law.

10. In the above circumstances, this Court finds that there is some force in the contention put forth by the learned counsel for the petitioner that an additional penalty of 10% cut in pension is not maintainable and the same is liable to be interfered with. This Court therefore, modifies the penalty imposed on the petitioner dated 13.12.2010, as the penalty to the extent of upholding the penalty of compulsory retirement and quashing the further order of 10% cut in pension as an additional penalty vide proceedings dated 13.12.2010. Hence, the respondents are directed to refund the amount so far deducted from the pension of compulsory retirement from the petitioner

and shall pass orders within a period of eight weeks from the date of receipt of a copy of this order.

11. With the above direction, the writ petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1. The Director of Public Health and Preventive Medicine,
No.359, Annasalai, Chennai 600 006.
2. The Deputy Director of Health Services,
Tirupur, Coimbatore District.

+1 CC to Mr.N.S. Nandakumar, Advocate sr 1732.

+1 CC to Govt. Pleader sr 2400.

W.P.No.15494 of 2011

NRI (CO)
SP(15/02/2018)

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