IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.4.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.A.No.765 of 2018
and
C.M.P.No.7231 of 2018

1. The Commissioner,
   Corporation of Chennai,
   Ripon Buildings,
   Chennai 600 003.

2. The Joint Director,
   Local Fund Audit,
   Corporation of Chennai,
   Chennai 600 003. ... Appellants

Versus

1. The Government of Tamil Nadu,
   rep. by the Secretary to Government,
   Municipal Administration and Water
   Supply Department,
   Fort St. George, Chennai 600 009.

2. J.Balakrishnan ... Respondents

Prayer: Writ Appeal filed filed under Clause 15 of the Letters Patent against the order dated 8.11.2017 passed in W.P.No.14420 of 2014 on the file of this court.

WP.NO.14420/2014:

Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to Direct the respondents to pay the DCRG and all other withheld retirement benefits to the petitioner with interest as per rules and grant all consequential benefits.

For appellant : Ms.Karthikaa Ashok

For R1 : Mr.P.S.Sivashanmugasundaram
Special Government Pleader

JUDGMENT

(Judgment of the court was made by M.DHANDAPANI, J.)

The intra-court appeal arises against the order passed by the learned Single Judge allowing the writ petition filed by the second respondent herein and thereby a direction was issued to settle the DCRG in full due and payable to the second respondent herein in accordance with the Rules.

2. The case of the writ petitioner/second respondent herein is that he was originally appointed as Steno Typist and on consecutive promotions, he was employed as Assessor in the appellant-Corporation of Chennai at the time of his superannuation on 31.5.2011. Without prejudice to the disciplinary proceedings pending as on that date, he was allowed to retire and subsequently, after conclusion of the domestic enquiry, final order was passed imposing a punishment of stoppage of increment without cumulative effect for one year. On his appeal, the Government had set aside the order of punishment, however, disciplinary action under Pension Rules was initiated, which ended in reduction of pension by a sum of Rs.1500/- per month for a period of two years. However, it appears that on the basis of an audit objection raised in the year 2002, the DCRG has not yet been settled to the writ petitioner and hence, he had filed the writ petition.

3. Having heard the learned counsel appearing for the appellants and Mr.P.S.Sivashanmugasundarm, learned Special Government Pleader appearing for the State and on perusal of the materials available before us, we find that the writ petitioner was permitted to retire by 31.5.2011 and the disciplinary proceedings pending as on that date also ended in reduction of pension for a period of two years. When such being the case, the DCRG payable to the writ petitioner is withheld for all these years based on an audit objection raised about 15 years ago, found that there would not be any meaning in allowing the authorities to proceed against the writ petitioner on the basis of such audit objection and having observed that the authorities can initiate appropriate departmental action against the officials concerned, who had not taken appropriate steps on the audit objection, in time, directed the authorities to settle the DCRG in full.

4. We do not find any error in the order passed by the learned Single Judge. Once the writ petitioner had already been imposed with a punishment as the outcome of the disciplinary

proceedings, it will not be fair on the part of the authorities to withhold the DCRG payable to him on the basis of the audit objection. If at all, it is for the authorities to initiate action against the officials, who had not taken steps to clear the audit objection in time.

In such view of the matter, the writ appeal is dismissed. No costs. The connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ssk.

To:

1. The Commissioner,
   Corporation of Chennai,
   Ripon Buildings,
   Chennai 600 003.

2. The Joint Director,
   Local Fund Audit,
   Corporation of Chennai,
   Chennai 600 003.

3. The Government of Tamil Nadu,
   rep. by the Secretary to Government,
   Municipal Administration and Water
   Supply Department,
   Fort St. George, Chennai 600 009.

+1cc to M/s.Karthikaa Ashok, Advocate, S.R.No.29010
+1cc to the Government Pleader, S.R.No.29541

W.A.No.765 of 2018

kan(co)
nr 31/05/2018