

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2018

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.35622 of 2016 and
W.M.P. No.30616 of 2016

Anthony Harry

.. Petitioner

-vs-

1.The Principal Secretary,
Government of Tamil Nadu,
Home (Police) Department,
Secretariat, Chennai-600 009.

2.The Director General of Police,
Tamil Nadu, Mylapore,
Chennai-600 004.

3.The Commissioner of Police,
Greater Chennai City,
Vepery, Chennai-600 007.

4.The Joint Commissioner of Police,
North Zone, Greater Chennai City,
Egmore, Chennai-600 008.

5.The Joint Commissioner of Police,
South Zone, Greater Chennai City,
St. Thomas Mount,
Chennai-600 016.

.. Respondents

Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records on the file of the 4th respondent herein and quash the final order dated 22.03.2010 awarding punishment of 'reduction in time scale of pay by one stage for one year without cumulative effect' in Punishment Roll No.02/PR.S (1) 2009 u/r 3(b) of the TNPSS (D&A) Rules, 1955, after the petitioner retirement from service; and quash the same as illegal and improper and consequently direct the respondents herein to settle the petitioner full pension, death cum retirement gratuity, cash-able leave salary, a portion of General Provident Fund withheld for final settlement, Special Provident Fund and all other retirement benefits withheld

showing pending of the two Punishment Rolls and now showing pending of the Revision Petition.

For Petitioner:: Mr.R.Sampath Kumar

For Respondents:: Mrs.P.Rajalakshmi,
Additional Government Pleader

ORDER

The petitioner has come up with this writ petition challenging the final order dated 22.03.2010 passed by the fourth respondent awarding punishment of 'reduction in time scale of pay by one stage for one year without cumulative effect' in Punishment Roll No.02/PR.S (1) 2009 u/r 3(b) of the TNPSS (D&A) Rules, 1955, after his retirement from service and seeking a direction to the respondents herein to settle her full pension, death cum retirement gratuity, leave salary, a portion of General Provident Fund withheld for final settlement, Special Provident Fund and all other retirement benefits.

2.The case of the petitioner is that while he was working as Inspector of Police, H3 Tondiarpet Police Station, the Retirement Order in NZO No.384/2009 Rc. No.238/12111/PR N (2)/2009 dated 30.06.2009 was issued by the Commissioner of Police, Greater Chennai Police, the third respondent herein. In the said Retirement Order, it has been stated that as per the guidelines issued in G.O. Ms. No.144 Personnel and Administrative Reforms (N) Department dated 08.06.2007, the petitioner was allowed to retire from service without prejudice to departmental actions pending against him in Punishment Roll No.77/PR S (1)/2008 u/r 3 (b) and Punishment Roll No.02/PR S(1)/2009 u/r 3(b) of South Zone, Greater Chennai Police. Thereafter, the impugned Final Order dated 22.03.2010 in PR No.02/2009 u/r 3(b) was passed by the fourth respondent stating that the charge memo was served to the delinquent officer by pasting method on 05.06.2009 and he had not submitted his explanation and not attended the oral enquiry and in this connection, the Deputy Commissioner of Police, T.Nagar has drawn an exparte proved minute on 03.12.2009 and the delinquent officer also retired on superannuation on 30.06.2009. In Punishment Roll No.77/PR.S(1)/2008, the Director General of Police, Tamil Nadu has passed final orders in Proceedings Rc.No.11766/Con.II (2)/2005 dated 17.03.2015 and dropped further action, which is not the subject matter in this writ petition.

3.The grievance of the petitioner is that showing the above two Punishment Rolls as pending, pension settlement had been withheld. According to Rule 9(2)(a) of Tamil Nadu Pension Rules

1978 and Government Letter No.55316/Per-N/94 dated 12.09.1994, the Government were the competent authority to pass the Final Order under the Tamil Nadu Pension Rules as on 22.03.2010, after the retirement of the Government servant and therefore, the above Final Order passed by the fourth respondent is legally not sustainable. Hence, the petitioner is before this Court.

4.Learned Additional Government Pleader appearing for the respondents submitted that although the Joint Commissioner of Police, North Zone Greater Chennai Police has passed the Final Order on 22.03.2010 imposing punishment of reduction in time scale of pay by one stage for one year without cumulative effect and the said order was set aside by the Government remanding the matter back, it is not known why the petitioner has not given his explanation.

5.In reply, the learned counsel appearing for the petitioner submitted that after the matter was remanded, notice was issued to the petitioner calling upon him to submit his explanation. Accordingly, the petitioner submitted the detailed explanation running into nine pages and the same has also been received by the respondent department with an endorsement. Therefore, it is not open to the respondents to say that the petitioner has not given any explanation to the show cause notice after the matter was remanded.

6.This Court also finds the endorsement with the official seal affixed by the respondents. Since the petitioner reached the age of superannuation and he has been eking out his livelihood only on receipt of the provisional pension, this Court directs the Director General of Police to consider the explanation given by the petitioner and pass appropriate orders, on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. Accordingly, this writ petition is disposed of. Consequently, connected W.M.P. is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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Chennai-600 016.

+1cc to Dr.R.Sampath Kumar, Advocate sr.no.79054
+1cc to Government Pleader sr.no.79126

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W.M.P. No.30616 of 2016

rk(co)
nr 10/12/2018