

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.2693 of 2018
and WMP Nos.3337 and 3338 of 2018

J. Raju

..... Petitioner

vs

1. The Principal Secretary - Finance (T&A ii)
Secretariat,
Fort St. George,
Chennai - 600 009
2. The Principal Secretary/Commissioner of
Treasuries and Accounts,
Integrated Finance Department Office Complex,
3rd floor, No.571, Anna Salai, Todd Hunter Nagar,
Nandanam, Chennai - 600 035
3. The Treasury Officer,
District Treasury,
Tiruvallur

..... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus to call for the records relating to Proc Rc.No.7733/2010/A2 dated 18.09.2017 passed by the third respondent dismissing the petitioner and not permitting him to retire from service on his reaching the date of superannuation i.e. 30.06.2014 afternoon and quash the same as arbitrary and unconstitutional and directing the second respondent to permit the petitioner to retire from service reaching the date of superannuation and to settle all the retirement benefits together with interest at the rate of 12%.

For Petitioner :: Mr.A.K. Rajaraman

For respondents :: Mr.R.S. Selvam
Govt. Advocate

ORDER

The petitioner was convicted by the competent criminal Court for having committed an offence under Sections 7 and 13 (2) r/w 13(1)(d) of Prevention of Corruption Act and he was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.2,000/- in default, to undergo simple imprisonment for three months by Special Judge/Chief Judicial Magistrate, Tiruvallur in Cr.No.07/2010 and Special Case No.17/2011 dated 15.5.2017. Aggrieved by the same, the petitioner preferred a criminal appeal in CrI. Appeal No.273/2017 and the same is pending. However, the petitioner was enlarged on bail. The appellate court, while entertaining the appeal, suspended the sentence on 24.05.2017.

2. These facts were brought to the notice of the respondents, after receiving the show cause notice on 16.08.2017 calling upon the petitioner to explain as to why he should not be dismissed, since he was already convicted by the learned Special Judge/Chief Judicial Magistrate, Tiruvallur in Cr.No.07/2010 and Special Case No.17/2011 dated 15.5.2017.

3. The petitioner has clearly mentioned in his explanation dated 24.08.2017 that the order of conviction and sentence are under appeal in Criminal Appeal No.273/2017 and the sentence of imprisonment alone is suspended. Yet, the authorities have proceeded further and passed the impugned order of dismissal from service, which is liable to be interfered with.

4. This Court is not able to find any error or illegality in the order passed by the third respondent. It is seen from the records that the petitioner suffered conviction and sentenced for the offence that was established by the Vigilance and Anti Corruption Department in respect of the offence under Sections 7 and 13 (2) r/w 13(1)(d) of Prevention of Corruption Act. Article 311 (2) (a) reads as under:

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State:

(1)

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges

Provided that where it is proposed after

such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed.

Provided further that this clause shall not apply

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

5. In this case, only sentence of imprisonment alone is suspended and the conviction has not been suspended. A government servant who has suffered conviction is liable to be dismissed from service and is not entitled to normal retirement to claim terminal benefits. Therefore, the impugned order passed by the third respondent is perfect and in order and hence the writ petition fails and the same is dismissed. No costs. Consequently, connected WMPs are closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sr

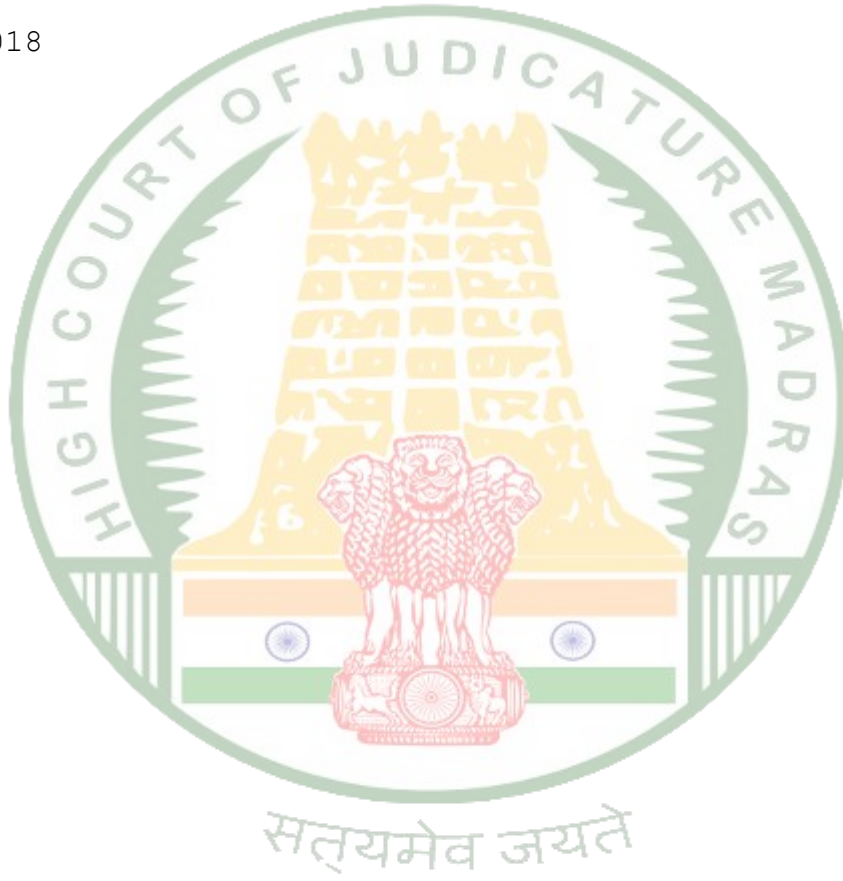
To

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+1 cc to Govt Pleader sr 10314
+1 cc to Mr.R.Ganapathy Advocate sr 10164

W.P.No.2693/2018

skv(co)
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