IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 06.09.2018

CORAM
THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.28044 of 2017 and
W.M.P.No.30110 of 2017

G.Vijayan ....Petitioner

Vs

1. The District Collector,
   Palladam Road,
   Tiruppur District,
   Tiruppur - 641 604.

2. The Accountant General (A&E),
   Tamil Nadu Circle,
   261, Anna Salai,
   Chennai - 600 018. ....Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus by calling for the records relating to the first respondent herein in R.C.No.10068/2013/A2 dated 30.01.2017 and quash the same and consequently direct the first and second respondents herein to settle all the retirement benefits of the petitioner with interest.

For Petitioner : Mr.R.S.Anandan

For Respondents : Mrs.Thangavadhana Balakrishnan,
Additional Government Pleader for R1

ORDER

As it appears from the materials on record, on the day preceding the date of superannuation of the petitioner, a disciplinary action was initiated under Rule 17 (a) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, 1955, however, the petitioner was allowed to retire. Now, the petitioner has come to challenge the same in this case on the ground that after retirement, a proceeding under Rule 17 (a) of the said Rules cannot be continued therefore the same is liable to be quashed.

2. Counter affidavit has been filed by the first respondent stating that since the petitioner did not intimate

the Authority with regard to involvement of a subordinate officer in a criminal case, for which he was allowed to retire, the petitioner has been proceeded with under Rule 17 (a) of the said Rules before the date of his retirement.

3. A perusal of the counter affidavit filed by the first respondent would go to show that nothing has been indicated justifying that a person who has already been allowed to retire, can be continued with the proceeding under Rule 17 (a) of the said Rules. The learned counsel appearing for the petitioner submits that a retired person cannot be proceeded under the said Rules for minor charge, even if the same has been initiated prior to his retirement. However, he submits that on retirement, no doubt a disciplinary proceeding which has been initiated against the person before the retirement can be deemed to continue after his retirement even if he has been allowed to retire, but the same is only in case of misconduct for which major punishment has been provided in Rules. Hence, the continuance of the said proceeding is illegal and liable to be quashed inasmuch as the same is non est in the eye of law.

4. The learned counsel appearing for the first respondent however concedes that such proceeding after retirement is non est in the eye of law and as such the Authority should have passed the order in this regard indicating the withdrawl of the same and release the retiral benefit in favour of the petitioner, if there is no other legal impediment.

5. Considering the aforesaid facts and submissions especially submissions of the learned counsel for the first respondent, the writ petition is disposed of being allowed with direction to the respondents to treat the 17 (a) proceeding under the said Rules to be non est in the eye of law and as such in no manner the same comes in the way of the petitioner for sanction of retiral benefit in his favour to which he is legally entitled to.

6. With the aforesaid order, this writ petition stands disposed of. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
   Palladam Road,
   Tiruppur District,
   Tiruppur - 641 604.

2. The Accountant General (A&E),
   Tamil Nadu Circle,
   261, Anna Salai,
   Chennai - 600 018.

+1cc to Mr.R.S.Anandan, Advocate, SR.No.61691
+1cc to the Government Pleader,SR.No.62113

W.P.No.28044 of 2017

SKV(CO)
rrs(16/10/2018)