

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.28887 of 2017

P.Shanmugam

... Petitioner

-Vs-

1.The Registrar General
High Court of Madras
Chennai-600 104

2.The Pay and Accounts Officer
High Court, Chennai-104

3.The Pension Pay Officer
Chennai-600 006

4.The Senior Accounts Officer
Pension-2, Office of the Principal
Accountant General of Tamilnadu
Chennai-600 018.

.... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the first respondent to consider the representation dated 22.06.2017 in terms of the order made in W.P.No.16317 of 2007 dated 22.07.2008 as well as under the Tamil Nadu Pension Rules, 1978 for refunding the amount recovered for the period 01.02.2007 to 14.10.2008 pursuant to attainment of superannuation of the petitioner at the age of 58 years, treating the same as full salary.

For Petitioner :Mr.P.Manikannan

For Respondents:Mr.Santhana Raman for R1

Mr.Sri Saran Ramanujam for R2 and 3

Ms.Hema Muralikrishnan for R4

ORDER

[Order of the Court was made by C.T.SELVAM, J.]

Petitione entered the Tamil Nadu State Judicial service as Judicial Second Class Magistrate on 22.02.1982 and came to hold the office of VI Additional Judge in City Civil

Court, Chennai from 03.01.2006. Petitioner having been born on 14.01.1949, the question of his being continued in service beyond the age of 58 years came up of consideration and first respondent under order in Roc.No.2A/2006/con.B2 dated 25.01.2007, communicated he was not permitted to continue in service.

2. Petitioner moved W.P.No.13617 of 2007 challenging such order and under order dated 22.07.2008, this Court had held in favour of the petitioner informing as follows:

".....

11. We accordingly set aside the proceeding contained in Roc.No.2A/2006-Con.B2 dated 25th Jan 2007, communicated by the 2nd respondent Madras High Court to the petitioner and the order of rejection dated 31st Jan 2007 and remit the case to the 2nd respondent with direction to reconsider the case of the petitioner for extension of his service beyond 58 years for continuance upto the age of 60 years. Taking into consideration the records of service, as noticed above, the 2nd respondent is expected to deliberate on the issue in similar manner as deliberated in regard to the other officers, who were similarly situated like the petitioner. It is expected that an early decision will be taken preferably within a month and for that the Registrar General of Madras High Court is directed to place this order before the Hon'ble the Chief Justice of the High Court for appropriate orders. We make it clear that if the officer is granted extension of time beyond the period of 58 years he may not be given full salary of the intervening period for which he has not performed the duty, but may be counted for all other purpose.

The writ petition is allowed with the aforesaid observations and directions. But there shall be no order as to costs."

Pursuant to the above order the petitioner was reinstated into service on 28.10.2008 and posted as I Additional Principal Judge Family Court, Chennai. Disciplinary proceedings were pending against him and he eventually was permitted to retire from service on 31.01.2009 without prejudice to the same. Departmental proceedings were conducted in C.No.66/2005/VC Iin R.O.C.No.555/2005/VC), C.No.26/2005/Vc (in R.O.C.No.259/2005/VC vide R.O.C.No.803/2003/VC) and in

keeping with findings therein and recommendations there upon, Government issued orders imposing punishment of cut in pension of Rs.2000/- p.m for a period of 3 years vide G.O.Ms.No.361, Public (Special A) Department, dated 16.05.2014. The departmental proceedings thus reached finality.

4. The Assistant Registrar Admin II, High Court forwarded revised proposals in respect of petitioner with the above findings vide proceedings dated 25.09.2014. Based on the same, Fourth respondent admitted the pensionary benefits of the petitioner with effect from 01.02.2009 in new Pension Payment Order number R 0216526 with a condition that the pension already paid to him with effect from 01.02.2007 to 31.01.2009 vide old PPO number C 213350 JUD is to be recovered. In keeping therewith the pension paid to the petitioner during the intervening period in which he had not put in work i.e from 01.02.2007 to 16.10.2008 had been deducted and a sum of Rs,10,72,413/- had been recovered by the fourth respondent from the petitioners terminal benefits on the date of his attaining of superannuation at the age of 60.

5. Challenging such action present writ petition has been filed.

6. We have heard learned counsel for petitioner as also perused the counter affidavit filed by the fourth respondent.

7. Learned counsel for petitioner submitted that under orders in W.P.No.16317 of 2007 dated 22.07.2008, this Court had made clear that "if the officer is granted extension of time beyond the period of 58 years he may not be given full salary of the intervening period for which he has not performed the duty, but may be counted for all other purpose".

8. Learned counsel submits that the above observation is to be understood as informing that full salary is not payable in the intervening period but some portion thereof would be. We are unable to agree.

9. Once, the petitioner has been reinstated in service and subsequently attained superannuation on which date alone he became entitled to pension then any sums paid under such head prior to his actual date of superannuation i.e. 01.02.2007 to 31.01.2009 necessary would have to be recovered from him and it is fundamental that a person who has received any sums towards pension owing to an intervening act before his actual date of retirement cannot hold on to the same as a person becomes entitled to pension only upon retirement/superannuation.

In such view of the matter, this Court finds absolutely no merits in the writ petition and accordingly writ petition is dismissed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

To

1.The Registrar General
High Court of Madras
Chennai-600 104.

2.The Pay and Accounts Officer
High Court, Chennai-104.

3.The Pension Pay Officer
Chennai-600 006.

4.The Senior Accounts Officer
Pension-2, Office of the Principal
Accountant General of Tamilnadu
Chennai-600 018.

+ 1 cc to Mr.Government Pleader Sr.20111

+ 1 cc to M/s. Hema Muralikrishnan, Advocate Sr.19741

(CS-VI)
EU(12/07/2018)

W.P.No.28887 of 2017

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