IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2018

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THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.19753 of 2012 and
M.P.No.2 of 2012

A.Thirumalai ... Petitioner

Vs

1.The Secretary to Government,
Revenue Department,
Fort St.George,
Chennai 600 009.

2.The District Collector,
Collectorate,
Salem 636 001.

3.The District Revenue Officer,
Collectors Officer, Salem District.

4.The Revenue Divisional Officer,
Mettur Taluk, Salem District.

5.The Tahsildar,
Mettur Taluk, Salem District. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the respondents to sanction and pay all terminal benefits viz., monthly pension, pension arrears, gratuity, commuted value of pension, SPF and leave salary etc., with interest to the petitioner.
Prayer amended as per order dated 03.12.2014 in M.P.No.1 of 2014 in W.P.No.19753 of 2012

For Petitioner : Mr.M.Elango
For Respondents : Mr.D.Venkatachalam,
Additional Government Pleader

O R D E R

Heard Mr.M.Elango, learned counsel for the petitioner and Mr.D.Venkatachalam, learned Additional Government Pleader appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Mandamus, to direct the respondents to sanction and pay all terminal benefits viz., monthly pension, pension arrears, gratuity, commuted value of pension, SPF and leave salary etc., with interest to the petitioner. "

3. The case of the petitioner is as follows:-

The petitioner was appointed as Surveyor in Revenue Department in 1976. He was promoted as Revenue Inspector thereafter. On attaining the age of superannuation, the petitioner retired from service on 30.06.2012, in the cadre of Revenue Inspector. The petitioner was in fact permitted to retire from service on 30.06.2012, without prejudice to the disciplinary proceedings which was initiated before his retirement and which continued after his retirement.

4. According to the petitioner, a charge memo was issued on the eve of his retirement on 30.06.2012, charging that the petitioner while working as Revenue Inspector at Kolathur, recommended old age pension and widow pension to 12 ineligible persons and thereby, caused a loss to the Government to the tune of Rs.7800/-. According to the petitioner, the disciplinary action has still not attained finality. Although the petitioner stood retired on 30.06.2012, no part of the retirement benefits has been paid to him on the ground that the disciplinary action has not attained finality and the same is pending. According to the petitioner, none of the terminal benefits like gratuity, pensionary benefits etc., has been settled. Therefore, he has approached this Court seeking issue of Writ of Mandamus to sanction and pay all terminal benefits due to him.

5. Upon notice, learned Additional Government Pleader appearing for the respondents, entered appearance.

6. The learned Additional Government Pleader would submit that the respondents may be directed to complete the disciplinary action within the time stipulated by this Court and on such completion, further action could be taken by the authority concerned in settling the terminal benefits to the petitioner on the basis of the outcome of the disciplinary action.

7. This Court has considered the rival submissions of the learned counsel appearing for the parties. The learned counsel for the petitioner while making his submissions, also relied on the decision of this Court passed in W.P.No.17675 of 2008 dated 12.09.2008, wherein, the learned Single Judge as he then was in similar circumstances, directed the respondents to pay all the terminal benefits after withholding the sum which was the alleged loss caused to the Government. The order passed by the learned Single Judge in paragraph Nos.3, 4 and 5 are reproduced below:-

"3. The case of the petitioner is that he joined service as Village Administrative Officer in the year 1982 and attained the age of superannuation on 30.6.2008. The petitioner was permitted to retire by order dated 30.6.2008, subject to the pendency of 17(b) charges against him. The nature of the charge under Rule 17(b) is that the petitioner recommended for the grant of financial assistance by the Government to three ineligible persons and thereby the Government sustained alleged loss of Rs.10,500/-.

4. Since the alleged loss itself comes to Rs.10,500/- and the petitioner having been allowed to retire from service subject to the pending charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, I am of the view that interest of justice would be met by directing the respondents to withhold Rs.15,000/- from the terminal benefits payable to the petitioner.

5. The respondents are directed to sanction and pay to the petitioner all terminal benefits after withholding a sum of Rs.15,000/-, within a period of three months from the date of receipt of copy of this order. Since the charge memo is pending from 26.6.2008 and having regard to the fact that the petitioner has already retired subject to the pending charge memo, respondents are directed to conclude the proceedings and pass final orders within a period of one year from the date of receipt of copy of this order."

The above order passed by the learned Single Judge of this Court is squarely applicable to the facts of the present case.

8. The alleged loss stated in the charge memo is only Rs.7,800/- and even in the worst scenario, it is open to the Government to only recover the loss caused by the petitioner only to the extent of Rs.7,800/-, in the event of the charge being established against the petitioner. That being the case, this Court does not see any justification for withholding the entire retirement benefits to the petitioner running to lakhs of rupees. In fact, the petitioner has retired from service as early as on 30.06.2012 and no part of the retirement benefits has been settled to him for more than five years. Moreover, the charge which is simple in nature and the disciplinary action initiated thereon, has not been pursued promptly by the authority concerned. The laxity exhibited by the authority in this regard, cannot result in denial of complete retirement benefits as admissible to the petitioner.

9. As stated above, the withholding of entire retirement benefits to the petitioner all these years is absolutely without any justification and the same cannot be countenanced both in law and on facts. Therefore, this Court is of the firm view that the direction is to be issued to the third respondent to settle all the terminal benefits due to the petitioner.

10. In view of the above conclusion, this Court directs the third respondent or any other competent authority to settle all the terminal benefits like gratuity, pension, commuted value of pension, arrears of pension etc., to the petitioner after withholding the amount of Rs.7,800/-, within a period of four weeks from the date of receipt of a copy of this order. The learned counsel for the petitioner would also submit that the petitioner is entitled to interest on the belated payment of retirement benefits to him. It is made clear that it is open to the petitioner to make a separate representation in this regard, seeking reasonable rate of interest on the belated payment and the same shall be considered by the authority concerned with reference to the rule position.

11. with the above direction, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar(CS-DR)

//True Copy//

Sub Assistant Registrar

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To
1.The Secretary to Government,
Revenue Department,
Fort St.George, Chennai 600 009.
2.The District Collector,
Collectorate, Salem 636 001.
3.The District Revenue Officer,
Collectors Officer, Salem District.
4.The Revenue Divisional Officer,
Mettur Taluk, Salem District.
5.The Tahsildar,
Mettur Taluk, Salem District.

+ 1 cc to M/s. M.Elango, Advocate Sr.15431
+ 1 cc to Government Pleader Sr.15925

(CS-DR)
EU(23/03/2018)