

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.07.2018

CORAM

The Hon'ble Mr.Justice M.DHANDAPANI

W.P.No.47837 of 2006

A.Anthony

.. Petitioner

Vs

1. The District Forest Officer,
Vellore District,
Vellore.

2.The Assistant Treasury Officer,
Sub Treasury, Krishnagiri.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking to issue a Writ of Certiorarified Mandamus calling for the records in (1) Ref.No.5902/93/B1, dated 03.07.2002 of the first respondent and (2) certificate dated 07.10.2002 of the second respondent, to quash the same and to issue consequential directions to the first respondent to refund the sum of Rs.2,73,252/- recovered from the pensionary benefits of the petitioner illegally with 18% interest.

For Petitioner : Mr.Kumarevel

For Respondents : Mr.K.K.Ramesh, GA (F)

O R D E R

This writ petition has been filed challenging the order dated 03.07.2012 passed by the first respondent and the certificate dated 07.10.2002 passed by the second respondent, to quash the same and for a consequential direction to the first respondent to refund the sum of Rs.2,73,252/- recovered from the pensionary benefits of the petitioner illegally with 18% interest.

2. The case of the petitioner is that, the petitioner is entered into the service of the Tamil Nadu Forest Department in the year 1958. He was permitted to retire on 30.06.1994 on attaining the age of superannuation. However, while he was working as Forest Ranger in Vellore Division, he was placed under suspension by the Conservator of Forests, Chennai and against the said order of suspension, the petitioner preferred W.P.No.9733 of 1987 before this Court. This Court, by order dated 03.11.1987 has set aside the suspension order and

subsequently, the suspension was revoked on 25.11.1987. However, the petitioner was not given posting and was made to wait compulsorily. In the meanwhile, on 12.11.1987, a criminal complaint was lodged against the petitioner in respect of certain irregularities while he was working as a forest ranger during the year 1986-1987. Thereafter, a charge memo was issued under Rule 17(b) of the Tamil Nadu Civil Services (D & A) Rules, against the petitioner on 30.11.1987 for the same set of allegations. The petitioner challenging the charge memo, filed writ petition in W.P.Nos.5339 and 5230 of 1988 and this Court granted interim stay on 15.06.1988. However, this Court does not extended the interim stay from 15.06.1988 and the petition seeking extension of stay was dismissed against which, the petitioner preferred W.A.Nos. 898 and 899 of 1988. In the meanwhile, the petitioner was relieved from service on 27.06.1988 on the expiry of the interim stay and thereafter, the petitioner was not given any posting orders which continued for two years from 27.05.1988 to 26.06.1990. Thereafter, the petitioner was imposed punishment of compulsorily retirement vide order dated 26.06.1990. Aggrieved by the said order of compulsorily retirement, the petitioner filed appeal before the Government, since no orders was passed by the Government, the petitioner again filed O.A.No.3531 of 1990 before the Tamil Nadu Administrative Tribunal. The Tribunal by its order dated 25.11.1994, had set aside the order of compulsorily retirement. Pursuant to the same, the Principal Chief Conservator of Forests, passed an order regularising the services by taking the period from 26.06.1990 to 30.06.1994 as eligible leave period. However, it has also been mentioned in the said order that the petitioner shall be deemed to be under suspension from 30.06.1994 since the criminal case is pending. Once again the petitioner filed O.A.No.5034 of 1995. Subsequently, vide G.O. (ID)No.34, Environment and Forests Department, the petitioner was allowed to retire on 30.06.1994 without any condition precedent. The petitioner was paid subsistence allowance during the period of suspension and it is the case of the petitioner that in view of the G.O.(ID)No.74, Environment and Forests Department, dated 04.03.2002, the petitioner is entitled for subsistence allowance and the same cannot be recovered. However, the first respondent through its letter dated 03.07.2002 had directed the second respondent to recover a sum of Rs.2,73,252/- from the pensionary benefits of the petitioner, which is arbitrary, illegal. Since no notice was given to the petitioner before recovering the said amount, the petitioner made representations to the authorities concerned. No fruitful results were forthcoming and hence, the petitioner has filed the present writ petition.

3. Learned counsel for the petitioner would submit that though the petitioner was allowed to retire as per G.O.ID.No.74,

Environment and Forests Department, dated 04.03.2002, the authorities without following the Rule 69 of the Tamil Nadu Pension Rules have ordered to recover the subsistence allowance paid to him which requires interference of this Court.

4. Learned Government Advocate appearing for the respondents would submit that the petitioner was paid only the provisional pension at the time of retirement and not the subsistence allowance as claimed by the petitioner. The petitioner was provided with the statement of the first respondent dated 03.07.2002 wherein the calculation were shown for the purpose of pension paid to the petitioner and wherein it has been clearly mentioned that the amount of Rs.2,73,252/- was paid as Provisional pension. The authorities are bound to recover the amount paid in excess and there is no illegality in the order passed by the respondents and hence, no interference of this court is warranted.

5. I have heard the learned counsel for the petitioner as well as the learned Government Advocate(F) appearing for the respondents.

6. A perusal of the documents filed along with the writ petition would reveal that the petitioner attained the age of superannuation on 30.06.1994 and retired from the services of the respondents. At the time of retirement, the petitioner was placed under suspension. There had been several litigations between the petitioner and the authorities concerned. The petitioner has chosen to file this writ petition in the year 2006. Though the petitioner was allowed to retire from service in the year 1994, however, the disciplinary proceedings were concluded in the year 2002, vide G.O.(I.D.) No.74. Immediately, the recovery order was passed and the same amount was recovered from the petitioner. Though the recovery order was passed in the year 2002, however, the petitioner filed a writ petition only in the year 2006, for which there is no proper explanation for the delay in filing the writ petition after 4 years. The provisional pension had also been paid to the petitioner at the time of his retirement. The authorities have recovered only the excess amount which was paid to the petitioner and hence, I do not find any illegality or infirmity in the order passed by the authorities. Hence, this writ petition is dismissed. No costs.

Sd/-

Deputy Registrar(CS)

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Sub Assistant Registrar

smi

To

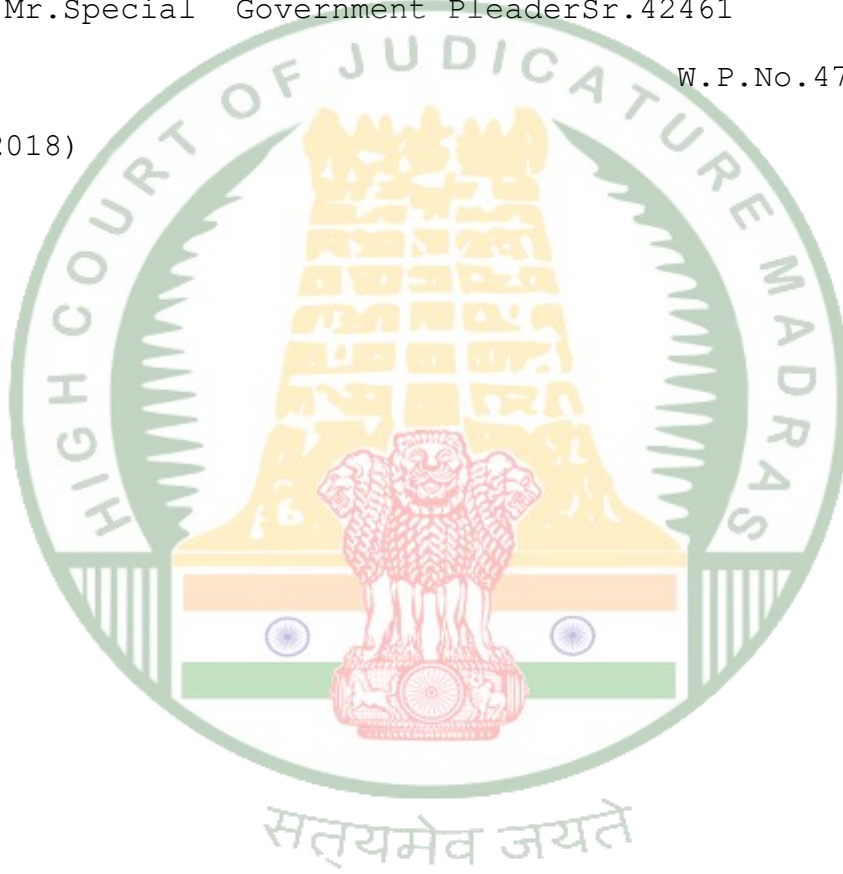
1. The District Forest Officer,
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2.The Assistant Treasury Officer,
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+ 1 cc to Mr.Special Government PleaderSr.42461

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(CS-DR)
EU(24/09/2018)



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