BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.18587 of 2014
and
M.P.(MD)No.1 of 2014

A.Baladoss ... Petitioner

Vs.

1. The Inspector General of Registration,
Santhome High Road, Chennai.

2. The Principal Secretary,
Commercial Taxes and
Registration Department,
Government of Tamil Nadu,
Saint Fort George, Secretariat,
Chennai-600 009. ... Respondents

(2nd respondent is suo motu impleaded as per order dated 07.02.2018)

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, call for the records relating to no. 40929/V2/2009 dated 08.10.2013 passed by the respondent and quash the same as illegal.

For petitioner : Mr.R.Ramadurai
For R1 & R2 : Mrs.S.Srimathy
Special Government Pleader

O R D E R

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Heard, the learned counsels on either side.

2.The petitioner was employed as a Office Assistant in Registration Department. Disciplinary proceedings were initiated against him on the ground that he indulged in certain acts of misconduct. He was removed from service. Challenging the same, the petitioner filed W.P.(MD)No.6979 of 2009 before this Court. This Court by order dated 26.03.2013, set aside the punishment of removal from service alone. Finding of guilty was confirmed. The matter was remitted to the file of the second respondent for imposing any other lesser punishment other than removal from service.

3.Pursuant to the judgment given by this Court, the second respondent has passed the impugned order dated 08.10.2013, modifying the punishment from one of removal of service to one of compulsory retirement. It was also made clear in the impugned order that there shall be 1/3rd cut in the eligible DCRG pension and 1/3rd cut in the eligible pension consequent to the order of compulsory retirement. The same is assailed in the writ petition. Particularly, on the ground that the mandate set out in the Rule 39(2) of the Tamil Nadu Pension Rules has not been complied with. The said provision reads as under :

> "39. *(2) Whenever in the case of a Government servant the Government passes an order (whether original, appellate or in exercise of power of review) awarding a pension less than the full compensation pension admissible under these rules, the Tamil Nadu Public Service Commission shall be consulted before such order is passed."*

4.The specific contention raised by the learned counsel appearing for the petitioner is that TNPSC was not consulted in this case. Even though 1/3rd cut in the pension has been imposed, the learned Special Government Pleader appearing for the respondents is not in a position to controvert the said submission.

5.A reading of the impugned order also does not show that Tamil Nadu Public Service Commission was consulted. On account of the infraction of the mandate set out in Rule 39(2) of the Tamil Nadu Pension Rules, this Court has to necessarily quash the order impugned in the writ petition. The matter is remitted to the Government for passing fresh orders in accordance with law. The Principal Secretary, Commercial Taxes and Registration Department, Government of Tamil Nadu, Chennai-600 009 is *suo motu* impleaded as second respondent. The second respondent shall pass fresh orders in accordance with law by taking note of the mandate set out in Rule 39 (2) of Tamil Nadu Pension Rules, 1978. Such an order shall be passed within a period of twelve weeks from the date of receipt of a copy of this order.

6.This writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Inspector General of Registration,
   Santhome High Road, Chennai.

2. The Principal Secretary,
   Commercial Taxes and
   Registration Department,
   Government of Tamil Nadu,
   Saint Fort George, Secretariat,
   Chennai-600 009.

+ 1 CC TO Mr.R.RAMADURAI, ADVOCATE IN SR No. 47338
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 47434

PNN/SKM
TE/CVC/SAR-2 : 06/03/2018 : 3P/5C

ORDER MADE IN
W.P. (MD) No.18587 of 2014 and
M.P.(MD)No.1 of 2014
07.02.2018