

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 14.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

WP.No.31520 of 2005
and
WP.MP.No.34557 of 2005

P.Mani

...Petitioner

Vs

- 1.The Managing Director,
Tamil Nadu Water Supply and
Drainage Board,
31, Kamarajar Salai,
Chepauk, Chennai - 600 005.
- 2.The Secretary (I/C),
Tamil Nadu Water Supply and
Drainage Board,
31, Kamarajar Salai,
Chepauk, Chennai - 600 005.
3. The Director of Rural Development
Rural Development Department,
Government of Tamil Nadu,
Panagal Buildings,
Saidapet, Chennai.
4. The Secretary,
Municipal Administration and
Water Supply Department,
Government of Tamil Nadu,
Fort St.George, Chennai - 600 009.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus or any other appropriate writ or order or directions in the nature of writ, calling for the records connected with the proceeding of the first respondent in Proc.No.90 208/Estt(DPI)/A2/2001 dated 01.04.2004 and the subsequent proceeding of the second respondent in Memo No.24988/Estt(DP)/A2/2005-1 dated 28.04.2005 and quash both the orders and further direct the respondents to sanction the period of suspension from 25.04.1997 to 22.09.1998 as "Duty Period" and consequently disburse the benefits arising out of it to the petitioner.

For Petitioner : Mr.C.Regurajan

For RR 1&2 : Mr. S. Eraskine Leo

For RR 3&4 : Mrs. K.Bhuvaneswari
Additional Government Pleader

O R D E R

The petitioner who was serving as Assistant Executive Engineer in the respondent Board was served with the memos dated 04.02.2000 and 26.09.2001, with the allegations that the Department had incurred loss to the tune of Rs.37,054/-. Thereafter, on 27.09.2001, the petitioner had given a representation, admitting his charge and gave the consent to have the amount of Rs.37,054/- recovered from his Death cum Retirement Gratuity since, he was due to retire on 30.09.2001.

2. Challenging the charge memos, the petitioner herein had filed Writ Petition Nos.17729 and 19968 of 2003. When these writ petitions were taken up for hearing, the learned standing Counsel appearing for the respondent Board had submitted that the respondents are not interested to have an enquiry conducted over the charges, if the petitioner's agrees for deduction of Rs.37,054/- from his DCRG towards the loss sustained.

3. In view of such submission, an order dated 10.09.2003 came to be passed to the effect that the entire amount of Rs.37,054/- could be recovered from the terminal benefits of the petitioner. The relevant portion of the said order reads as follows:

13. Mrs.Sudharsansa Sundar, learned counsel appearing for the TWAD Board and Mr.P.S.Jayakumar, learned Government Advocate appearing for the third respondent-borrowing authority, have made it clear that the respondents are not interested to hold an enquiry any more if the petitioner agrees for the deduction of Rs.37,054/- towards the loss sustained by the PRM Cell, Collectorate at Dharmapuri District, during his service as Assistant Executive Engineer on deputation, as alleged in the charge memo dated 26.09.2001. Further, the first respondent & TWAD Board makes it clear that except the said sum of Rs.37,054/-, nothing more would be deducted either from the petitioner's gratuity or from his pension towards the above mentioned charges.

The first respondent is also willing to settle the full pension benefits to the petitioner, as he would be otherwise entitled to for his entire service.

14. In that view of the matter, both the above writ petitions are disposed of under the following terms:

(i) The petitioner is permitted to make a representation to the first respondent & TWAD Board in terms of the submissions made by the learned counsel for the petitioner as referred to above, requesting the entire balance of terminal benefits after deducting the sum of Rs.37,054/- towards the impugned charges, within fifteen days from the date of receipt of a copy of this order;

(ii) On receipt of such representation, the first respondent, after deducting the said sum of Rs.37,054/- from the terminal benefits of the petitioner, shall settle the entire terminal benefits and also finalise the full pension payable to the petitioner for his entire service, within thirty days from the date of receipt of representation; and

(iii) After making necessary entries with respect to the final pension to be paid to the petitioner as indicated above, the first respondent shall hand over the pension pass book to the petitioner immediately thereafter.

4. Pursuant to the order of this Court, the charges came to be dropped by the first respondent herein through his proceedings dated 01.04.2004, whereby it was held that the amount of Rs.37,054/- could be recovered from the DCRG, with the further condition that the period of suspension undergone by the petitioner from 25.04.1997 to 22.09.1998 shall be treated as "Non Duty" in view of the proposed recovery.

5. Since the petitioner was of the view that the suspension period ought not have been treated as "Non Duty" he had filed W.P.No.16587 of 1999, seeking for regularisation of period of suspension between 25.04.1997 to 22.09.1998. The said writ petition came to be dismissed with the observation that if the petitioner is aggrieved by the order treating his suspension period as "Non Duty" the same requires to be challenged. In the meantime, the petitioner's earlier appeal preferred to the second respondent as against the order of the first respondent also came to be rejected on 28.04.2005, challenging the same, the present writ petition came to be filed.

6. The learned Counsel for the petitioner submitted that earlier when the charges were challenged before this Court in Writ Petition No.17729 of 2003, the respondents had expressed their view that if the amount of Rs.37,054/- is recovered from the DCRG, they were willing to settle the full pension benefits to the petitioner as if he would be otherwise entitled to for his entire service. Since, such a statement was made before this Court earlier, it was not justified on behalf of the respondents in treating the suspension period as "Non Duty".

7. The learned standing Counsel for the respondent Board on the other hand, opposed and submitted that pursuant to the earlier orders of the Court dated 10.09.2003, the matter was referred to the Government and by an order dated 18.03.2005, the Government had accepted the proposal to drop further action on the charges framed against the petitioner except to recover the amount of Rs.37,054/- from his DCRG subject on the condition that the suspension period from 25.04.1997 to 22.09.1998 should be treated as "Non Duty". In view of such an order of the Government, the respondents 1 & 2 were justified in treating the suspension period as "Non Duty" and therefore, the petitioner is not entitled to seek for benefits during the suspension period.

8. I have given careful consideration to the submissions made by the respective counsels.

9. The impugned order of the second respondent as confirmed by the first respondent herein is ex-facie illegal for the following reasons:

When the petitioner herein had earlier filed the writ petition challenging the charges levelled against him, the Board had taken a definite stand as if they were interested only in recovering the loss that had been caused by the petitioner on the whole and nothing more. As a matter of fact, they had gone one step further and submitted before this Court that they are willing to settle the petitioner benefits treating him as if he was in his full service till the date of his retirement. It is in view of this submission, that this Court was considered to pass orders in the writ petition permitting the respondents to recover the alleged loss from the DCRG of the petitioner, in order to give him peaceful retirement.

10. It is pertinent to mention here that the respondents had never taken a stand before this Court, when the order came to be passed in W.P.Nos.17729 and 19968 of 2003, that they would

also be treating the petitioners suspension period as "Non Duty". The consequent question that would arise is that, had the respondents taken such a stand before this Court when the earlier orders came to be passed, whether the order itself would have been passed or not? Or, whether the petitioner would have agreed to such a condition, is also doubtful. When it was not the intention of the Board to treat the suspension period as "Non Duty" when the submissions were made in the earlier writ petition, dropping the charges along with the condition to treat the suspension period as "Non Duty" would amount to further penalty being imposed on the petitioner. Such a penalty is contrary to the submissions made earlier by the respondents that they would treat the entire service period of the petitioner for the purpose of full pensionary retirement benefits.

11. The submission of the learned standing Counsel for the respondents that the Board was constrained to take such a decision to treat the suspension period as "Non Duty", in view of the Government recommendations, is unacceptable. When the respondents had impliedly agreed to drop the charges against the petitioner in the earlier writ petition, consequently an order came to be passed, and the Government may not be justified in imposing further penalty and as such the impugned order passed by the respondents 1 and 2 can only be construed to be illegal.

12. In the light of the above observations, the Writ Petition is allowed and the proceedings of the first respondent in Proc.No.90 208/Estt(DPI)/A2/2001 dated 01.04.2004 and the subsequent proceeding of the second respondent in Memo No.24988/Estt(DP)/A2/2005-1 dated 28.04.2005 are hereby quashed and consequently, the first respondent herein is directed to disburse the outstanding retirement benefits deducted towards the period of suspension between 25.04.1997 to 22.09.1998 terming it as "Duty Period" to the petitioner.

13. It is made clear that the sum of Rs.37,054/- already recovered from the petitioner out of his DGRG cannot be claimed by the petitioner by way of refund.

14. In this connection, the petitioner is granted liberty to make an appropriate application to the first respondent seeking for refund of the amount deducted from his DCRG for the suspension period of 25.04.1997 to 22.09.1998, as well as for the refund pension and arrears of the refund pension. On receipt of such representation, the first respondent shall consider the representation positively, in the light of the observations made

in this order and release the claim amount to the petitioner within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Writ Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

ssi/ksa-2

To

1. The Managing Director,
Tamil Nadu Water Supply and
Drainage Board,
31, Kamarajar Salai, Chepauk, Chennai - 600 005.
2. The Secretary (I/C),
Tamil Nadu Water Supply and
Drainage Board,
31, Kamarajar Salai, Chepauk, Chennai - 600 005.
3. The Director of Rural Development
Rural Development Department,
Government of Tamil Nadu,
Panagal Buildings, Saidapet, Chennai.
4. The Secretary,
Municipal Administration and Water Supply Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.

+1cc to Mr. G. P. Arivuchudar, Advocate SR.No.24163

+1cc to Government Pleader SR.No.25102

WP.No.31520 of 2005

RJI (CO)
GMY (09/04/2019)

WEB COPY