IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.10.2019

C O R A M

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.8319 of 2013

M.R.Sridaran ... Petitioner

Vs.

1.The Govt. of Tamil Nadu,
Rep by its Secretary to Government,
Tamil Development, Religious
Endowments and Information Department,
Secretariat, Chennai - 600 009.

2.The Director of Stationery and Printing,
110, Anna Salai, Chennai - 600 002. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records connected with letter Dir. No.R2/20414/2009 dated 06.09.2012 of the second respondent and Lr.No.25611/S&P 1-2/2012-2 dated 28.01.2013 of the first respondent quash the same and consequently direct the first respondent (who is the pension sanctioning authority as per G.O.Ms.No.837 Finance (Pension) Department dated 06.09.1980 as amended in Lr.No.12644/Pension/85-16 Finance (Pension) Department dated 04.01.1988) to release the DCRG amount of Rs.5,52,800/- with interest applicable to General Provident Fund.

For petitioner : Mr.B.R.Ganesan

For Respondents : Mrs.A.Shrijayanthi
Special Government Pleader.

ORDER

The present writ petition is filed for a Writ of Certiorarified Mandamus, calling for the records connected with letter Dir. No.R2/20414/2009, dated 06.09.2012 of the second respondent and Lr.No.25611/S&P 1-2/2012-2, dated 28.01.2013 of the first respondent and to quash the same and consequently, to direct the first respondent (who is the pension sanctioning authority as per G.O.Ms.No.837 Finance (Pension) Department dated 06.09.1980 as amended in Lr.No.12644/Pension/85-16 Finance (Pension) Department dated 04.01.1988), to release the DCRG amount of Rs.5,52,800/- with interest applicable to General Provident Fund.

2. The petitioner was serving as Deputy Director of Stationery in the office of the Director of Stationery and Printing, Anna Salai, Chennai. He attained age of superannuation on 30.09.2009. Seven months after his retirement, departmental proceedings were initiated against the petitioner, stating that there were serious lapses in the purchase of Special Maplitho Paper Reels and in the purchase of Azurelaid Reels with Security Water Mark. It was stated that the petitioner has violated in purchase of Special Maplitho Paper Reels in as much as he recommended the purchase of stationery, thereby causing the pecuniary loss to the Government in the purchase. Charges were framed against the petitioner. The petitioner's DCRG benefit, was not settled due to the departmental proceedings initiated against him, on the ground that financial loss has been caused to the Government. The petitioner has given representation for grant of DCRG benefit. By the impugned order dated 06.09.2012, DCRG benefit was denied, in view of Rule 9(b) of the Tamil Nadu Pension Rules, 1978. Rule 9(b) of the Tamil Nadu Pension Rules, 1978, reads as under:-

> "9(b) In case there is any pecuniary loss caused to the Government, to any local body or to any co-operative societies comprising of Government servants and registered under the Tamil Nadu Co-operative Societies, Act 1961, and if in any, departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement, the Government shall also have the right of ordering recovery from the Pension [or Death-cum-Retirement Gratuity] of the whole or part of the pecuniary loss caused by such grave misconduct or negligence.
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> Provided that the Tamil Nadu Public Service Commission shall be consulted before any final orders under this clause are passed."

3. The learned counsel for the petitioner relied on Rule 60 (1)(c) of the Tamil Nadu Pension Rules, 1978, would contend that since the petitioner has been permitted to retire without their being any departmental proceedings and since the charges are primarily such departmental or judicial proceedings are only for administrative lapses not involving any pecuniary loss to the

Government, Death-cum-Retirement Gratuity benefits, cannot be withheld.

4. The learned counsel for the petitioner was relied on the judgment of the Hon'ble Supreme Court in State of Jharkhand and others vs. Jitendra Kumar Srivastava and another in C.A.No.6770 of 2013 in SLP (C) No.1427 of 2009, decided on 14.08.2013, wherein, the Ho'ble Supreme Court, while considering the non-provision under the Jharkhand Pension Rules, observed as under:-

> "12. .... 35. Having due regard to the above decisions, we are of the opinion that the right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under Article 19(1)(f) and it is not saved by Sub-article (5) of Article 19. Therefore, it follows that the order dated June 12, 1968 denying the petitioner right to receive pension affects the fundamental right of the petitioner under Articles 19(1)(f) and 31(1)of the Constitution, and as such the writ petition under Article 32 is maintainable. It may be that under the Pension Act (Act 23 of 1871) there is a bar against a civil court entertaining any suit relating to the matters mentioned therein. That does not stand in the way of a Writ of Mandamus being issued to the State to properly consider the claim of the petitioner for payment of pension according to law".
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> 13. In State of West Bengal Vs. Haresh C. Banerjee and Ors. (2006) 7 SCC 651, this Court recognized that even when, after the repeal of Article 19(1)(f) and Article 31 (1) of the Constitution vide Constitution (Forty-Fourth Amendment) Act, 1978 w.e.f. 20th June, 1979, the right to property was no longer remained a fundamental right, it was still a Constitutional right, as provided in Article 300A of the Constitution. Right to receive pension was treated as right to property. Otherwise, challenge in that case was to the vires of Rule 10(1) of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 which conferred the right upon the Governor to withhold or withdraw a pension or any part thereof under certain circumstances and the said challenge was repelled by this Court. Fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognized as a right in "property".

14. Article 300 A of the Constitution of India reads as under:

"300A Persons not to be deprived of property save by authority of law. - No person shall be deprived of his property save by authority of law." Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300 A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.

15. It hardly needs to be emphasized that the executive instructions are not having statutory character and, therefore, cannot be termed as "law" within the meaning of aforesaid Article 300A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold - even a part of pension or gratuity. As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different."

5. On notice, the respondents have filed a counter affidavit. The respondents have primarily relied on Rule 9 of the Tamil Nadu Pension Rules, 1978.

6. Though Rule 60 (c) of the said Rules, states that no gratuity shall be authorised to the Government servant untill the conclusion of such departmental proceedings. The proviso to Rule 60 (c), states that no such gratuity, shall be withheld in respect of a Government servant, who had been permitted to retire without prejudice to the departmental or judicial proceedings pending against him, where such departmental or judicial proceedings are only for administrative lapses not involving any pecuniary loss to the Government. The second proviso to Rule 60 (c), states that where a Government servant, against whom a departmental or judicial proceedings involving pecuniary loss to Government is pending, is permitted to retire without prejudice to such departmental or judicial proceedings, a portion of gratuity can be withheld, after taking into account the pecuniary loss caused to the Government.

7. This exercise contemplated in 2nd proviso to Rule 60 (c), has not been conducted. The impugned order therefore set aside. The matter is remanded back to the Director of Stationery and Printing, Chennai/the second respondent, to arrive at the amount of DCRG, which needs to be withheld. The respondent are directed to complete the procedure, within a period of twelve months, from the date of receipt of a copy of this order. The balance amount has to be paid along with interest, as prescribed in the Rule 45 (A) of the Tamil Nadu Pension Rules, 1978. The enquiry was commenced in the year 2010, 9 years have been passed after the impugned order. The Secretary to the Government, Tamil Development, Religious Endowments and Information (Stationery and Printing) Department, Chennai/the first respondent, is directed to complete the enquiry process against the petitioner, within a period of two months from the date of receipt of a copy of this order. Writ Appeal is allowed, with the above mentioned terms.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. Secretary to Government,
Government of Tamil Nadu,
Tamil Development, Religious
Endowments and Information Department,
Secretariat, Chennai - 600 009.

2. The Director of Stationery and Printing,
110, Anna Salai, Chennai - 600 002.

+1cc to Mr.B.R.Ganesan, Advocate Sr.90507
+1cc to the Government Pleader Sr.90398

W.P.No.8319 of 2013

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