

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2019

C O R A M

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.NO.35087 OF 2016

AND

W.M.P.NO.30239 OF 2016

P.L.Govardan

... Petitioner

Vs.

1. The Secretary,
Government of Tamil Nadu,
(Department of Handloom, Handicraft,
Textiles & Khadi), Fort St.George,
Chennai - 600 009.

2. The Chief Executive Officer,
Tamil Nadu Khadi & Village Industries Board,
Kuralagam, Chennai - 600 108.

... 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 with respect to Letter in Rc.No.18686/E.IV(2)/2006, dated 10.06.2016 issued by Respondent No.2 and quash the same as illegal, consequently directing the Respondents to disburse the petitioner all his retirement benefits and full pension within a specified time.

For petitioner : Mr.S.Nambi Arooran

For R1 : Mr.K.Bhuvaneswari
Additional Government Pleader.

For R2 : Mr.S.K.Bose

ORDER

The instant writ petition is filed for a Writ of Certiorarified Mandamus, calling for the records, relating to Letter in Rc.No.18686/E.IV(2)/2006, dated 10.06.2016, issued by respondent No.2 and to quash the same as illegal, and consequently directing the respondents to disburse all the petitioner's retirement benefits and full pension, within a specified time.

2. The facts in brief, are as under:-

(a) The petitioner was working in the Khadi and Village Industries Board. The petitioner was reached the age of superannuation, on 31.08.1995. Before the age of superannuation, he was suspended, even though there were no enquiry against him. Charges dated 05.04.1999 and 20.03.2001 respectively, were framed against him. The petitioner was permitted to retire by an order dated 13.11.2002 with effect from 31.08.1995. The first charge memo dated 05.04.1999, has been dropped. Against the second charge memo, dated 20.03.2001, enquiry was conducted and order dated 13.03.2006, was passed directing recovery of alleged notional loss of Rs.5,52,187-50, from the petitioner.

(b) As against the recovery order dated 13.03.2006, petitioner has filed W.P.No.22017 of 2013. This Court by an order dated 10.02.2016, set aside the order dated 13.03.2006. Resultantly, the order of recovery, was quashed.

(c) The grievance of the petitioner is that despite the fact that there are no enquiry pending against the petitioner, pensionary benefits have not been disbursed. The petitioner gave a representation for release of pensionary benefits. The respondents by the order impugned herein, in Letter Rc.No.18686/E.IV(2)/2006, dated 10.06.2016, released the following amounts:-

"General Provident Fund of Rs.27,030/- and the Special Provident Fund of Rs.8,793/- was already paid on 01.12.95 and 30.06.2013 respectively. Further, in obedience of the above judgement, encashment of Earned Leave Rs.64,784/- was also sanctioned and paid on 10.06.2016."

(d) However, for sanction of other pensionary benefits due to the petitioner, the claim was rejected on the ground that a criminal case was pending against the petitioner in C.C.No.27 of 2011 before the learned Principal Sessions and Special Judge, Chennai. This order which is challenged in this writ petition.

3. It is the contention of the petitioner that once both the charges have been dropped and there is no enquiry pending against the petitioner, the pensionary benefits due to the petitioner, cannot be stopped and only because of the criminal case was pending against the petitioner. It is stated that the unless there is a bar under the TamilNadu Pensionary Rules, 1978, no amount of pension can be withheld, on the ground that a criminal case is pending.

4. On the other hand, the respondents have filed counter affidavit, stating that the pension has been withhold under Rule 69(1)(b) of the Tamil Nadu Pension Rules, 1978.

5. Heard the learned counsel for the parties.

6. The learned counsel for the respondents states that similarly placed persons like the petitioner, who were also permitted to retire, have approached this Court and this Court by an order dated 27.11.2008 in W.P.No.24066 of 2008, directed the respondents to release the entire retirement benefits of the petitioner therein, primarily on the ground that since there are no disciplinary proceedings pending against the employee, then the pensionary benefits cannot be withhold. He would state that the similar benefits shall be extended to the petitioner.

7. Second proviso of the Rule 69 (1) (b), permits the government to withhold the gratuity, in cases where the departmental or judicial proceedings pending against him, where such departmental or judicial proceedings are only for administrative lapses not involving any pecuniary loss caused to the Government. In the present case, admittedly, when the petitioner retired from service, no enquiry proceedings was pending against him, and the petitioner was allowed to retire. The petitioner was arrayed as co-accused and the charges framed against him only on 05.04.1999 by which time the petitioner retired. Therefore, Rule 69 (1) (b) of the above said rules, has no application in case of the petitioner. There are no other provisions in the entire Pension Rules, which can justify withholding the pension benefits on the ground of a pending criminal case.

8. In fact that what is strange is that in the counter affidavit filed by the second respondent, it is specifically stated that the retirement benefits have been given to other co-accused, only because of the judgment of courts, thereby implying that they are prepared to release the retiral benefits, if this Court passes such an order. Such a stand by an authority and which is a instrumentality of state, is not appreciated.

9. Be that as it may, writ petition is allowed. The respondents are directed to release the pensionary benefits to the petitioner, within a period of twelve weeks from the date of receipt of a copy of this order. No Costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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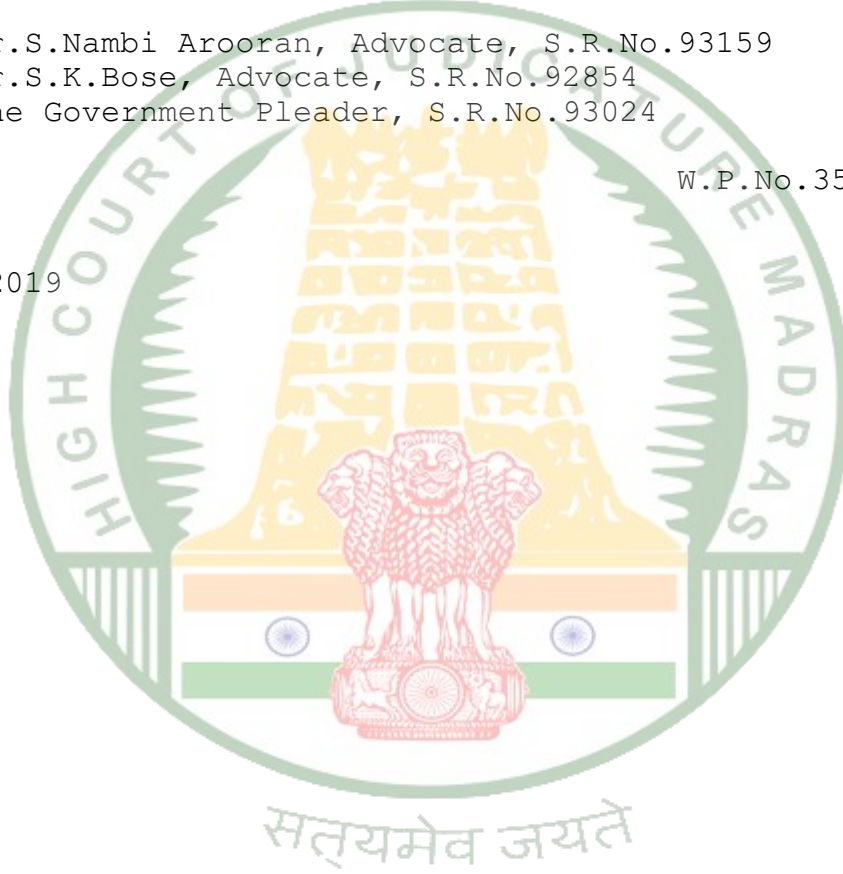
To

1. The Secretary,
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(Department of Handloom, Handicraft,
Textiles & Khadi), Fort St.George,
Chennai - 600 009.
2. The Chief Executive Officer,
Tamil Nadu Khadi & Village Industries Board,
Kuralagam, Chennai - 600 108.

+1cc to Mr.S.Nambi Arooran, Advocate, S.R.No.93159
+1cc to Mr.S.K.Bose, Advocate, S.R.No.92854
+1cc to the Government Pleader, S.R.No.93024

W.P.No.35087 of 2016

SAI (CO)
CS/26/12/2019



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