IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 22.07.2019

CORAM
THE HONOURABLE Mr.JUSTICE S.VAIDYANATHAN

W.P. 35692 of 2016

R.Shanmugaraja ... Petitioner

Vs

1. The Principal Secretary to Government,
   Revenue Department,
   Fort St. George,
   Chennai-600 009.

2. The Principal Secretary and
   Commissioner for Revenue Administration,
   Ezhilagam, Chepauk,
   Chennai-600 005.

3. The District Collector,
   Namakkal District,
   Namakkal.

4. The Accountant General,
   Tamil Nadu,
   (Accounts and Entitlements),
   361, Anna Salai,
   Chennai. .. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 3rd respondent in Roc.No.14054/2015/R1, dated 02.05.2016 quash the same and consequently direct the respondents herein to disburse the retirement benefits, arrears of pay, etc. to the petitioner to the extent he is eligible and to send the pension proposal of the petitioner to the 4th respondent for payment of pension, revised pension and arrears of pension to the petitioner together with fixed statutory interest therein within a reasonable time as may be fixed by this Court.

For Petitioners : Mr.K.Muthu Ganesa Pandian

For Respondents : Mr.P.Sivashanmugasundaram, Special Govt. Pleader for R1 to R3

Mr.V.Murali for R4

O R D E R

The above Writ Petition has been filed praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 3rd respondent in Roc.No.14054/2015/R1, dated 02.05.2016 quash the same and consequently direct the respondents herein to disburse the retirement benefits, arrears of pay, etc. to the petitioner to the extent he is eligible and to send the pension proposal of the petitioner to the 4th respondent for payment of pension, revised pension and arrears of pension to the petitioner together with fixed statutory interest therein within a reasonable time as may be fixed by this Court.

2. The case of the petitioner is that having rendered required years of service, he was allowed to retire on 31.10.2014 upon attaining the age of superannuation. Subsequently, a Government Order was issued vide G.O.(2D) No.905, Revenue (Services I) Department, dated 31.10.2014, by which the revenue administration was directed to recover any balance amount to be collected from the petitioner's Death-cum-Retirement Gratuity in a lumpsum. The petitioner has submitted a representation dated 16.04.2015 stating that having allowed to retire without any reservation vide former proceedings, the respondents cannot initiate any departmental proceedings under the Pension Rules. He would further submit that the Government has initiated departmental proceedings during the pendency of this Writ Petition and the final orders have not been passed. He further submitted that even though the findings appears to be against him, entire proceedings went in his favour. However, the disciplinary proceedings is not the subject matter of the present Writ Petition. As the petitioner was allowed to retire as stated supra, without any reservation to proceed departmentally, the petitioner is entitled to all the benefits, more particularly, in terms of Rule 9 of the Tamil Nadu Pension Rules, 1978, the proceedings should have been initiated with the sanction of the Government.

3. The sum and substance of the case of the respondent is that for the incident took place in the year 2012, proceedings have been initiated in the year 2015 by issuance of charge memo dated 10.06.2015 and the petitioner was informed that the retirement benefits would not be settled in view of the departmental proceedings under the Tamil Nadu Pension Rules. It is further submitted that the enquiry has been conducted in detail and final orders alone has not been passed.

4. The learned Government Advocate would further submit that he has received a written communication dated 20.07.2019 from the Additional Chief Secretary/Commissioner of Revenue

Administration, Chennai stating that the departmental proceedings has already been completed and final orders are awaited. Accordingly, in view of Rule 9(2)(b) of Pension Rules, proceedings can be initiated even after retirement and there is no need to mention in the order that he has been allowed to retire subject to the departmental proceedings. Hence, the learned Government Advocate prayed for dismissal of the Writ Petition.

5. Heard both sides.

6. It is not in dispute, the petitioner, who was Deputy Collector retired on 31.10.2014 and he has filed the present Writ Petition seeking retirement and other terminal benefits including arrears of pay. It is not in dispute that the petitioner was involved in the alleged misconduct, for which charge sheet was issued only on 10.06.2015 after one year of retirement of the petitioner. It is also not in dispute that the order of retirement viz., G.O. does not contain that the petitioner has been allowed to retire subject to departmental proceedings. In such an event, the question as to whether departmental enquiry can be allowed to continue or not is a moot question, and this Court is not inclined to answer for that in the present Writ Petition in detail, as the proceedings are not before this Court. In this context, it is relevant to look into Rule 9(2)(b)(i) and (ii) of Tamil Nadu Pension Rules, 1978, which is extracted below :-

> "9. Right of Government to withhold or withdraw pension :-
> (2) (b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment-
> (i) shall not be instituted save with the sanction of the Government;
> (ii) shall not be in respect of any event which took place more than four years before such institution;"

7. It is very clear that the departmental proceedings can be initiated even after the retirement, in respect of an event, which took place less than four years before such institution. In this case, the incident had taken place in the year 2012 and the departmental proceedings has been initiated in the year 2015, which is well within a period of four years. There may be instances, which may come to the light of the department after the retirement of a person. It is the contention of the petitioner that no departmental proceedings could be initiated against any person, after his retirement. Prima facie, there are no instances available to keep a person under suspension after the date of superannuation, naturally, they would have been

allowed to retire. If any misconduct comes to light on the date of institution within four years as contemplated under Rule 9(2)(b), certainly, the respondents are empowered to initiate action. There may be a case of misappropriation, which may not come to light immediately and only after retirement of a person, like the cat will be out of the bag. In such an event, non-mentioning of the proceedings in the superannuation order will not vitiate the continuation of proceedings under the Pension Rules. As the respondents have initiated action within a period of three years, the petitioner will have to wait for final decision of the departmental enquiry proceedings. The petitioner has also filed enquiry findings, which is against the petitioner, but, however, he contended that the said proceedings itself are initiated contrary to the Act and Rules. This Court, as stated supra, is not going to render any finding touching the merits of the enquiry proceedings and findings rendered therein, more particularly, the proceedings are not before this Court. In case, the petitioner is able to establish his innocence, the petitioner would be entitled to all the benefits due to him in accordance with the Rules. In the present Writ Petition, the relief sought for by the petitioner cannot be granted, as the proceedings initiated by the respondents is in accordance with Rule 9(2)(b) of the Tamil Nadu Pension Rules, 1978 and the absence of Pension Rules in the superannuation order would not vitiate the proceedings. As there is a delay in the institution of enquiry proceedings, this Court can expect the Government to pass final orders in one way or the other, at the earliest point of time, preferably, within a period of forty five days from the date of the copy of this order, so that the petitioner could work out his remedy in case of any adverse decision rendered against him.

8. With the above direction, the Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rpp

To

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Revenue Department,
Fort St. George,
Chennai-600 009.

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   Commissioner for Revenue Administration,
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   Tamil Nadu,
   (Accounts and Entitlements),
   361, Anna Salai,
   Chennai.

+1cc to Mr.K.Muthu Ganesa Pandian, Advocate, S.R.No.63486
+1cc to the Government Pleader, S.R.No.62783

W.P. 35692 of 2016

RGN(CO)

RRS(13/08/2019)