

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03.01.2019
CORAM
THE HON'BLE DR.JUSTICE S.VIMALA
W.P.No.14375 of 2018

D.Sugumar

... Petitioner

-Vs-

1.The District Collector
Erode District, Erode.

2.The Sub Collector
Gobichettipalayam, Erode District.

... Respondents

For Petitioners : M/s.A.Thiyaragaran
For Respondents : Mr.R.S.Selvam,
Government Advocate

Prayer : Writ Petition filed under Article 226 of the Constitution of India seeking a writ of Mandamus directing the respondents to disburse the gratuity amount accrued to the petitioner early with eligible interest.

O R D E R

Petitioner joined as Village Administrative Officer on 07.07.1984. He was placed under suspension in respect of a case registered by the Vigilance and Anti Corruption Police. Petitioner was suspended from service on 19.02.2008 and he was reinstated into service on 01.04.2012 and attained superannuation on 30.08.2013. Even prior to that he was suspended by an order dated 27.8.2013 and not permitted to retire by an order of the Revenue Divisional Officer dated 31.08.2013. The petitioner sent a representation dated 16.05.2015 to the respondents seeking disbursement of gratuity, SPF, GPF and EL along with unearned leave on private affairs, which was not considered. Hence, the petitioner has approached this Court by filing W.P.No.16098 of 2015 for a direction to the respondents to disburse the retirement benefits. In paragraph 4 of the order dated 08.06.2015, it was stated as follows,

"4. Though the petitioner sought for a direction to disburse the gratuity and DCRG also in the writ petition, the learned counsel appearing for the

petitioner has submitted that the petitioner is not pressing the claim for gratuity and DCRG as he is not entitled to claim the same till the disposal of the criminal case and the final order is passed based thereon.

3. The learned counsel for the petitioner submitted that there is no bar for the maintainability of this writ petition, as on the previous occasion, the claim for gratuity was not pressed by the counsel and therefore the present petition is maintainable. The learned counsel for the petitioner relied upon the averments made in paragraph 3 of this writ petition.

4. The learned counsel for the petitioner also submitted that pendency of criminal case is not an absolute bar for claiming the gratuity and only in cases where the offence involves moral turpitude and that offence might have been committed during the course of employment and the learned counsel would contend that the pending case against the petitioner is not relating to the offence involving moral turpitude.

5. In view of the contentions raised, it is necessary to look into the provisions of Tamil Nadu Pension Rules, 1978. Proviso 3 to Rule 60 of the Tamil Nadu Pension Rules, 1978, provides as follows.

"Rule 60. Provisional Pension where departmental or judicial proceeding for enquiry by the Director of Vigilance and Anti Corruption may be pending.

(1) (a).....

(b).....

(c).....

Provided further that, where a Government Servant, against whom a departmental or judicial proceedings involving pecuniary loss to the Government is pending, is permitted to retire without prejudice to such departmental or judicial proceedings a portion of gratuity may be authorized after deducting the maximum computed financial loss to the Government for which the Government Servant is held liable, along with uncovered Government dues, if any, of such Government Servants, with interest"

6. Accordingly, this Court is of the view that even the Statute provides for withholding of only a portion of the gratuity, to the extent of financial loss to the Government. In this case, there is no allegation of financial loss

having been caused to the petitioner. Hence, the respondents are directed to disburse the Death-cum-Retirement-Gratuity, due to the petitioner within a period of eight weeks from the date of receipt of a copy of the order. The writ petition is disposed in the above terms. No costs. The criminal case has not been disposed of for the past six years. If in case the criminal proceedings ends in conviction, it is open to the authorities to proceed against the pension payable to the petitioner.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kst

To

1.The District Collector,
Erode District, Erode.

2.The Sub Collector, Gobichettipalayam,
Erode District.

+1cc to Mr.A.Thiyagarajan, Advocate, S.R.No.451

+1cc to the Government Pleader, S.R.No.1056

W.P.No.14375 of 2018

SAI (CO)

GSP(12/02/2019)

सत्यमेव जयते

WEB COPY