

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 22.10.2019
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.15522 of 2019
and
W.M.P. Nos.15430 & 15432 of 2019

L.Magilan

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by Principal Secretary
to Government,
Environment and Forest Department,
Secretariat, Chennai - 600 009.
 2. The Principal Chief Conservator of Forests,
(Head of the Department)
Chennai - 600 015.
 3. The Deputy Conservator of Forests,
State Forestry Research Institute,
Kolapakkam, Chennai.
- ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent in (1) Letter and 13727/FR1/2014-33 dated 20.02.2019 (2) Letter No. 13727/FR1/2014-34 dated 20.02.2019 (3) G.O.(3D) No. 40, Environment & Forests (FR.1) Department, dated 16.04.2014 (4) G.O.(3D) No.43 Environment and Forest (FR.1) Department, dated 30.04.2014, quash the same and to issue consequential directions to regularise the period of suspension from 16.04.2014 to 30.04.2014 as duty for all purposes, permit the petitioner to retire from service on 30.04.2014 AN with all consequential pensionary and retirement benefits including encashment of surrender of earned leave and unearned leave on private affairs, G.P.F balance, D.C.R.G, full pension with arrears and all other benefits and to disburse the Consequential Monetary benefits with interest at 18% p.a. within a fixed time frame.

For Petitioner : Mr.M.Ravi
For Respondents : Mr.M.Elumalai
Government Advocate

O R D E R

This petition has been filed by the petitioner, seeking for the issuance of Writ of Certiorarified Mandamus to call for the records of the first respondent in (1) Letter and 13727/FR1/2014-33 dated 20.02.2019 (2) Letter No. 13727/FR1/2014-34 dated 20.02.2019 (3) G.O.(3D) No. 40, Environment & Forests (FR.1) Department, dated 16.04.2014 (4) G.O.(3D) No.43 Environment and Forest (FR.1) Department, dated 30.04.2014, quash the same and to issue consequential directions to regularise the period of suspension from 16.04.2014 to 30.04.2014 as duty for all purposes, permit the petitioner to retire from service on 30.04.2014 AN with all consequential pensionary and retirement benefits including encashment of surrender of earned leave and unearned leave on private affairs, G.P.F balance, D.C.R.G, full pension with arrears and all other benefits and to disburse the Consequential Monetary benefits with interest at 18% p.a. within a fixed time frame.

2. The case of the petitioner is that he was initially appointed as a Forest Ranger in the year 1984, and thereafter, he was promoted from one post to another and lastly he worked as Assistant Conservator of Forest. While he was serving as a Regional Manager/Assistant Conservator of Forest, Villupuram, he was implicated in a criminal case registered in Cr.No.2 of 2011 by the Vigilance and Anti Corruption unit, Cuddalore. Thereafter he was promoted as Deputy Conservator of Forest and he was due to retire on 30.04.2014. At that point of time, he was placed under suspension by proceedings dated 16.04.2014 by the first respondent on the ground of pendency of criminal case. Later by proceedings dated 30.04.2014, the petitioner was not permitted to retire from service though he attained age of superannuation, until conclusion of the criminal proceedings pending against him. The petitioner filed a writ petition in W.P.No.26447 of 2014 before this Court, seeking for direction to the respondents therein to disburse his terminal benefits, which was disposed of on 25.09.2014 by this Court, directing the respondents therein to pay the DCRG and leave encashment salary to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. Thereafter the petitioner made a

representation to the respondent on 17.10.2014 enclosing the copy of the order passed in the above said writ petition. However the said representation was not disposed of by the respondents.

3. In the meanwhile, though the petitioner was found guilty and convicted in the criminal case by the trial Court, however an appeal was filed before this Court. By judgment dated 19.01.2018 in Criminal Appeal Nos. 625 and 634 of 2016, this Court set aside the judgment of conviction passed by the Trial Court and allowed the appeal filed by the petitioner. Thereafter the petitioner again made a representation on 31.01.2018 enclosing a copy of the acquittal order and requested the respondents to permit him to retire from service and to disburse all his retirement benefits. The said representation was also not disposed of by the respondents till date.

4. Again after acquittal in the criminal case, the petitioner filed another writ petition in W.P.No. 23392 of 2018 before this Court challenging the proceedings impugned therein, and consequently a direction to direct the respondents therein to regularise the period of suspension as duty for all purposes. The said writ petition was disposed on 17.09.2018 by this Court, giving a direction to the respondents therein to consider and dispose of the representation made by the petitioner. Thereafter despite his representations, since the order of this Court passed in the above said writ petition was not complied with by the respondents, the petitioner filed contempt petition in Cont.P.No.188 of 2019.

5. The learned counsel for the petitioner would contend that though the petitioner attained the age of superannuation as early as on 30.04.2014, he was not permitted to retire from service based on disciplinary proceedings initiated against him, which were initiated based upon criminal case in Crime No. 2 of 2011 registered by the Vigilance and Anti Corruption Department. He would further contend that though the Trial Court convicted the petitioner, later on in the appeal, this Court, by elaborate judgment dated 19.01.2018 acquitted the petitioner and as on date there is no legal impediment for the respondents to permit the petitioner to retire and to pay all the retirement benefits to the petitioner. However, the learned counsel for the petitioner would submit that on the pretext that the Government has accorded sanction to prefer SLP before the Hon'ble Supreme Court, the respondents have passed an impugned proceedings which cannot be sustained. He would also contend that the respondents have no power to withhold retirement benefits even during the pendency of the disciplinary proceedings or criminal proceedings

and there is no justification to continue the same despite the petitioner was acquitted in the criminal case. In support of the contention, the learned counsel relied upon the decision of this Court made in W.A.No. 1485 of 2018 dated 30.07.2018 the Secretary to Government, Higher Education Department, Secretariat, Chennai and another Vs. Dr.K.Sundaramoorthy.

6. On perusal of the entire materials placed before this Court, it would reveal that the petitioner was placed under suspension by proceedings dated 16.04.2014 since he was involved in a criminal case and thereafter though he reached the age of superannuation as early as on 30.04.2014, but he was not allowed to retire from service. While so, the criminal case registered as against him ended in conviction by the Trial Court, however in an appeal filed before this Court, he was acquitted. Therefore as on date, by virtue of judgment of acquittal passed by this Court, as rightly contended by the learned counsel for the petitioner, there is no impediment for the respondents to consider the claim of the petitioner for disbursement of the terminal benefits and regularisation of suspension period.

7. The only ground cited by the respondents for rejection of the claim of the petitioner is that since the Government has accorded sanction to prefer SLP they have passed the impugned order in this regard. This ground, in the opinion of this Court, cannot be sustained to withhold gratuity and pension payable to the petitioner. Even during the pendency of the departmental proceedings or criminal proceedings, it has been held by this Court that the Government has no power to withhold gratuity and pension. It is relevant to refer the decision of this Court made in W.A.No. 1485 of 2018 dated 30.07.2018 the Secretary to Government, Higher Education Department, Secretariat, Chennai and another Vs. Dr.K.Sundaramoorthy, wherein, para No. 8 the learned Division Bench of this Court has held as follows:-

8. In this connection, it would be appropriate to refer to the decision passed by this Court in W.A.No. 71 of 2017 dated 14.11.2017. In that case, due to certain irregularities in the allotment of plots, the respondent therein was kept under suspension. He has been denied all the terminal benefits. However, he was paid only subsistence allowance upto 30.06.2012 and subsequently, only provisional pension was paid. Thereafter, the authorities have sanctioned only the General Provident fund. The request for sanction of Special Provident Fund and Encashment of Earned Leave/Private Affairs at his credit, were rejected. The learned counsel appearing for the respondent

therein relied upon the decision of the Jharkhand High Court in 2007 (2) BLJR 2847 (Dr.Dudh Nath Pandey V. The State of Jharkhand), wherein it has been held that the Government has no power to withhold gratuity and pension during the pendency of the departmental proceeding or criminal proceeding. It has also been held that it does not give any power to withhold Leave Encashment at any stage either prior to the proceeding or after conclusion of the proceeding. Relying upon the said decision, this Court ordered to settle the General Provident Fund, Special Provident Fund and Encashment of Earned Leave/ Private Affairs, within a period of two months.

8. In view of the above, the respondents are directed to settle the terminal benefits to the petitioner within a period of twelve weeks from the date of receipt of a copy of this order. Accordingly, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CO)

/true copy/
Sub Asst. Registrar

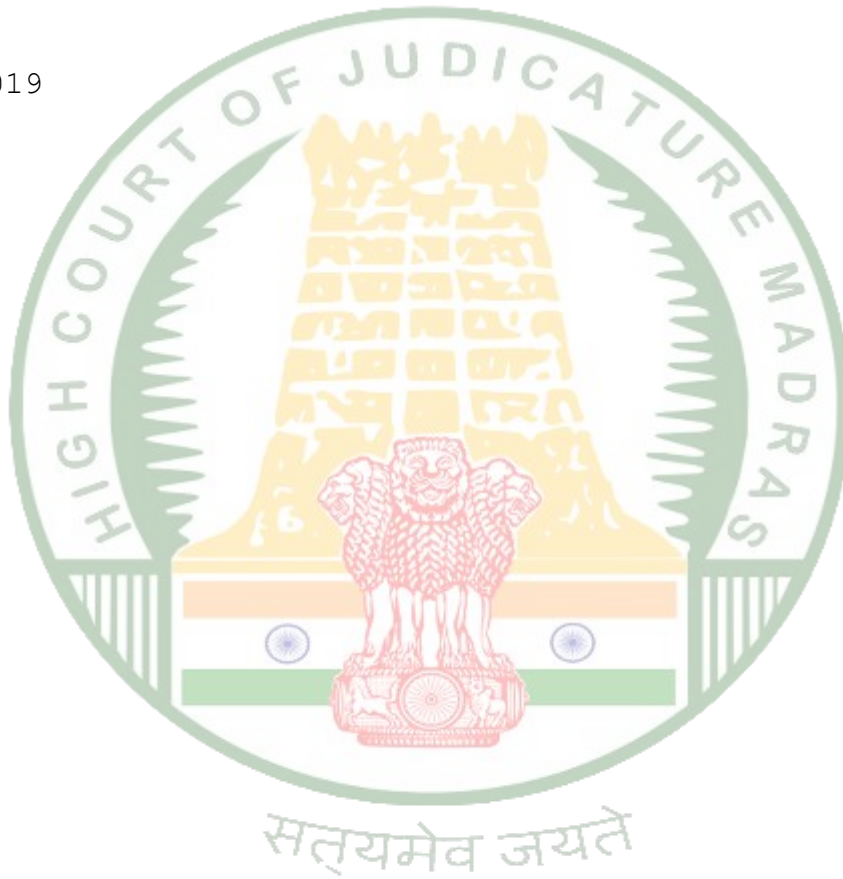
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To

1. The Principal Secretary to Government,
Environment and Forest Department,
Secretariat, Chennai - 600 009.
2. The Principal Chief Conservator of Forests,
(Head of the Department)
Chennai - 600 015.
3. The Deputy Conservator of Forests,
State Forestry Research Institute,
Kolapakkam, Chennai.

+1 cc to Mr.M.Ravi Advocate sr89074
+1 cc to Special Government Pleader(Forest) sr88350

W.P.No.15522 of 2019
and
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rsi(co)
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