

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2019

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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.16192 of 2018

WMP.No.19279 of 2018

Swaminathan

.. Petitioner

Vs.

1.The Secretary to Government,
Health & Family Welfare Department,
Fort St. George, Chennai -600 009

2.The Director of Medical & Rural Health Services,
Teynampet, Chennai -600 006

3.The Joint Director of Health Services,
Kumbakonam

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the third respondent in connection with the impugned order passed by him in Na.Ka.No.2781/C.Ma./06 dated 23.01.2007, modified by the second respondent in Ref.No.28788/SC1/3/2006 dated 08.09.2007 and Na.Ka.No.28788/C.Ka.1/3/2006 dated 18.05.2018 and quash the same and direct the respondents to settle the retirement benefits of the petitioner within a reasonable time alongwith interest @ 12% p.a. from 31.12.2006 to till the date of actual payment.

For Petitioner .. Mr.K.Venkataramani, Sr.Counsel for
Mr.M.Muthappan

For Respondents.. Mr.V.Kathirvelu, Spl. G.P.

ORDER

This writ petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records of the third respondent in connection with the impugned order passed by him in Na.Ka.No.2781/C.Ma./06 dated 23.01.2007, modified by the second respondent in

Ref.No.28788/SC1/3/2006 dated 08.09.2007 and Na.Ka.No.28788/C.Ka.1/3/2006 dated 18.05.2018, quash the same and consequently direct the respondents to settle the retirement benefits of the petitioner within a reasonable time along with interest @ 12% p.a. from 31.12.2006 to till the date of actual payment.

2. The case of the petitioner is that he was appointed as an Audio Metrician on 01.04.1986. The petitioner was due for superannuation on 07.04.2006, but he was not allowed to retire on the ground that there was a criminal case registered against him in Cr.No.11 of 2005. He was placed under suspension on 07.04.2006. On 16.05.2006, a charge memo was issued under 17-B of the Disciplinary Rules containing two Articles of charges. The said charge memo was put to challenge by the petitioner in W.P(MD) No.6407 of 2006 before the Madurai Bench of this Court. But the petitioner was not successful in that writ petition. Thereafter, an enquiry was conducted into the charges and by enquiry report dated 09.01.2007, charges were held as proved.

3. On 23.01.2007, a copy of the enquiry report was communicated to the petitioner, and finally punishment was imposed i.e., stoppage of increment for one year with cumulative effect. Finally, on 29.04.2017, the criminal case registered against him has ended in acquittal. Thereafter, on 01.06.2017, the petitioner submitted a representation to revoke the order of suspension and to permit him to retire from service with all consequential benefits. Thereafter, the petitioner approached this Court in W.P.No.19054 of 2017, challenging the order of suspension dated 07.04.2006 and the order not allowing him to retire from service dated 31.12.2006. Notice was issued in the said writ petition and the same is pending. Pending writ petition, on 09.01.2018, the third respondent has issued proceedings towards revocation of order of suspension without prejudice to the pending disciplinary proceedings.

4. The petitioner was allowed to retire from service on 09.01.2018, vide order dated 09.01.2018 and the disciplinary proceedings were continued under Section 9 (2) (a) of the Tamil Nadu Pension Rules. Thereafter, a show cause notice was issued on 02.04.2018 under Section 9 (2) of the Pension Rules, holding that the charges 1 & 2 have been proved and proposed to impose a cut in pension at Rs.200/- per month for a period of 3 months. The petitioner submitted his reply to the said show cause notice on 18.04.2018, specifically denying the charges.

However, the disciplinary authority has not accepted the explanation of the petitioner and imposed a punishment of cut in pension at Rs.200/- per month for a period of 3 months. The said punishment is put to challenge in the present writ petition.

5. Although, Mr.K.Venkataramani, the learned Senior Counsel for the petitioner has tried to impress upon this Court that the acquittal of the petitioner in the criminal case as well as the punishment imposed in the disciplinary proceedings cannot stand the test of judicial scrutiny, the said submission does not merit any serious consideration for the simple reason that the standard of proof in the departmental action is entirely different from that of the standard of proof in the criminal proceedings. Therefore, the disciplinary authority has concluded that the charges 1 & 2 framed against the petitioner as proved and on such proved charges, a very minor punishment of cut in pension at Rs.200/- p.m. was imposed and that too only for a period of 3 months. The said punishment imposed on the petitioner can hardly have any adverse effect on the pensionary benefits paid to the petitioner. In view of a very mild punishment imposed on the petitioner, which in fact, has no adverse consequence, this Court does not think that this is a fit case to intervene with the penalty imposed on the petitioner.

6. For the above said reasons, this Court finds that the writ petition lacks merit and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
Health & Family Welfare Department,
Fort St. George, Chennai -600 009
- 2.The Director of Medical & Rural Health Services,
Teynampet, Chennai -600 006
- 3.The Joint Director of Health Services,
Kumbakonam

+1cc to Mr.M.Muthappan , Advocate SR.No. 59325
+1 cc to Government Pleader Sr.No. 59188

W.P.No.16192 of 2018

cp (CO)
A.SK(21/08/2019)