IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2019

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.19264, 19271 of 2019 and 22115 of 2018
And
W.M.P.Nos.18701, 18704, 18710, 18711 of 2019
and 25929 of 2018

R.Karunanidhi ... Petitioner in all the W.Ps.

Vs.

1.The Government of Tamil Nadu
Rep. by its Secretary,
Commercial Taxes and Registration Department,
Fort St.George, Chennai.

2.The Commissioner of Commercial Taxes,
Commercial Taxes Department,
2nd Floor, Ezhilagam, Chepauk,
Chennai - 5. ... Respondents in W.P.Nos.19264 and 19271 of 2019

1.The Secretary to Government,
Commercial Taxes and Registration Department,
George St. Fort, Chennai.

2.The Commissioner of Commercial Taxes,
Commercial Taxes Department,
2nd Floor, Ezhilagam, Chepauk,
Chennai - 5.

3.Accountant General (A & E),
Pariksha Bhavan, No.361,
Anna Salai, Teynampet,
Chennai - 600 018. ... Respondents in W.P.No.22115 of 2018

Prayer in W.P.Nos.19264 and 19271 of 2019:

Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records in connection with the impugned proceedings bearing reference Nos.CD2/24984/2017 and CD2/25702/2017-I dated 06.05.2019 and 02.05.2019 respectively, issued by the 2nd respondent and quash the same.

Prayer in W.P.No.22115 of 2018:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records in connection with G.O(D).No.85, CT & R (E2) Department, dated 30.04.2018 issued by the 1st respondent in so far as it states that "departmental disciplinary action is contemplated against the petitioner as recommended by appropriate investigation authority on the substantiated allegation in one preliminary enquiry and other pending enquiry based on allegation petitions" and quash the same and further direct the respondents to disburse all retiral benefits due to the petitioner together with interest within such time as stipulated by this Hon'ble Court.

For Petitioner	: Mr.K.Krishnamoorthy
For Respondents	: Mr.Hariharan for R1 and R2 Additional Government Pleader

COMMON ORDER

Since the petitioner in all these writ petitions are one and the same, these writ petitions are taken up together and disposed by way of a common order.

2.W.P.No.19264 of 2019 has been filed seeking issuance of Writ of Certiorari calling for the records in connection with the impugned proceedings bearing reference No.CD2/24984/2017 dated 06.05.2019, issued by the second respondent and to quash the same.

3.W.P.No.19271 of 2019 has been filed seeking issuance of Writ of Certiorari calling for the records in connection with the impugned proceedings bearing reference No.CD2/25702/2017-I dated 02.05.2019, issued by the second respondent and to quash the same.

4.W.P.No.22115 of 2018 has been filed seeking issuance of Writ of Certiorarified Mandamus calling for the records in connection with G.O(D).No.85, CT & R (E2) Department, dated 30.04.2018, issued by the first respondent in so far as it states that "departmental disciplinary action is contemplated against the petitioner as recommended by appropriate investigation authority on the substantiated allegation in one preliminary enquiry and other pending enquiry based on allegation petitions" and to quash the same and to further direct the respondents to disburse all retiral benefits due to the petitioner together with interest within such time as stipulated by this Court.

5.Heard the arguments advanced on either side.

6.The case of the petitioner is that the petitioner served in the Commercial Taxes Department and retired on 30.04.2018 as Joint Commissioner (ST), Trichy on attaining the age of superannuation. He was permitted to retire from service vide G.O.(D) No.85, Commercial Taxes and Registration (E2) Department, dated 30.04.2018, however, the said Government Order stated that the disciplinary proceedings contemplated against the petitioner shall be continued under Rule 9 of the Tamil Nadu Pension Rules, 1978 in accordance with the procedure laid down in the said Rules. Thereafter, the impugned charge memos initiating disciplinary action under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, came to be issued. Challenging the impugned charge memos and the said Government Order, the petitioner has filed these writ petitions.

7.The learned counsel appearing for the petitioner would submit that the respondents have right to initiate disciplinary action against the petitioner under Rule 9 (2) (b) (i) of the Tamil Nadu Pension Rules, however, the respondents have no right to initiate disciplinary action against the petitioner under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

8.The learned Additional Government Pleader would submit that the impugned charge memos were issued to the petitioner with regard to the alleged irregularities committed by the petitioner during his service. He would further submit that the petitioner was allowed to retire from service vide G.O.(D) No.85, dated 30.04.2018 without prejudice to the disciplinary proceedings contemplated against the petitioner. Hence the respondents have power to issue charge memo.

9.Admittedly, the petitioner was allowed to retire from service vide Government Order in G.O.(D) No.85, dated 30.04.2018 and in the said Government Order it is also stated that the disciplinary proceedings contemplated against the petitioner shall be continued under Rule 9 of the Tamil Nadu Pension Rules, 1978 in accordance with the procedure laid down in the said Rules. Hence, I do not find any illegality in the Government Order in G.O.(D) No.85, dated 30.04.2018.

10.However, after the said Government order, two charge memos were issued under Rule 9 (2) (b) (i) of the Tamil Nadu Pension Rules read with Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Admittedly, the petitioner was allowed to retire from service. Hence, the respondents have right to initiate disciplinary action against the petitioner under Rule 9 (2) (b) (i) of the Tamil Nadu Pension Rules, however, the respondents have no right to initiate disciplinary action against the petitioner under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal)

Rules. Hence, the charge memos dated 06.05.2019 and 02.05.2019 are quashed. However, the respondents are directed to proceed with the disciplinary proceedings under Rule 9 (2) (b) (i) of the Tamil Nadu Pension Rules. The disciplinary proceedings intiated against the petitioner shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

11.The writ petitions are disposed of on the above terms. No costs. Consequently, the connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

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To

1.The Secretary,
Commercial Taxes and Registration Department,
Fort St.George, Chennai.

2.The Commissioner of Commercial Taxes,
Commercial Taxes Department,
2nd Floor, Ezhilagam, Chepauk,
Chennai - 5.

3.The Accountant General (A & E),
Pariksha Bhavan, No.361,
Anna Salai, Teynampet,
Chennai - 600 018.

+3cc to Mr.K.Krishnamoorthy, Advocate SR.No.95738, 95739, 95740

+1cc to Special Government Pleader (Taxes) SR.No.96143

W.P.Nos.19264, 19271 of 2019 and 22115 of 2018
And
W.M.P.Nos.18701, 18704, 18710, 18711 of 2019 and 25929 of 2018

VSN II(CO)
GMY(28/11/2019)