

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :06.09.2019
CORAM
THE HON'BLE MR.JUSTICE M.DHANDAPANI
W.P.No.22962 of 2019

V. Ashok Kumar

..Petitioner

vs

1. The Secretary to Government,
Home (Police V) Department,
Fort St George, Chennai-600 009.

2. The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai.

3. The Joint Commissioner of Police,
East Zone, Egmore,
Chennai - 600 008.

4. The Deputy Inspector General of Police,
Technical Services,
Police Telecommunication Branch,
Chennai- 600 004.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus or any other appropriate writ or order or direction in the nature of writ, directing the respondents to forthwith draw and settle the retirement benefits of the petitioner namely Gratuity, Surrender of leave, Special Provident Fund, Provident Fund Arrears, Computation of pension besides regularise the period of suspension from 24.12.2008 to 19.12.2013 as duty for all purposes within a reasonable time as deem fit by this Hon'ble Court, notwithstanding and without reference to the pending Criminal Appeal in CrI.A.No.125/2014 pending on the file of this Hon'ble Court.

For Petitioner : Mr. M. Muthappan
For Respondents :Mr. R.S. Selvam,
Government Advocate

O R D E R

The learned counsel for the petitioner would submit that the petitioner was falsely implicated in the criminal case registered in crime No.15/2008 under section 7 & 13(2) r/w 13(1) (d) of the Prevention of Corruption Act. He was placed under suspension with effect from 24.12.2008. He was also charge sheeted before the Special Court for Prevention of Corruption Act, Chennai and after trial, he was acquitted by the Special Court by an order dated 31.7.2017 in C.C.No.93/2011. Thereafter, based on the orders of acquittal, he was reinstated into service by the orders of the Joint Commissioner of Police, Chennai on 17.12.2013. On 31.08.2017, though the petitioner was permitted to retire from service, without prejudice to the pendency of Crl Appeal, preferred by the Department, he has not been paid the retirement benefits.

2. Heard both sides.

3. The impugned order, dated 25.12.2008 is one of deemed suspension pending contemplation of the charges. The petitioner was working as Office Superintendent in the respondent Department.

3. The suspension is made under Rule 17(e)(1)(ii) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. The reason found in the order is that the petitioner was allegedly demanding and accepting illegal gratification of Rs.2,000/-

4. The grievance of the petitioner is that even though the order of suspension has been passed as early as in the year 2008, there has been no review. The order of suspension in the present case, has been passed preventing the petitioner from getting the retirement benefits on his attaining the age of superannuation.

5. This Court is unable to go into the merits of the allegations made by the petitioner. So long as the power of suspension is available with the respondent and it has been exercised by the competent authority, the Court cannot go behind the order of suspension.

6. The Supreme Court in its decision reported in 1990 (3) SCC 60 (Director General and Inspector General of Police, Andhra Pradesh, Hyderabad and others Vs. K.Ratnagiri) has held in paragraph 7 as follows:

"7....The Rule 13(1) empowers the authority to keep the respondent under suspension pending investigation or enquiry into the criminal charges where such suspension is necessary in the public interest. When the first information report is issued, the investigation commences and indeed it has commenced when the respondent was kept under suspension. The order of suspension cannot, therefore, be said to be beyond the scope of Rule 13(1) merely because it has used the word 'prosecution' instead of investigation into the charges against the respondent. A wrong wording in the order does not take away the power if it is otherwise available. The Tribunal seems to have ignored this well accepted principle."

Further, it was observed in paragraph 3 as follows:

"3....The government may review the case and make further or other order but the order of suspension will continue to operate till it is rescinded by an appropriate authority."

7. Once again, the Supreme Court vide its decision reported in 1994 (2) SCC 617 (State of Haryana Vs. Hari Ram Yadav and others) held in paragraph 10 as follows:

"10....The law is well settled that in cases where the exercise of statutory power is subject

to the fulfilment of a condition then the recital about the said condition having been fulfilled in the order raises a presumption about the fulfilment of the said condition, and the burden is on the person who challenges the validity of the order to show that the said condition was not fulfilled. In a case, where the order does not contain a recital about the condition being fulfilled, the burden to prove that the condition was fulfilled would be on the authority passing the order if the validity of the order is challenged on the ground that the condition is not fulfilled...."

8. In the light of the above, the writ petition filed by the petitioner is misconceived and deserves to be dismissed. Accordingly, the writ petition shall stand dismissed. No costs.

06/09/2019

BEING MENTIONED

This matter having been listed under the caption "for clarification" on Friday the 08/11/2019 pursuant to the order of this court dated 06.09.2019 made herein in the presence of the Mr. Venkataramani Senior Counsel for Mr. M. Muthappan Advocate for the petitioner and of Mr. R. S. Selvam, Government Advocate on behalf of the Respondent counsel and the court made the following order:

This matter came up on 08.11.2019 under the caption 'for clarification' at the instance of the learned counsel appearing for the petitioner and the same is clarified. The Registry is directed to issue the following order:

2. Writ petition is filed for issuance of Writ of Mandamus directing the respondents to forthwith draw and settle the retirement benefits of the petitioner namely Gratuity, Surrender of leave, Special Provident Fund, Provident Fund Arrears, Computation of pension besides regularise the period of suspension from 24.12.2008 to 19.12.2013 as duty for all purposes within a reasonable time as deem fit by this Hon'ble Court, notwithstanding and without reference to the pending Criminal Appeal in CrI.A.No.125/2014 pending on the file of this Hon'ble Court.

3. Heard the learned Senior Counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents.

4. The case of the petitioner is that he was falsely implicated in the criminal case, which was registered in crime No.15/2008 under section 7 & 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. He was placed under suspension with effect from 24.12.2008. He was also charge sheeted before the Special Court for Prevention of Corruption Act, Chennai and after trial, he was acquitted by the Special Court by an order dated 31.7.2017 in C.C.No.93/2011. Thereafter, based on the orders of acquittal, he was reinstated into service by the orders of the Joint Commissioner of Police, Chennai on 17.12.2013. On 31.08.2017, though the petitioner was permitted to retire from service without prejudice to the pendency of Criminal Appeal preferred by the Department, he has not been paid the retirement benefits. Therefore, the petitioner has sent a representation to the respondents on 10.04.2019. However, till date, the representation of the petitioner was not considered by the respondents. Hence, this writ petition.

5. Learned Senior Counsel appearing for the petitioner submitted that though criminal case was registered against the petitioner under the Prevention of Corruption Act, it was ended in acquitted and the appeal preferred by the State challenging the acquittal order is pending. The petitioner was allowed to retire on 31.08.2017. Merely because the appeal preferred by the State is pending, it would not deprive the right of the petitioner to get his terminal benefits. He further submitted that no disciplinary proceedings is pending against the petitioner so far. The issue involved in the present case is squarely covered by the judgment of the Division Bench of this Court dated 18.01.2016 made in W.A.No.1700 of 2015 (The Joint Registrar of Co-operative Societies and another vs. R.Chithravelu). Therefore, he prays for issuing a direction to the respondents to settle the retirement benefits of the petitioner.

6. On perusal of the above said judgment of the Full Bench of this Court reveals that the said decision squarely covers this issue and the relevant paragraphs are extracted hereunder:

"4. The Writ Court after considering the respective submissions and placing reliance on a Full Bench judgment of the Punjab and Haryana High Court, directed the Official Respondents to disburse him the said amounts as under:

"According to the petitioner, he is entitled to receive these items even if he is ultimately dismissed from service. I am in agreement with the submission of the learned counsel for the petitioner. It is useful to refer to a Full Bench judgment of the Punjab and Haryana High Court dated 9.11.2012 in Letters Patent Appeal No.113 of 2012 in Punjab State Civil Supplies Corporation Ltd., and others vs. Pyare Lal. The relevant portions are extracted hereunder:

"10.

Before we go into the legal sanctity of the Circular, it must be remembered that the Leave Encashment is paid on account of unutilised leave and therefore, it partakes the character of salary.

12. We are, therefore, in agreement with the view taken by the Division Bench of this Court in B.S.Gupta vs. Uttar Haryana Bijli Vitran Nigam Limited and others (2006 (8) SLR 690) holding that amount of leave encashment is payable to the retiring employee notwithstanding the pendency of the departmental enquiry or criminal proceedings. "

I am of the view that the same principle would apply in the case of payment of General Provident Fund and contribution of the Government employee to Special Provident Fund also.

Hence, a direction is issued to the first respondent to settle the General Provident Fund, contribution of the petitioner to Special Provident Fund and Earned Leave Encashment, within a period of six weeks from the date of receipt of a copy of this order.

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9. In this respect the Writ Court has rightly placed its reliance on the Full Bench judgment of the Punjab and Haryana High Court in Punjab State Civil Supplies Corporation Ltd., and others vs. Pyare Lal (LPA No.113 of 2012 dated 09.11.2012)."

7. In the light of the above said judgment, this Court hereby directs the respondents to pay the General Provident Fund, earned leave encashment and Special Provident Fund, if the petitioner contributes in accordance with the Pension Rules and the eligible retirement benefits to the petitioner, within a

period of four weeks from the date of receipt of a copy of this order.

8. With the above direction, this writ petition stands disposed of. No costs.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

mrn

To

1. The Secretary to Government,
Home (Police V) Department,
Fort St George, Chennai- 600 009.

2. The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai.

3. The Joint Commissioner of Police,
East Zone, Egmore,
Chennai - 600 008.

4. The Deputy Inspector General of Police,
Technical Services,
Police Telecommunication Branch,
Chennai- 600 004.

+1 cc to the Government Pleader sr93351

+1 cc to Mr.M.Muthappan Advocate sr93256

br(co)
aa27/12/2019

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