

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.28394 of 2019
and
W.M.P.No.28075 of 2019

G.Nandakumar ... Petitioner
-vs-

- 1.The Secretary to Government,
School Education (OP2) Department,
Fort St. George, Chennai-600 009.
- 2.The Under Secretary to the Government,
School Education (OP2) Department,
Fort St. George, Chennai-600 009. ... Respondents

Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in connection with the impugned order passed by him in Letter No.17463/OP2/2019-1 dated 25.07.2019 and quash the same and direct the respondents to draw and disburse the provisional pension and other retirement benefits namely Encashment of surrender leave for 240 days, Encashment of Unearned Leave on Private Affairs for a period of 3 months and Special Provident Fund, due to him within the time limit fixed by this Court.

For Petitioner : Mr.K.Venkatramani, Senior Counsel
assisted by Mr.M.Muthappan

For Respondents: Ms.P.Kavitha,
Government Advocate

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O R D E R

This writ petition has been filed by the petitioner to quash the letter dated 25.07.2019, in Letter No.17463/OP2/2019-1 and direct the respondents to draw and disburse the provisional pension and other retirement benefits.

2.Heard Mr.K.Venkatramani, learned Senior Counsel assisted by Mr.M.Muthappan, learned counsel for the petitioner - and Ms.P.Kavitha, learned Government Advocate for the respondents.

3. With consent, this writ petition is taken up for final disposal.

4. The case of the petitioner is that the petitioner entered into service as Office Assistant based on the employment seniority and was appointed in the Transport Department in the year 1989. Subsequently, he was promoted as Record Clerk in the School Education Department with effect from 28.11.2006, based on the orders of the School Education Department. Thereafter, his salary was fixed and he was granted Selection Grade scale of pay in the post of Record Clerk on completion of 10 years of his service. While the petitioner was in service, he was falsely implicated in a criminal case and was placed under suspension by the orders of the 2nd respondent dated 05.01.2017, with retrospective effect from i.e., 02.01.2017. On the date of superannuation, i.e., 30.06.2019, he was not allowed to retire from service stating that criminal case is pending against the petitioner on the file of the Special Judge cum Chief Judicial Magistrate, Chennai.

5. The further case of the petitioner is that though the 2nd respondent in his order dated 28.06.2019, stated that he is entitled to provisional pension during the period of suspension for an amount which shall not exceed the amount of pension, so far, the pension has not been sanctioned to him and he has not been paid provisional pension for the last two months. Even if he was placed under suspension, he was entitled to receive encashment of surrender leave of 240 days, encashment of unearned leave on private affairs for a period of 3 months, special provident fund, provisional pension and gratuity. Hence, the petitioner made a representation to the 1st respondent. However, the said representation was rejected by the 2nd respondent, vide impugned order dated 25.07.2019, on the ground that criminal case was pending against the petitioner. Challenging the same, the present writ petition has been filed.

6. Mr. K. Venkatramani, learned Senior Counsel for the petitioner would submit that after filing the present writ petition, the 1st respondent issued a letter dated 01.10.2019, stating that to claim subsistence allowance for the period from June to September, 2019 the petitioner has to furnish a declaration to the Government to the effect that he has not left the Headquarters during this period and he was not having any other income for his living. However, the learned Senior Counsel for the petitioner submitted that the letter is issued on a wrong premise, as if the petitioner is claiming subsistence allowance, which is totally wrong and irrelevant. Since the petitioner's services were retained, he is claiming provisional

pension. Hence, this Court may issue directions to the respondents to pay the provisional pension and other benefits within a reasonable time.

7.The learned Government Advocate appearing for the respondent submits that eligible amount will be paid within reasonable time.

8.Considering the facts and circumstances of the case and also the fact that the petitioner's services were retained and till date no provisional pension and other benefits were paid, I am inclined to issue direction to the respondents to pay the petitioner the eligible provisional pension amount and other benefits within a period of twelve weeks from the date of receipt of a copy of this order.

9.With the above direction, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

abr
To

1.The Secretary to Government,
School Education (OP2) Department,
Fort St. George, Chennai-600 009.

2.The Under Secretary to the Government,
School Education (OP2) Department,
Fort St. George, Chennai-600 009.

+1cc to Mr.M.Muthappan, Advocate Sr.86043

+1cc to the Government Pleader Sr.86075

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ln[co]
srg 25/11/2019