WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **08.11.2019**

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A.(MD)No.1194 of 2019

and

C.M.P.(MD)Nos.10340 and 10341 of 2019

A.Arjunan ... Appellant/Petitioner

Vs.

1.The Director,
Tamil Nadu Medical and Health Services,
Chennai.

2.The Deputy Director of Health Services,
Thoothukudi District,
Thoothukudi.

3.The Superintendent,
The Deputy Director of Health Service Office,
Thoothukudi,
Thoothukudi District.

4.The Block Health Officer,
Primary Health Centre,
Kayammozhi,
Thoothukudi District.

5.The Block Health Officer,
Primary Health Centre,
Meyananapuram,
Thoothukudi District. ... Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letter Patent Act, to set aside the order dated 01.07.2019 passed in W.P.(MD) No.14620 of 2019 on the file of this Court.

Prayer in WP(MD). 14620/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the Impugned proceeding in Na.Ka.No.142.2019 dated 30.04.2019 issued by the 4th respondent and to quash the same and consequently directing the respondents 1 and 2 to sanction family pension with all benefits to the petitioner.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

For Appellant : Mr.J.David Ganesan
For Respondents : Mr.A.K.Baskara Pandian
Special Government Pleader

JUDGMENT

[Judgment of this Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr.J.David Ganesan, learned Senior Counsel for the appellant and Mr.A.K.Baskara Pandian, learned Special Government Pleader for the respondents. By consent on either side, this writ appeal is taken up for final disposal.

2. This appeal is directed against the order in W.P.(MD) No.14620 of 2019, dated 01.07.2019.

3. The writ petition was filed praying to set aside the proceedings issued by the fourth respondent, dated 30.04.2019, by which the appellant was informed that he is not permitted to retire from service on account of the pendency of the charge memo, dated 15.04.2019 and to retain in service and provisional pension will be computed and paid in terms of Rule 9 of the Tamil Nadu Pension Rules.

4. The learned writ Court by the impugned order, dated 01.07.2019 dismissed the writ petition and declined to grant relief to the appellant to be paid as family pension and other benefits. The observations made by the writ Court that once the charge proceedings have been initiated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal Rules), which is the procedure for the cases, where there is a proposal to impose major penalty, the employee on attaining the age of superannuation will not be permitted to retire and will be retained in service and disciplinary proceedings will be proceeded. Upon retirement, subsistence allowance cannot be paid, if the employee was placed under suspension while in service.

5. This is what has been done in the case of the appellant. Therefore, at this juncture, the appellant cannot claim that he should be permitted to retire and he should be paid all retiral benefits. Therefore, we concur with the observations made by the learned writ Court and the ultimate conclusion as well. However, on account of dismissal of the writ petition, with consequential direction, there has been a stalemate in the matter. Therefore we are inclined to issue appropriate further direction, while confirming the order passed by the learned writ Court.

6. Accordingly, this writ appeal is dismissed and the order made in the writ petition is confirmed. A direction is issued to

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

the appellant to submit his explanation to the charge memo, dated 15.04.2019 within a period of three weeks from the date of receipt of a copy of this order. On receipt of explanation, the second respondent is directed to appoint an Enquiry Officer within a period of ten days therefrom. The Enquiry Officer shall commence and complete the enquiry within a period of six months from the date on which, the Enquiry Officer is appointed subject to the condition that the appellant cooperates with the enquiry proceedings. It is needless to state that the other Departmental witnesses should also cooperate with the domestic enquiry. On completion of the enquiry, the Enquiry Officer shall submit a report to the disciplinary authority, who shall after affording an opportunity to the appellant, considering the further explanation, if any, pass final orders within a period of two months from the date on which, further explanation is submitted by the appellant. Till then, the benefits paid to the petitioner / appellant under the provisions of the Tamil Nadu Pension Rules shall be continued. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar(CS)

ta

To

1.The Director,
Tamil Nadu Medical and Health Services,
Chennai.

2.The Deputy Director of Health Services,
Thoothukudi District,
Thoothukudi.

3.The Superintendent,
The Deputy Director of Health Service Office,
Thoothukudi,
Thoothukudi District.

4.The Block Health Officer,
Primary Health Centre,
Kayammozhi,
Thoothukudi District.

5.The Block Health Officer,
Primary Health Centre,
Meyananapuram,
Thoothukudi District.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

+1 CC to Mr.J.DAVID GANESAN, Advocate (SR-96965[F] dated 08/11/2019)

ORDER MADE IN
W.A.(MD)No.1194 of 2019
08.11.2019

MK (22.11.2019) 4P 7C

https://hcservices.ecourts.gov.in/hcservices/