BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 03.10.2019
CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.(MD)No.11910 of 2014
and
M.P.(MD)No.1 of 2014

K.Rajendran ... Petitioner

vs.

1. The Additional Chief Secretary and Commissioner of Revenue Administration, Ezhilagam, Chepauk, Chennai - 600 005.

2. The District Collector, Thoothukudi District, Thoothukudi.

3. The Treasury Officer, District Treasury, Thoothukudi. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records of the first respondent, ie., the Additional Chief Secretary and Commissioner of Revenue Administration, Chennai, relating to letter Na.Ka.No.Services 3(4)/42849/2010, dated 29.04.2014 and quash the same as *per se* illegal and without jurisdiction.

For Petitioner : Mr.S.Visvalingam
For Respondents : Mr.M.Jeyakumar
Additional Government Pleader

O R D E R

This Writ Petition is filed to quash the impugned order passed by the first respondent, dated 29.04.2014.

2.The petitioner was serving as Deputy Tahsildar in Ottapidaram, Thoothukudi District. He retired from service on attaining the age of superannuation, ie., 30.01.2007. In the year 2007, a charge memo was issued against the petitioner under Rule 17 (b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, for inclusion of a private name in a joint patta in respect of some land in North Thittanmkulam Village.

3.Pursuant to the charge memo, punishment of stoppage of increment in one stage, ie., for a period of one year, was imposed on the petitioner, by order, dated 19.11.2007, which is just few days prior to his retirement. Challenging the order of punishment, the petitioner preferred an appeal before the Commissioner of Revenue Administration and the Commissioner found that the stoppage of increment cannot be imposed, as the petitioner was due to retire on 30.11.2007. Since the punishment awarded cannot be executed retrospectively, the matter was remitted and the District Collector was directed to proceed further from the place, where, the mistake had occurred.

4.Based on the order passed by the first respondent, dated 19.02.2010, the District Collector, by order, dated 01.06.2010, passed an order cancelling the earlier order, dated 19.11.2007. Thereafter, departmental action was initiated under Rule 9(2)(b)(ii) of the Tamil Nadu Pension Rules. The impugned order was passed by imposing a punishment of recovery from the petitioner's pension at Rs.500/- per month for a period of three years. The said order is challenged in the present writ petition.

5.One of the prime contentions of the petitioner's Counsel before this Court is that the impugned order passed by the first respondent, dated 29.04.2014 is *per se* illegal and contrary to Rule 9(2)(b)(ii) of the Tamil Nadu Pension Rules, 1978. The learned Counsel for the petitioner, referring to the Rules, contended that the first respondent cannot initiate and pass an order inflicting recovery, after the lapse of 8 years from the date of retirement, as per the specific provisions contained in Rule 9(2)(b)(ii) of the Tamil Nadu Pension Rules, 1978.

6.The learned Counsel for the petitioner submitted that the departmental proceedings cannot be instituted, in respect of any event, which took place more than 4 years before institution. In this case, admittedly, the impugned order was passed, after a lapse of eight years from the date of delinquency and retirement.

7.Though the learned Counsel for the respondents try to persuade this Court that the order passed by the first respondent was in continuation of earlier proceedings, this Court is unable to accept the said contention. For convenience, Rule 9(2)(b)(ii) of the Tamil Nadu Pension Rules, 1978, is extracted below:

> *"9.Right of Government to withhold or withdraw pension-*
>
> *(2)(b)(ii)Shall not be in respect of any event, which took place more than four years before such institution;"*

8.The earlier punishment was not enforceable, as the punishment was imposed, just few days prior to the retirement, when no increment was due. It is in the said circumstances, the first respondent had no option, but to set aside the punishment. However, the remand order cannot be interpreted to give fresh life to the proceedings to pass appropriate orders. A fresh order of punishment can be passed, only if it could be made well before the time, as contemplated under Rule 9(2)(b) of Tamil Nadu Pension Rules, 1978.

9.The District Collector has passed an elaborate order earlier and held that the earlier punishment cannot be validated and that he had no other option, but to pass an order cancelling the order of punishment. However, in utter disregard to the order passed by the first respondent earlier and contrary to the provisions of Rule 9(2)(b) of Tamil Nadu Pension Rules, the impugned order has been passed by the first respondent inflicting the punishment of recovery of a sum of Rs.500/- per month for a period of three years.

11.The second order imposing the punishment beyond the period of four years from the date of delinquency is contrary to Rule 9(2)(b) of Tamil Nadu Pension Rules, 1978, and the earlier order of District Collector would clearly show that the second respondent had acknowledged the fact that no punishment can be imposed as against the petitioner, after the earlier punishment was set aside by the first respondent. It appears that due to communication gap, independent proceedings has been initiated by the first respondent once again, which is without authority and contrary to Rule 9(2)(b) of Tamil Nadu Pension Rules, 1978.

12.In view of the discussion above, this Court is inclined to allow this writ petition. Accordingly, this writ petition is allowed and the impugned order passed by the first respondent, dated 29.04.2014 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Additional Chief Secretary and
   Commissioner of Revenue Administration,
   Ezhilagam, Chepauk, Chennai - 600 005.

2. The District Collector,
   Thoothukudi District, Thoothukudi.

3. The Treasury Officer,
   District Treasury, Thoothukudi.

+1 CC to Mr.S.VISVALINGAM, Advocate (SR-91269[F] dated 04/10/2019)

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CMR
MK (31.10.2019) 4P 5C