BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 26.09.2019
CORAM:
THE HONOURABLE MR.JUSTICE S.S.SUNDAR
W.P(MD)No.864 of 2014

G.Thangavel : Petitioner

Vs.

The Commissioner of Treasuries and Accounts,
Panagal Buildings,
Saidapet, Chennai 600 015. : Respondent

Prayer: Petition is filed under Article 226 of the Constitution of India, Writ of certiorarified mandamus, to call for the records of the respondent the Commissioner of Treasury and Accounts, Chennai relating to ந.க.எண். 32232/2009/க்யூ3-1 dated 26.02.2013 and quash the same and consequently direct the respondent to send revised pension proposals within a specified time.

For Petitioner : Mr.S.Visvalingam
For Respondent : Mr.R.Murugan, Additional Government Pleader

ORDER

This Writ Petition has been filed seeking to quash the proceedings of the respondent vide reference ந.க.எண்.32232/2009/க்யூ3-1 dated 26.02.2013 and to direct the respondent to send a revised pension proposal within a time frame to be stipulated by this Court.

2.The petitioner was recruited as Junior Assistant in the year 1985, in the office of the District Treasury, Virudhunagar. He was promoted as Accountant in the year 1989 and got further promotion as Superintendent in the year 2006. In the post of Superintendent, the petitioner attained superannuation on 28.02.2013. He was allowed to retire on the date of superannuation as per the proceedings of the respondent. Before his retirement, charges were framed against the petitioner under Rule 17-b of Tamil Nadu Civil Services (Discipline and Appeal) on 25.08.2011. After the explanation was submitted by the petitioner, an enquiry officer was appointed and after the completion of enquiry, submitted his report holding that the charges were proved. Thereafter, the respondent passed an order imposing the punishment of stoppage of the petitioner's increment for a period of one year without cumulative effect. This order of punishment was passed on 26.02.2013, i.e., just two days prior to the retirement of the petitioner. Since no increment was due to be accrued to the petitioner, by virtue of retirement, the petitioner filed the writ petition challenging the order of punishment mainly on the ground that such order of stoppage of increment cannot be ordered just before his retirement.

3.The learned counsel for the petitioner also relied upon the Government Order vide G.O.Ms.No.113, dated 02.08.2006. In the said Government Order, two provisos were introduced to Rule 8(iii) of the Tamil Nadu Civil Services (Discipline and Appeal) rules, as per which the respondent cannot impose a punishment of stoppage of increment for a period of one year without cumulative effect, when no increment is due to the employee because of retirement. Since the factual position is not disputed by the respondent, this Court has no hesitation to quash the impugned order dated 26.02.2013 passed by the respondent.

4.The learned counsel for the petitioner further submitted that recovery was also impermissible in this case, as per the Honourable Division Bench of this Court. He also submitted that specific amount has been deducted towards DCRG and this Court should also direct for refund of the said amount deducted from the petitioner's salary. The learned counsel relied upon the judgment of the Honourable Division Bench of this Court in Writ Appeal No.239 of 2007, in the case of **S.A.Kajanajmudeen Vs. The District Collector, Dindigul District**, wherein the two provisos which were introduced to Rule 8(iii) introduced vide G.O.Ms.No.113, Personnel and Administrative Reforms (N) Department, dated 02.08.2006 were explained. The Honourable Division Bench considered and interpreted the word 'contingency' found in second proviso and held that the second proviso cannot be applied when the punishment of withholding increment cannot be given effect to due to retirement on attaining the age of superannuation. The order of punishment was quashed and the first and second respondents were directed to make payment of entire DCRG amount without any deduction which has been ordered vide proceedings dated 31.03.2017.

5.In the case cited supra, a learned Single Judge of this Court, while rejecting the prayer to direct the respondent to pay the entire DCRG amount to the petitioner therein without any deduction held that the second proviso to Rule 8 (iii), specifically enables the respondent to recover equivalent monitory value, and that the order of recovery made during the pendency of the writ petition, was proper. However in the writ appeal, the Honourable Division Bench, held that the second proviso makes it clear that said proviso can be made applicable only when the punishment of withholding of increment cannot be implemented on account of any other contingency other than retirement by superannuation that arises after imposition of penalty.

6.The learned counsel for the petitioner also relied upon yet another judgment of another singe Judge of this Court dated 03.04.2012 in W.P.No.4086 of 2011, wherein the Writ Petition filed for similar prayer was allowed following the judgment of Division Bench. The learned Single judge has observed that the amount recovered from the petitioner therein should be refunded within a period of four weeks from the date of receipt of a copy of this order.

7.It is seen that in the said writ petition, the petitioner therein specifically prayed for a mandamus to direct the respondent to refund the amount recovered from him. But, in the present writ petition no prayer is sought for by the petitioner.

8.Though the petitioner had an opportunity to amend the prayer by producing the order of recovery, the same has not been done. In the absence of any materials or pleading connecting to the relief that is now sought for, this Court cannot grant such relief. However, liberty is given to the petitioner to workout his remedy seeking refund of the money deducted towards DCRG amount payable to the petitioner either by filing a representation before the authorities concerned or by filing an independent writ petition. In case this order renders the recovery, pending writ petition illegal without any factual controversy, the respondent shall refund the amount recovered within six weeks from the date of receipt of a copy of this order.

9.Accordingly, this Writ Petition is allowed with the above directions. No costs.

Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar(CS)

To

The Commissioner of Treasuries and Accounts,
Panagal Buildings,
Saidapet, Chennai 600 015.

+1 CC to Mr.S.VISVALINGAM, Advocate (SR-89565[F] dated 26/09/2019)
+1 CC to spl.GP (SR-90222[F] dated 27/09/2019)

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