



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD) No.17721 of 2017

and

W.M.P. (MD) No.14272 of 2017

K.Ganesan

... Petitioner

vs.

1) The Accountant General (Accounts &
Entitlement) Tamil Nadu
Office of the Accountant General (Accounts &
Entitlement) Tamil Nadu,
361, Anna Salai,
Chennai 600 018

2) The Deputy Director of Health Services,
Pudukottai.

3) The Treasury Officer,
District Treasury,
Pudukottai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order dated 25.05.2017 passed by the first respondent and quash the same and consequently to direct the first respondent to pay arrears of monthly pension and continue to pay the monthly pension.

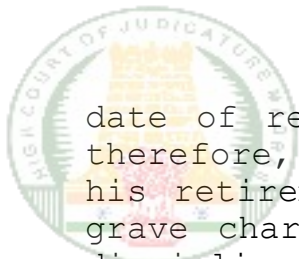
For Petitioner : Mr.J.Anandkumar

For R-1 : Mr.P.Gunasekaran

For RR 2 & 3 : Mr.C.M.Marichellaiah Prabhu,
Additional Government Pleader

O R D E R

The petitioner, who had earlier served as Superintendent in the second respondent office had reached the age of superannuation on 28.02.2015, on which date, he was permitted to retire. As on the



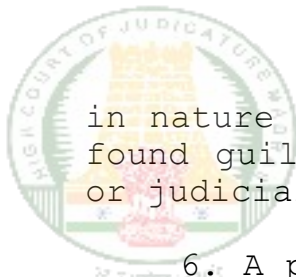
date of retirement, there were no charges pending against him and therefore, he was extended with the monthly pension from the date of his retirement onwards. By a charge memo dated 10.06.2016, certain grave charges have been levelled against the retired employee and disciplinary proceedings were initiated. However, his monthly pension was stopped from 01.08.2016 onwards. On the petitioner's request for continuation of the payment of monthly pension, the first respondent herein had rejected the same through the impugned order dated 25.05.2017, which is under challenge in the present writ petition.

2. The learned counsel for the petitioner would submit that under Rule 9 of the Tamil Nadu Pension Rules, 1978 the respondents are not entitled to stop the pension since the petitioner has not been found guilty of any misconduct or negligence. In support of his contention, the learned counsel also relied upon the Hon'ble Division Bench judgment of this Court. The learned counsel for the first respondent would submit that under Rule 69 of the Tamil Nadu Pension Rules, the petitioner would be entitled only for payment of provisional pension, since the disciplinary proceedings is pending against him.

3. The learned Additional Government Pleader appearing on behalf of the respondents 2 & 3 would submit that the disciplinary proceedings are not being proceeded further in view of the non-cooperation of the petitioner, since he is absconding. Even otherwise, the learned Additional Government Pleader submitted that in view of Rule 8 of the Tamil Nadu Pension Rules, the respondents are entitled to permanently withhold the monthly pension. By drawing attention of this Court to the charges levelled against the petitioner, the learned Additional Government Pleader submitted that the charges against the petitioner is that he has manipulated cheques and misappropriated amounts to the tune of Rs.1,22,00,800/- between 14.11.2005 to 28.02.2015, which came to be found. As such, the charges itself being serious in nature, the impugned proceedings does not suffer from any infirmity.

4. I have given careful consideration to the submissions made by the respective counsels appearing on either side.

5. Rule 9(i) of the Tamil Nadu Pension Rules provides that the Government would have the right to withhold or withdraw the pension or a part thereof, whether permanently or for a specified period, if, in any departmental or judicial proceeding, the petitioner is found guilty of grave mis-conduct or negligence during the period of his service. While interpreting Rule 9 of the Tamil Nadu Pension Rules, the Hon'ble Division Bench of this Court in the decision rendered in the case of **Union of India Rep. by Director, Intelligence Bureau vs. V.V.Krishna Kumar** in W.P.No.34163 of 2012 dated 13.03.2015 had held that the right to withhold the pension under Rule 9 of the Tamil Nadu Pension Rules, is actually permanent



in nature and in order to invoke the same, the petitioner should be found guilty of grave misconduct or negligence in any departmental or judicial proceedings.

6. A plain reading of Rule 9 of the Tamil Nadu Pension Rules as well as by following the decision of the Hon'ble Division Bench in the aforesaid case, it is clear that in order to withdraw the pension by invoking Rule 9 of the Tamil Nadu Pension Rules, the disciplinary proceedings initiated against the petitioner ought to have concluded. Admittedly, in the instant case, the disciplinary proceedings is yet to be completed and therefore, the impugned order withholding the petitioner's pension may not be proper.

7. As rightly pointed out by the learned standing counsel for the first respondent, a pensioner who is undergoing disciplinary proceedings would be entitled only for payment of provisional pension in view of Rule 69 of the Tamil Nadu Pension Rules. Rule 69 of the Tamil Nadu Pension Rules provides that when a departmental or judicial proceedings is pending against a government servant referred to Rule 9(4), the Head of office shall pay provisional pension not exceeding the maximum pension which could have been admissible on the basis of qualified service upto to the date of retirement of the Government servant. The provision itself is self explanatory to the effect that when disciplinary proceedings are initiated against a pensioner, the pension he would be entitled to will only be a provisional pension and such provisional pension requires to be ordered by the Head of office in which the petitioner was last employed.

8. The learned Additional Government Pleader would submit that though the disciplinary proceedings were initiated way back on 10.06.2016, there is no effective progress on the same, in view of the non-cooperation of the petitioner. Such statement is refuted by the learned counsel for the petitioner and he submits that the said statement is not true. Without going into such statements made by both the counsels, this Court is of the view that, if a time limit is stipulated for the disciplinary proceedings to be completed, the ends of justice would be secured. Likewise, in view of the pendency of the disciplinary proceedings, the petitioner can be directed to approach the second respondent herein, seeking for provisional pension for which he would be entitled in view of Section 69 of the Tamil Nadu Pension Rules.

9. In the light of the above observations, the impugned order dated 25.05.2017 directing to stop payment of the petitioner's pension is hereby quashed. However, it is held that the petitioner would only be entitled for provisional pension for which he may be entitled under Rule 69 of the Tamil Nadu Pension Rules 1978.

10. The second respondent shall endeavour to complete the disciplinary proceedings initiated against the petitioner herein, as



expeditiously as possible, in any event within a period of three months from the date of receipt of a copy of this order. The petitioner herein is called upon to cooperate with the disciplinary proceedings before the second respondent. Insofar as the payment of provisional pension is concerned, the petitioner is at liberty to approach the second respondent with an appropriate application seeking for payment of provisional pension under Rule 69 of the Tamil Nadu Pension Rules and on receipt of such application, the second respondent herein, shall take necessary action on the application and pass appropriate orders in accordance with law within a period of two weeks therefrom.

11. Accordingly, the Writ Petition is disposed of. No costs. Consequently, connected W.M.P.(MD) No.14272 of 2017 is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1) The Accountant General (Accounts & Entitlement) Tamil Nadu
Office of the Accountant General (Accounts & Entitlement) Tamil Nadu, 361, Anna Salai, Chennai 600 018

2) The Deputy Director of Health Services, Pudukottai.

3) The Treasury Officer, District Treasury, Pudukottai.

+1 CC to M/s.J.ANAND KUMAR, Advocate (SR-104048[F] 09/12/2019)
+1 CC to M/s.P.GUNASEKARAN, Advocate (SR-104098[F] 09/12/2019)
+1 CC to M/s.Special Govt.Pleader (SR-104227[F] dated 10/12/2019)

Order made in

W.P. (MD) No.17721 of 2017

09.12.2019

sts

SDS(07.01.2020) 4P-7C