IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 23.01.2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ
W.P.No.15204 of 2008

K.Balraj ... Petitioner

Vs.

1.Government of Tamil Nadu rep
by Secretary to Government,Municipal
Administration and Water Supply Department
Fort St.George
Chennai-600 009

2.The Commissioner of Municipal Administration
Chepauk, Chennai-600 005

3.The Director of Local Fund Audit
Kuralagam, Chennai-600 108

4.The Municipal Commissioner
Thanjavur

5.The Municipal Commissioner
Cuddalore

6.The Municipal Commissioner
Virudhachalam, Cuddalore District

7.The Municipal Commissioner
Pattukottai, Thanjavur District

8.The Regional Director Municipal Administrative
Thanjavur Region, Thanjavur
R8 impleaded as per order of this Court
dated 23.01.2020 made in M.P.No.1 of 2011
in W.P.No.15204/2008 ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certioraified Mandamus, calling for the records of the third respondent relating to P.P.O.No.19857/M (Ni.Mu.Mo.59462/MPV.5/2007) dated 11.2.2008 of the third respondent quash the same to the limited extent of withholding of Rs.2,62,400/- i.e. D.C.R.G. payable to the Petitioner and (2) Pro.No.8374/06/A3 dated 27.02.2007 of the 8th respondent and quash the same to the limited extent conditions imposed for retirement and issue consequential directions to the respondents to disburse the sum of Rs.2,62,400/- recovered from the D.C.R.G to the petitioner forthwith with interest at 18 percent per annum from 11..02.2008 onwards till date of refund.

(Prayer amended as per order dated 23.01.2020 in MP.NO.2/11 WP.No.15204/08)

For Petitioner : Mr.M.Ravi
For Respondents: Mr.P.Chinnadurai
Addl.Govt.Pleader for R1 to 3 and 8

Mr.V.Ragupathi for R4

Mr.N.Subbarayalu for R6 and 7

No Appearance for R5

O R D E R

Petitioner was originally appointed as Typist in Thanjavur Municipality on 01.06.1972 and promoted as Assistant on 01.04.1994 and continued till 2000. Thereafter, he was transferred to Pattukottai Municipality. He attained the age of superannuation and was permitted to retire from service on 28.02.2007 as Accountant, Class IV, Pattukottai Municipality as per the orders of the Regional Director of Municipal Administration in Pro.No.8374/06/A3 dated 27.02.2007. The grant of permission to retire incorporated several conditions of withholding the dues from the DCRG amount payable to the petitioner. Aggrieved over the same, the petitioner is before this Court.

2. According to the petitioner even though it is stated that one Karunanandan watchman was permitted to continue in service upto 60 years of age i.e., beyond age of his retirement at 58 years. He retired in the year 2000 after attaining the age of 60. The salary paid for the period between 1998-2000 was considered as loss caused to the Government and persons who were holding the post at that relevant point of time were called to

set right the loss to the Government. Accordingly, one A.G.Batcha, Manager, Dindigul Municipality and one A.Thangaiyan, Manager, Koothanallur Municipality have remitted a sum of Rs.5139/- and Rs.1314/- respectively. The petitioner was working from 11.03.1999 to 29.02.2000 as Assistant and he has not taken any steps for the retirement of said watchman therefore, his liability was fixed to the tune of Rs.26,609/-.

3. It is well settled that as per rule 9(1)(b) of Tamil Nadu Pension rules, 1978 any pecuniary loss caused to the Government or to any local body and the Government employee, who was found guilty of grave misconduct or negligence during his service, the amount can be with held from pension or DCRG. In the instant case, the 4th respondent Municipality Commissioner of Thanjavur Municipality would state that the show cause notice was issued to four assistants who were working in the concerned seat during the period i.e the watchman was allowed to continue in his service beyond the age of retirement. All the four assistants have submitted their explanation, but the Commissioner of Municipal Administration/2nd respondent herein is yet to pass orders. From the statement made by the 4th respondent, it is very clear that no disciplinary proceedings were initiated against the petitioner or anybody else, for any misconduct and no orders were passed for recovering the said amount. However, the petitioner was permitted to retire with condition that the money will be withheld. It is also well settled that the relationship between the Government and his employee ceases once the Government employee is permitted to retire. No money can be withheld without following the ingredients of rule 9 of Tamil Nadu Pension Rules 1978. Rule 9(1)(b) reads as under:

> " 9. Right of Government to withhold or withdraw pension.
>
> (1) (b) In case there is any pecuniary loss caused to the Government, to any local body or to any co-operative societies comprising of Government servants and registered under the Tamil Nadu Co-operative Societies. Act. 1961, and if in any, departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement, the Government shall also have the right of ordering recovery from the Pension [or Death-cum-Retirement Gratuity] of the whole or part of the pecuniary loss caused by such grave misconduct or negligence:"

4. The above rule puts a restriction for initiating disciplinary proceedings. No disciplinary proceedings can be initiated for an incident or misconduct, which had taken place four years prior to the institution of the disciplinary proceedings. In other words, for any misconduct which had taken place prior to four years of retirement of an employee, disciplinary action cannot be initiated. In the instant case, the petitioner retired from service in the year 2007, wherein the said incident have taken place between 1998-2000. In that event, for an incident which had taken before seven years, disciplinary proceeding cannot be initiated at this juncture. Further, without quantifying the loss caused to the Government and without quantifying the liability of the petitioner, it cannot be recovered at random by fixing percentage on all the persons, who were holding charge. The said watchman continued beyond the age of his superannuation at 58 years. On that date petitioner was not working at that office. There is no material produced by the respondent to show as to who was responsible for his continuation beyond 58 years. Even though, the petitioner was serving as an assistant between 11.03.1999 and 19.07.2001, it is not clearly stated that in what way be contributed for the misconduct. In an institution like Municipality, where hierarchy of offering working, decisions shall be taken at the top. The administrative and financial powers vest with them. While so without taking action against them, fixing the liability only on the assistants is not tenable. Above the post of the petitioner there are several superior officers are functioning. If at all it is construed as an misconduct those who have endorsed the payment of salary and the officers were responsible for disbursement of salary are also equally liable. In the instant case, the respondents have conveniently omitted to initiate disciplinary proceedings nor passed any order of recovery against individual officers. Without passing any order of recovery through a departmental or judicial proceeding withholding the amount is contradictory to Rule 9 of Tamil Nadu Pension Rules, 1978.

5. The judgment of this Court in Kootha Pillai vs Commissioner, Municipal Administration, Chennai and Others, 009 1 MLJ 761, it is held as follows:

> " 30. The Supreme Court and this Court have considered the issue relating to the authority and power of the government or Head of the department from initiating or continuing the departmental action, if already taken, against the government servant, after retirement. In Bhagirathi Jena v. Board of Director, O.S.F.C. Reported in 1999(3) SCC 666, the Supreme Court, at Paragraph 7, held as follows:

> "7. In view of the absence of such a provision in the above said regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in the case of misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.06.1995, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement."

6. Once the Government servant retires from service the relationship between the Government servant and Government ceases to exist. Further proceedings cannot be initiated after his retirement, that too for an incident, which had taken place seven years prior to his retirement. Therefore, withholding of money without any disciplinary proceeding and without passing any order giving opportunity to the petitioner to defend his case is clearly illegal and abuse of process of law. In such circumstances, I am inclined to set aside the impugned order withholding a sum of Rs.2,62,000/- from the DCRG of the petitioner.

7. Learned counsel appearing for the respondent would submit that the amount has been forwarded by the 3rd respondent to the 7th respondent office and it is deposited in a bank account. In such event, the petitioner is entitled to receive the said amount along with accrued interest as available in the bank. If not deposited, the respondents are directed to deposit the amount within a period of four weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government of Tamil Nadu
Municipal Administration and Water Supply Department
Fort St.George, Chennai-600 009

2.The Commissioner of Municipal Administration
Chepauk, Chennai-600 005

3.The Director of Local Fund Audit
Kuralagam, Chennai-600 108

4.The Municipal Commissioner, Thanjavur

5.The Municipal Commissioner, Cuddalore

6.The Municipal Commissioner, Virudhachalam, Cuddalore District

7.The Municipal Commissioner, Pattukottai, Thanjavur District

8.The Regional Director Municipal Administrative
Thanjavur Region, Thanjavur.

+1 cc to Government Pleader Sr.No.
+1cc to Mr.V.Raghupathi , Advocate SR.No. 4666

W.P.No.15204 of 2008

A.SK(09/10/2020)