

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	Orders Pronounced on
25.02.2020	01.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.2206 of 2016

R.Thangam

...Petitioner

Vs.

1. The Principal Secretary to Government,
Home Department (Police IV),
Fort St. George, Chennai - 600 009.
 2. The Director General of Police,
Mylapore, Chennai - 600 004.
 3. The Commissioner of Police,
Vepery, Chennai 600 007.
- ...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent in G.O.(2D) No.308 Home (Police-IV) Department, dated 10.09.2015 and quash the same and to direct the respondents to disburse the petitioner's pension in full from 31.-3.2000 the date of the petitioner's superannuation from service with all attendant benefits and arrears.

For Petitioner : Mr.Raghupathy for
Mr.P.Chandrasekar

For Respondents : Mr.J.Ramesh, A.G.P.

O R D E R

Challenge in the writ petition is against the order passed by the first respondent, dated 10.09.2015 G.O.(2D) No.308 Home (Police-IV) Department, withdrawing the pension granted to the petitioner on the ground of conviction ordered in the criminal case and also a fine of Rs.52,000/- imposed against the petitioner.

2. The case of the petitioner in brief is as follows: The petitioner joined the Police Department as grade II Police Constable in the year 1966. While the petitioner was employed at J.J. Nagar Police station on 27.8.1997, he was placed under suspension for the custodial death of an accused Selvam who died on 24.8.2007. As a result of the death of the prisoner, the police station was attacked by a mob on 25.8.2007. The order of suspension was revoked on 22.3.2008. The petitioner was to attain superannuation of service on 31.3.2000. However, on 28.3.2000, once again he was placed under suspension by the proceedings of the third respondent in C.O.P. Order No.488 of 2000 and a charge memo in PR.55/PR(1)/COP/2000 dated 28.3.2000 served on the petitioner. The first respondent initiated both criminal proceedings as well as disciplinary proceedings against the petitioner by G.O.(Ms) No.1441, Public (L & O.E.) dated 4.9.1998. In the criminal case, the petitioner was convicted and imposed a fine of Rs.2000/- by the Additional Sessions Court - FTC, Poonamallee, besides compensation of Rs.50,000/- to the wife of the deceased. In the disciplinary proceedings in PR.55/2000, the third respondent by an order, dated 7.3.2001 imposed a punishment of three stages reduction of pay for a period of 3 years with cumulative effect. Thereafter, the order of suspension, dated 28.3.2000 was revoked by the first respondent vide G.O.(2D) NO.440, Home (POL.IV) department, dated 3.9.2010 and the petitioner was allowed to retire from service, vide G.O.(2D) No.441 Home (POL.IV) Department, dated 3.9.2010. Thereafter, the third respondent by a communication, dated 7.12.2010 suspension order was revoked and the petitioner was permitted to retire from service on superannuation with effect from 31.3.2000.

3. On 6.9.2011, by letter No.71275/Pol.IV/2000-27 Home (Pol.IV) Department, dated 9.7.2011, the first respondent issued show cause notice calling for explanation from the petitioner, why the punishment of withdrawal of pension in full should not be imposed. The petitioner submitted explanation on 14.9.2011 and the same was forwarded to the first respondent by the second respondent. However, no final order has been passed. Already, the criminal Court convicted the petitioner in connection with criminal case in S.C.No.155 of 2003. Thus, the stoppage of pensionary benefits would certainly amounts to violation of Article 21 of the Constitution of India. Since the representation of the petitioner was not considered, the petitioner filed W.P.No.No.31094 of 2014, wherein this Court by order, dated 5.2.2015 directed the first respondent to dispose of the application submitted by the petitioner, within a period of two months from the date of receipt of a copy of the order. As the Court order was not complied with, the petitioner filed contempt petition No.1851 of 2015 and thereafter, the

impugned order has been passed rejecting the representation of the petitioner. Challenging the order, the petitioner has filed the present writ petition.

4. Counter affidavit has been filed on behalf of the first respondent wherein it is stated as under:

It is submitted that sequel to the Police Standing Order 145 enquiry, departmental disciplinary action under rule 3 (b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, was initiated against the petitioner and he was placed under suspension on 28.3.2000 and also not allowed him to retire from service on superannuation on 31.3.2000. The Government in G.O.(2D) No.440, dated Home (Pol.IV) Department, dated 3.9.2010, taking into account that the suspension of the petitioner from service is not warranted for any other departmental disciplinary proceedings case / criminal case / Vigilance enquiry, the Government revoked the order of suspension of the petitioner without prejudice to the departmental action in P.R. No.55/2000 pending against him. The Government in G.O.(2D) No.441, Home (Pol.IV) Department dated 3.9.2010, allowed the petitioner to retire from service on superannuation with effect from 31.3.2000 A.N. without prejudice to the departmental action in PR.No.55/2000 pending against him. Since the criminal case ended in conviction against the petitioner and since he was found guilty of grave misconduct, the Government decided to invoke Rule 9(1) (a) of the Tamil Nadu Pension Rules, 1978 against him for imposition of punishment of withdrawal of pension in full. The petitioner was directed to submit his reply specifically as to whether he admits or accept the proposed punishment of withdrawal of pension in full or not. The petitioner submitted his reply, dated 14.9.2011 to the Government. The Government after careful examination, decided to impose the punishment of 'Withdrawal of pension in full' and passed order vide G.O.(2D) No.308, Home (Pol.IV) Department, dated 10.9.2015. Therefore, the impugned order passed by the first respondent is perfectly valid in law and the writ petition is liable to be dismissed.

5. Heard the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

6. While the writ petitioner was employed at J.J. Nagar Police station, was placed under suspension on 28.3.2000 and initiated departmental proceedings in P.R.No.55/2000 against the writ petitioner and the petitioner was not permitted to retire from service on superannuation on 31.3.2000, besides criminal case registered against the petitioner in S.C.No.155 of 2003 on the file of the Additional District Sessions Judge

(Fast Track Court), Poonamallee. In the departmental proceedings, the petitioner was imposed a punishment of reduction of pay for three years with cumulative effect. In the criminal case, the petitioner was convicted by the Additional District Sessions Court, (Fast Track Court) Poonamallee, by judgment, dated 27.2.2004 in S.C.No.155 of 2003 and imposed a fine of Rs.2000/- besides compensation of Rs.50,000/- to the wife of the deceased Selvam. Thereafter, the suspension order was revoked and the petitioner was permitted to retire from service vide G.O.(2D) No.441, Home (Pol.IV) Department, dated 3.9.2010 on superannuation with effect from 31.3.2000. Based on the conviction in the criminal case and also fine imposed against the petitioner and also he was found guilty of grave misconduct in departmental proceedings, the petitioner was served with show cause notice by letter No.71275/Pol.IV/2000-27 Home (Pol.IV) Department to submit explanation regarding the imposition of punishment of withdrawing pension. After getting explanation, dated 30.5.2013, the impugned order has been passed by the first respondent, withdrawing the pension granted to the petitioner.

7. According to the learned counsel appearing for the petitioner, pursuant to the judgment passed in a criminal case in S.C.No.155 of 2003 on the file of the Additional District and Sessions Court (Fast Track Court), Poonamallee, the suspension order passed against the petitioner was revoked. While so, the first respondent cannot withdraw the pension granted to the petitioner for the reason that two punishments cannot be imposed for the same cause of action or the same offence. Further, the alleged occurrence taken place in the year 1997, whereas the impugned order has been passed withdrawing the pension of the petitioner in the year 2015. Even after revocation of suspension order, there is a delay of five years in imposing punishment of withdrawing pension, namely, the suspension order was revoked in the year 2010 and the impugned order withdrawing the pension was passed in the year 2015. The impugned order is liable to be quashed on the sole ground of inordinate delay. Further, when Tamil Nadu Public Service Commission recommended for grant of pension to the petitioner, the first respondent without recording any reason ignored the view of T.N.P.S.C. It is further contended by the learned counsel appearing for the petitioner, once the Service Commission had recommended for grant of pension, the first respondent ought to have afforded an opportunity to the petitioner prior to overruling the recommendations of the Tamil Nadu Public Service Commission. Without considering the application submitted by the petitioner for pension, the first respondent has chosen to pass the impugned G.O.(2D) No.308, dated 10.9.2015. In support of his submissions, the learned counsel appearing for the petitioner relied on the following decisions:

1. Civil Appeal No.6770 of 2013, dated 14.8.2013 [STATE OF JHARKHAND & OTHERS VS. JITENDRA KUMAR SRIVASTAVA AND ANOTHER]
2. (2004) 13 SCC 342 [LT. GOVERNOR, DELHI AND OTHERS VS. HC NARINDER SINGH]
3. MANU/SC/0175/2018 = (2018) 14 SCC 92 [UCO BANK AND OTHERS VS. RAJENDRA SHANKAR SHUKLA]
4. CDJ 2020 MHC 386 [M.SAKTHIVEL VS. THE PRINCIPAL SECRETARY / TRANSPORT COMMISSIONER, CHENNAI & OTHERS]
5. CDJ 2012/MHC/4875 [MOKKARAJ & OTHERS VS. PANDIYAMMAL]
6. W.P.No.6007 of 2017, DATED 27.11.2017 [M.SUCEELA BAI VS. THE GOVT. OF TAMIL NADU REP. BY ITS PRINCIPAL SECRETARY TO GOVT. REVENUE ADMINISTRATION]
7. W.A. No.3162 of 2019 DATED 20.09.2019 [[M.SUCEELA BAI VS. THE GOVT. OF TAMIL NADU REP. BY ITS PRINCIPAL SECRETARY TO GOVT. REVENUE ADMINISTRATION]

8 The learned counsel appearing for the petitioner contended that two punishment cannot be imposed on the same cause of action which would amount to double jeopardy and hence, such an action could not be sustained. In support of his submission, he relied on the decision of the Hon'ble Supreme Court in [LT. GOVERNOR, DELHI (supra), PANDIYAMMAL case (supra) and M.SAKTHIVEL (supra) case. In the case of M.SAKTHIVEL (supra), the second charge memo was challenged on the ground that substance of the charge against the petitioner was exactly the same as found in the first charge memo and the explanation of the petitioner was not considered by the authority. Hence, the charge memo quashed by the respondent. Yet another decision relied upon by the learned counsel for the petitioner in the case of UCO BANK AND OTHERS, the delay of about 7 years in issuing a charge sheet is totally unreasonable and unacceptable and the charge sheet is liable to be set aside on the ground of inordinate and unexplained delay. In the unreported judgment of this Court in M.Suceela Bai case (supra), the disciplinary proceedings have been initiated after 4 years of the superannuation. Therefore, by virtue of Rule 9(2) of Pension Rules, this Court has held that the disciplinary proceedings initiated after four years from the date of occurrence, cannot be sustained.

9 Therefore, according to the learned counsel appearing for the petitioner, once the criminal case was launched against the petitioner, suspension order was revoked vide G.O.(2D) No.40 Home (Pol.IV) Department, dated 3.9.2010 and the pensionary

benefits also granted to the petitioner, the respondent cannot exercise power under Rule 9(2) of The Tamil Nadu Pension Rules to withdraw the pensionary benefits granted to the writ petitioner, in the light of the aforesaid decisions.

10 The learned Additional Govt. Pleader appearing for the respondents relied upon the decision of the Hon'ble Supreme Court in SITA RAM YADAVA VS. UNION OF INDIA AND OTHERS [1995 SUPP (4) SCC 618] wherein the Hon'ble Supreme Court held as under:

"6. This Court, while granting special leave, passed the following order :

"Special leave granted.

By the Presidential order dated 5.5.1987, both pension and DCRG have been withheld. Counsel for the petitioner submitted that so far as gratuity is concerned, the matter stands covered by this Court's decision in D.V. Kapur V. Union of India, 1990 (4) SCC 314. That case turned on the interpretation of Rule 9 of the Civil Services Conduct Rules, 1972. In paragraph 10 of the judgment after referring to the Rule, this Court pointed out that the right to gratuity being a statutory right could be taken away by a valid Rule only and since Rule 9 did not empower the withholding of gratuity and no other rule was pointed out which permitted the withholding of gratuity, the order withholding gratuity could not be sustained. We enquired of Mr. Tulsi, learned ASG, if he was in a position to point out any Rule which entitled the President to withhold DCRG. He was not able to do so. It, therefore, prima facie appears that the contention urged by counsel in regard to gratuity is well founded. We, therefore, by this interim order direct the release of DCRG to the petitioner on the petitioner giving an undertaking to this Court to refund the same in the event this Court so directs."

11 Yet another decision of the Andhra Pradesh High Court, in CHIEF COMMISSIONER OF LAND ADMINISTRATION, A.P., HYDERABAD AND ANOTHER VS. R.S. RAMARISHNA RAO AND ANOTHER [2010 SCC ONLINE AP 37 = (2010) 2 ALD 773 (DB) relied on by the learned Additional Govt. Pleader appearing for the respondent, wherein it has been held as under:

"19. The final orders, as indicated in sub-rules (b) and (c) of Rule 52(1) of the

Pension Rules, are the orders to be passed by the department upon conclusion of the departmental or judicial proceedings. Once the departmental proceedings end in favour of delinquent employee, there is no question of agitating the orders of the disciplinary authority by the department itself. Therefore, the final orders are required to be passed for the purpose of payment of retirement benefits.

20. Insofar as the criminal cases are concerned, the department has got a right to file an appeal. But, it cannot be said that the judicial proceedings have not been concluded. Once the criminal Court acquits the accused, it must amount to be the conclusion of the judicial proceedings in the first instance. Therefore, the appeals filed against the acquittal orders cannot be treated as continuation of criminal proceedings. The same view was taken by a Division Bench of Calcutta High Court in State of West Bengal's case (supra), referred to above. Para 9 of the said judgment reads as follows:

'The submission of Mr.Chakraborty to the effect that pendency of the appeal against acquittal will amount to continuation of the proceedings cannot be accepted. Continuation of the proceedings must relate to investigation, enquiry or trial and such investigation, enquiry or trial, if any, have come to an end with the judgment of acquittal. The same being continuing in the instance case, is misconceived, only on the ground that an appeal there against is pending. If the respondent No.1 is convicted by the Appeal Court for commission of a criminal offence, sub-rule (4) of Rule 3 of the said Rules would be attracted. Keeping in view the fact that different sub-rules of Rule 3 operate in different fields, we are of the opinion that sub-rule (3) of Rule 3 be held to be operative only in the case namely, when an investigation enquiry or trial remains pending and not or when the employee person is acquitted. The situations obtaining under different sub-rule being absolutely different, in our opinion, sub-rule (3) of Rule 3 must be given a restrictive interpretation''.

21. If the appeal is not in continuation of original criminal proceedings,

the order of acquittal is a final order within the ambit of Rule 52 of the Pension Rules, referred to above. After the orders of acquittal passed by the criminal Court, as already stated above there is no power for the Government to withhold pension or retirement benefits. The said benefits, therefore, are liable to be paid immediately after acquittal order.

22. If the appeal or revision proceedings are in continuation of the criminal proceedings, there will be no end for the litigation and the employees, who have been acquitted honourably, shall not get retirement benefits till conclusion of all appeals, revisions, special leave petitions etc. Appeal against acquittal, not being continuation of original criminal proceedings, Rule 52 as above, will not be available to Government for withholding retirement benefits.

23. For the aforesaid reasons, we are of the opinion that the Tribunal was correct in passing the impugned order and we do not see any error committed by the Tribunal warranting interference by this Court under Article 226 of the Constitution of India.

24. Even otherwise, we have held in W.P.No.8000 of 2009 and batch, dated 17.11.2009 that when a Government employee suffers conviction and he is dismissed from service under Rule 25 of the State and Subordinate Service Rules, 1996, mere pendency of the criminal appeal and suspension of sentence does not enable such convicted Government employee to seek either reinstatement or payment of retirement benefits. The same analogy applies in the instant cases of acquittal as well and once the Government employee is acquitted of the criminal charge, merely because the State preferred an appeal, the Government cannot withhold retirement benefits of the Government employees, on account of pendency of the appeals against acquittal.

25. Insofar as awarding of interest in O.A.No.7027 of 2006, which is the subject matter of W.P.No.222929 of 2009, is concerned, withholding of pension or gratuity during pendency of the criminal proceedings is justified in the light of Rule 52 of the

Pension Rules, referred to above, and after the acquittal, the employee is entitled to all retirement benefits and consequently, if the said benefits are not paid on acquittal of the employee of the criminal charges, there is no reason why the Government should not be made liable for paying interest over retirement benefits from the date of acquittal. Therefore, we do not see any illegality in awarding interest @ 8% per annum on the retirement benefits from the date of acquittal.''

12 According to the learned Additional Govt. Pleader appearing for the respondents, show cause notice was issued on 9.7.2011 for withdrawal of pensionary benefits and the petitioner made objection on 14.9.2011. Again, he made representation on 30.5.2013. The Government has considered the objection of the petitioner and passed the impugned order. According to the learned Additional Government Pleader appearing for the respondents, T.N.P.S.C. views were not accepted by the Government. Conviction in the criminal case was taken note of by the first respondent and the impugned order has been passed by invoking power under Rule 9(1) (a) of Tamil Nadu Pension Rules.

13 The issue involved in the present writ petition is whether the respondent can withdraw the pensionary benefits granted to the petitioner after attaining superannuation.

14 Now, let us see, Rule 9(1) (a) of Tamil Nadu Pension Rules reads as under:

'The Government reserve to themselves the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period if, in any departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement, and such withholding or withdrawing the pension may be effected irrespective of the fact whether or not any pecuniary loss on account of such grave misconduct or negligence was caused to the Government, to any local body or to any co-operative society comprising of government servants and registered under the Tamil Nadu Co-operative Societies Act, 1961; [Provided that before passing an order

under this sub-rule withholding or withdrawing the pension of a pensioner, the Tamil Nadu Public Service Commission shall be consulted if the pensioner does not agree to such withholding or withdrawal of the pension. The Tamil Nadu Public Service Commission need not be consulted in cases where the pensioner agrees to withholding or withdrawal of the pension but a copy of the order passed by the Government in such cases shall be sent to the commission:] Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the limit specified in sub-rule (5) of Rule 43."

15 Admittedly, the respondent has not chosen to pass the final order on the suspension order passed against the petitioner. The first respondent has passed an order revoking the suspension order passed against the petitioner vide G.O. (2D) No.441, Home (Pol.IV) Department, dated 3.9.2010 and the petitioner was permitted to retire from service on superannuation with effect from 31.3.2000. Thereafter, based on the conviction order passed against the petitioner in the criminal case in S.C.No.155 of 2003, dated 27.2.2004, the present impugned order has been passed to withdraw the pensionary benefits granted to the petitioner, after providing opportunity to the petitioner to submit his explanation. The Government has discretionary power either accept or ignore the views expressed by the Tamil Nadu Public Service Commission.

16. Therefore, the Government has reviewed the departmental proceedings initiated against the petitioner, by sending show cause notice to the petitioner to submit explanation as to why the Government should not impose punishment of withdrawal of pension granted to the petitioner. By virtue of Rule 9 (1) (a) of Tamil Nadu Pension Rules cited supra, the Government has power to withheld or withdraw the pensionary benefits granted to the employee, convicted by the Court of law or punishment imposed in a departmental proceedings. If an officer against whom an enquiry is held is unable to satisfactorily account for possession by himself or by any other person on his behalf, pecuniary resources or property disproportionate to his known sources of income, a charge of corruption should be presumed to have been proved against him and the case will come within the purview of this rule. In the aforesaid Rule says that the property or pecuniary resources in respect of the departmental proceedings are instituted under Rule 9 should have been acquired by the person concerned or any

other person on his behalf anytime within the period of four years before institution of such proceedings. If not instituted while the officer was on duty either before retirement or during re-employment. In view of the provisions under Rule 9 (1) (a) of Tamil Nadu Pension Rules, the petitioner cannot have any legal right to claim pensionary benefits. In view of the above, the decisions relied on by the learned counsel appearing for the petitioner would not support the case of the petitioner. Therefore, the impugned order passed by the first respondent is perfectly valid and in accordance with the provisions of Tamil Nadu Pension Rules. Therefore, this Court does not warrant to interfere with the order passed by the first respondent. The writ petition deserves to be dismissed.

17 In view of the facts and circumstances of the case, relevant rules and the decisions cited supra, the writ petition stands dismissed. No costs.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To

1. The Principal Secretary to Government,
Home Department (Police IV),
Fort St. George, Chennai - 600 009.
2. The Director General of Police,
Mylapore, Chennai - 600 004.
3. The Commissioner of Police,
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