

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2020

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.9764 of 2020

D.Sankar

Assistant Executive Engineer,

P.W.D., W.R.D. (Retd.)

Door No.11/541, Ravi Abirami Nivas,

Sahayamatha Pattanam, Melur Post,

Thoothukudi-628 002.

... Petitioner

vs.

The Government of Tamil Nadu,

Represented by the Principal Secretary to Government,

Public Works Department,

Secretariat, Chennai-9.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondent herein to forthwith regularize the period of suspension with effect from 28.04.2018 till 30.06.2018 and to sanction and disburse all retirement and pensionary benefits after deducting the amount of Rs.24,000/-.

For Petitioner : Mr.M.Ravi

For Respondent : Mr.R.A.S.Senthil Vel

Addl. Govt. Pleader

O R D E R

This Writ Petition has been filed for a direction to the respondent to forthwith regularize the period of suspension with effect from 28.04.2018 till 30.06.2018 and to sanction and disburse all retirement and pensionary benefits after deducting the amount of Rs.24,000/-.

2. Mr.R.A.S.Senthil Vel, learned Additional Government Pleader takes notice for the respondent. By consent of both parties, this writ petition is disposed of at the admission stage itself.

Facts of the case in nutshell:

3. The petitioner was initially appointed as Assistant Engineer in the Public Works Department on 11.08.1982 and was thereafter promoted as Assistant Executive Engineer on 21.12.2007. He had put in an unblemished service of 25 years and also received a certificate to that effect;

3.1. It is submitted that even though his name was empanelled for promotion to the post of Executive Engineer and was at the verge of retirement on 30.06.2018, he was placed under suspension on 25.04.2018, citing the reason of initiation of enquiry under Rule 17(b). Subsequently, three charges were issued against him and the Enquiry Officer held the charges to be not proved. However, the 1st respondent, being disagreed with the view of the Enquiry Officer, held that Charge No.1 was partly proved and Charge No.3 as proved;

3.2. It is further submitted that it was on 31.10.2019 that the respondent had revoked the order of suspension and permitted him to retire from service with effect from 30.06.2018, holding that the disciplinary proceedings pending against the petitioner shall be continued under Rule 9 of the Tamil Nadu Pension Rules. Subsequently, a provisional conclusion was also arrived at by the respondent to impose a punishment of withholding of pension at the rate of Rs.1,000/- per month for a period of two years, with a direction to the petitioner to reply within 15 days on the same. The petitioner also agreed for the provisional conclusion in order to overcome from mental agony over his suspension, avoid the delay in disbursement of the retirement benefits, etc.;

3.3. It is also submitted that the respondent had passed the final order of penalty of cut in pension of Rs.1000/- per month for two years only on 14.02.2020 and since a final order was passed, in terms of Rule 69 of Tamil Nadu Pension Rules, the respondent is bound to disburse the entire retirement benefits after deducting the amount of Rs.24,000/-. Since the proceedings had been initiated only under Pension Rules and had culminated in imposition of a minor penalty of recovery of Rs.24,000/-, the period of suspension from 28.04.2018 to 30.06.2018 has to be treated as duty period for all purposes, thereby he is entitled to all consequential benefits flowing therefrom.

4. It is not in dispute that the petitioner was suspended from service at the verge of his retirement, i.e., 25.04.2018 on certain charges and the Enquiry Officer, after conducting a detailed enquiry, held the charges as not proved. Since the respondent was in disagreement with the report of the Enquiry Officer held otherwise, viz., Charge No.1 was partly proved and

Charge No.3 as proved. It is also not in dispute that the order of suspension was revoked by the respondent on 31.10.2019 and the petitioner was allowed to retire from service with effect from 30.06.2018 with an observation to continue the disciplinary proceedings under Rule 9 of the Tamil Nadu Pension Rules.

5. Finally, the respondent has passed a final order on 14.02.2020 by ordering a penalty cut of Rs.1000/- per month from pension for two years. It is the main plea of the petitioner that since the order of suspension was revoked as early as on 31.10.2019 and the departmental proceedings also got culminated into an imposition of minor punishment, he is automatically entitled to all retiral benefits and the suspension period should be treated as duty period for all purposes.

6. The contention of the respondent, that it was based on the consensus given by the petitioner, the said order of punishment of cut in pension was imposed on the petitioner, cannot be accepted, for the simple reason that the petitioner, at the time of giving such consent, would have thought that payment of penalty amount of Rs.24,000/- could be much safer than spending huge amount for litigation, as the Government may, for some reason or the other, deprive his monetary benefits, in case he had to approach this Court for redressal. The petitioner would also be aware that he may have to incur huge amount towards litigating expenses over and above the amount sought to be provisionally imposed, apart from endless waiting for release of his terminal benefits. The act of the respondent in withholding the terminal benefits of the petitioner, even after revocation of the suspension order and imposition of penalty, is highly depreciated and the respondent ought not to have driven the petitioner to approach this Court for disbursement of his retiral benefits and the respondent, on their own, should have extended the benefits to the petitioner, after adjusting the penalty amount, as the petitioner also consented for deduction of Rs.24,000/- from his retiral benefits.

7. Considering the overall facts and circumstances of the case, I am of the view that there is substance in the submission made by the petitioner and the petitioner is entitled for the direction sought for in this Writ Petition. Accordingly, this Writ Petition is disposed of, with a direction to the respondent to regularize the period of suspension with effect from 28.04.2018 till 30.06.2018 and disburse the entire retirement benefits to the petitioner, including DCRG, revised pay after notional fixation, commutation of pension, pension arrears, encashment of surrender leave and unearned leave on private affairs, etc., within a period of four months from the date of receipt of a copy of this order, after adjusting the amount of Rs.24,000/- that was imposed as per the order of punishment. It

is made clear that no recovery beyond Rs.24,000/- is permissible, as the order of punishment has attained finality and the petitioner also undertook that he will not question the said order of punishment before any forum. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

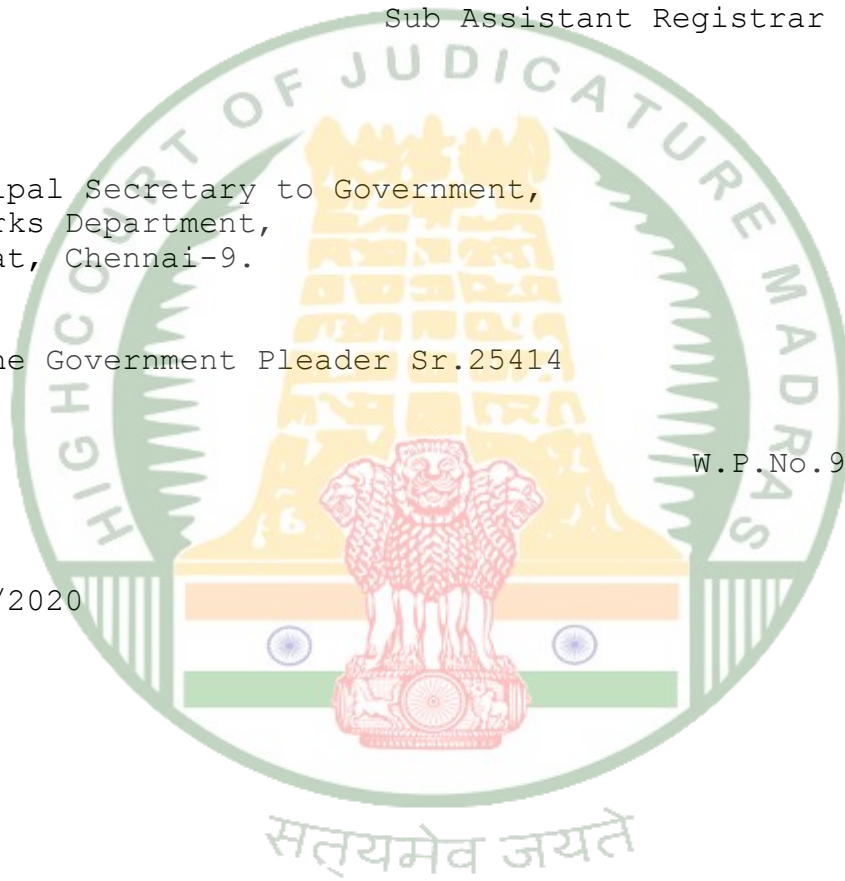
To

The Principal Secretary to Government,
Public Works Department,
Secretariat, Chennai-9.

+1cc to the Government Pleader Sr.25414

W.P.No.9764 of 2020

mp[col]
srg 03/08/2020



WEB COPY