IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.11.2020

Coram

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. No.16412 of 2014

and

WMP No.1506 of 2017

N.Kottai Raj ... Petitioner

-vs -

1. The Principal Secretary/
Commissioner of Commercial Tax,
Ezhilagam,Chepauk,
Chennai - 5.

2. The Commercial Tax Officer,
Harur Circle,
Harur. ..... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned Letter No.V3/13810/2014, dated 08.05.2014 issued by the 1st respondent and quash the same and consequently direct the 1st respondent to disburse the petitioner's service benefit such as encashment of leave and special provident fund forthwith.

For Petitioner : Mr.R.Thiagarajan

For Respondents : Mr.R.Swarnavel, GOVERNMENT ADVOCATE

ORDER

This writ petition has been filed to quash Letter No.V3/13810/2014, dated 08.05.2014 issued by the 1st respondent and consequential direction to the 1st respondent to disburse the petitioner's service benefit such as encashment of leave and special provident fund forthwith.

2. The case of the petitioner is that he joined as Typist in Commercial Tax Department in the year 1977 and subsequently promoted as Assistant Commerical Officer. While so, due to implication in a criminal case, his retiral benefits were not disbursed, though he attained the age of superannuation on 31.05.2008. Hence, he made several

representations, which were rejected by the respondent vide impugned order dated 8.5.2014 informing the petitioner that he is entitled only to get General Provident Fund and the earned leave salary and special provident fund were withheld. In the above backdrop, the present writ petition has been filed.

3. Learned counsel for the petitioner submits that even in a case of removal/dismissal from service, persons are eligible to get their benefits. That being so, benefits like encashment of leave salary and special provident fund were not disbursed to the petitioner. In the light of the decision of this Court in 2019 (5) CTC 19, the petitioner is entitled to receive the same. Insofar as the pendency of disciplinary proceedings with regard to the criminal case is concerned, the petitioner was falsely implicated. Hence, he prays before this Court to issue suitable direction to the respondent to disburse the aforesaid benefits due to the petitioner.

4. Mr.R.Swarnavel, learned Government Advocate appearing for the respondents submits that the petitioner was charge sheeted for involvement in a criminal case and only on exoneration from the charges, he would be entitled to receive the retiral benefits in full, as per Rule. However, he fairly conceded that this Court may issue a direction to the respondents to complete the disciplinary proceedings within a time frame fixed by this Court.

5. This Court gave its anxious consideration to the submissions advanced by the learned counsel on either side and perused the materials available on record.

6. Though very many contentions have been raised by the learned counsel on either side, however, it is an undisputed fact that disciplinary proceedings are pending against the petitioner since the year 2004. It is the contention of the respondents that the pendency of the criminal proceedings against the petitioner is the reason for non-conclusion of the disciplinary proceedings. The Courts have time and again held that the pendency of criminal proceedings is not a bar for concluding the disciplinary proceedings as the disciplinary proceedings can be taken to its logical end, irrespective of the pendency of the criminal proceedings.

7. Further, it has been the consistent view of the Courts that the pendency of the disciplinary proceedings would not be a bar for the delinquent to receive certain retirement benefits. However, it would be inappropriate to disburse all the retiral benefits to the delinquent pending the disciplinary proceedings. However, in the present case, the disciplinary proceedings against the petitioner is pending for more than a decade and a half. It is incumbent on the part of the respondents to complete the disciplinary proceedings against the delinquent as expeditiously as possible so that no

prejudice is caused to the delinquent at the time of his superannuation. However, in the present case, as stated above, the proceedings has been pending for more than a decade and a half. However, as already stated, unless the disciplinary proceedings is finally concluded, the terminal benefits due to the petitioner cannot be settled. In the above back drop, this Court is of the considered view that direction has to be given to the respondents to complete the pending disciplinary proceedings against the petitioner within a prescribed time frame.

8. Accordingly, this writ petition is disposed of directing the respondents to conclude the disciplinary proceedings pending against the petitioner within a period of twelve weeks from the date of receipt of a copy of this order, in accordance with law and subject to the outcome of the disciplinary proceedings, it is open to the petitioner to agitate his rights in a manner known to law. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1. The Principal Secretary/
Commissioner of Commercial Tax,
Ezhilagam,Chepauk,
Chennai - 5.

2. The Commercial Tax Officer,
Harur Circle,
Harur.

C.C. to M/S.Thiyagarajan, Advocate SR.NO.36567
C.C To The SPECIAL GOVERNMENT PLEADER , SR.NO.616

W.P. No.16412 of 2014

KJ(CO)

RRI 21/12/2020