



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.8749 of 2020

S.Mohamed Abdul Nazar,
Head of the Department/
Lecturer (Selection Grade) (Retired),
Annamalai Polytechnic College, Chettinad,
Sivagangai District.

... Petitioner

Vs.

1) The State of Tamil Nadu,
Rep. By its Principal Secretary to Government,
Higher Education Department,
St.George Fort, Chennai 600 009

2) The Commissioner,
Directorate of Technical Education,
Guindy, Chennai 600 025

3) The Principal,
Annamalai Polytechnic College,
Chettinad, Sivagangai District.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to release the revised pay, pension and retirement benefits as per 7th pay commission fixation of the petitioner after withholding a sum of Rs.16,84,466/- as pending recovery proceedings initiated by the 3rd respondent in his proceedings in APC/A3/2016 dated 23.01.2017 and in his proceedings in 344/A3/2017 dated 25.01.2017 subject to the outcome of the pending writ petition in W.P.(MD) Nos.1460 to 1465 of 2017 by considering the petitioner's representation dated 08.07.2020 within the period that may be stipulated by this Court.

For Petitioner

: Mr.C.Venkatesh Kumar
For M/s.Ajmal Associates

For Respondents

: Mr.S.Dhayalan,
Government Advocate



O R D E R

The prayer sought for in this writ petition is for a Writ of Mandamus, directing the respondents to release the revised pay, pension and retirement benefits as per 7th pay commission fixation, of the petitioner after withholding a sum of Rs.16,84,466/- as pending recovery proceedings initiated by the 3rd respondent in his proceedings in APC/A3/2016 dated 23.01.2017 and in his proceedings in 344/A3/2017 dated 25.01.2017 subject to the outcome of the pending writ petition in W.P.(MD) Nos.1460 to 1465 of 2017 by considering the petitioner's representation dated 08.07.2020 within the period that may be stipulated by this Court.

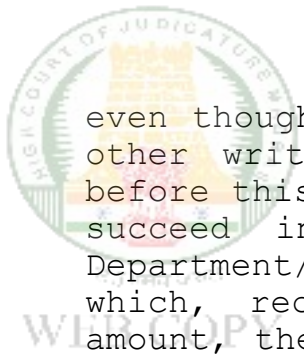
2. The petitioner was working as the Head of the Department/Lecturer at the third respondent Polytechnic College and on attaining superannuation, he retired from service on 31.05.2018. Though he retired on 31.05.2018, his retiral benefits were not disbursed to the petitioner. The reason being, for such withholding of the retiral benefits of the petitioner is that, since there have been two proceedings dated 23.01.2017 and 25.01.2017 initiated against the petitioner, for recovery of some amount and those proceedings were pending and as against those proceedings, the petitioner has filed Writ petitions in W.P.(MD) Nos.1460 to 1465 of 2017 and had obtained an order of interim stay, by order of this Court, dated 31.01.2017 and those cases are still pending before this Court, as a result of which, the respondents have not released the retiral benefits to the petitioner.

3. In this context, it is the grievance of the petitioner that the retiral benefits approximately payable to the petitioner is totally Rs.30,00,000/- (Rupees Thirty lakhs). However, the recovery proceedings initiated against the petitioner is only for a sum of Rs.16,84,466/- and the validity of such proceedings, even though was the subject matter in the writ petitions referred to above, assuming that if the respondents are entitled to recover the said sum of Rs.16,84,466/- from the petitioner, retaining the said amount, the remaining amount can be released to the petitioner as retiral benefits, since the petitioner is a retired employee, who is struggling a lot to meet his daily expenses.

4. In this regard, it seems that a representation has been given to the respondents on 08.07.2020 and the same since has not been considered, the petitioner is before this Court.

5. I have heard Mr.C.Venkatesh Kumar, learned counsel appearing for the petitioner and Mr.S.Dhayalan, learned Government Advocate appearing for the respondents.

6. As has been rightly pointed out by the learned counsel appearing for the petitioner, by projecting the aforesaid case of the petitioner, if at all any recovery proceedings is initiated and



even though the said recovery proceedings are the subject matter in other writ petitions filed by the petitioner, which are pending before this Court, and assuming that ultimately the Department would succeed in those writ petitions and with the result, the Department/ respondents will be entitled to recover the amount, for which, recovery proceeding was initiated, except for the said amount, the remaining amount of the retiral benefits payable to the petitioner cannot be withheld endlessly by the respondents.

7. This position is not disputed by the learned Government Advocate appearing for the respondents. He would only submit that, if the entire retiral benefits is given to the petitioner and ultimately if the respondents succeed in the recovery proceedings, which include the pending writ petitions referred to above before this Court, then it will be very difficult for the respondents to recover the said amount from the petitioner. Therefore, the retiral benefits have been retained.

8. I have considered the said submissions made by the learned counsel appearing for both sides and I have perused the materials available before this Court.

9. As has been rightly pointed out by the learned counsel appearing for the petitioner, if at all the recovery proceedings are initiated only in respect of a sum of Rs.16,84,466/- and the said amount is also retained by the respondents, along with the retiral benefits, this Court feels that, by retaining the said amount, or equal amount, the remaining amount out of the total retiral benefits payable to the petitioner which is approximately quantified by the petitioner as Rs.30,00,000/- can very well be disbursed to the petitioner.

10. In that view of the matter, this Court is inclined to pass the following order in this writ petition:

“(i) that the respondents are hereby directed to consider the request of the petitioner dated 8.07.2020 and accordingly, calculate the amount to be recovered from the petitioner, pursuant to the recovery proceedings initiated by the respondents dated 23.01.2017 and 25.01.2017 and the remaining amount, out of the total retiral benefits payable to the petitioner, shall be disbursed to the petitioner. Even the retained portion of the amount for the purpose of recovery proceedings is subject to the outcome of the W.P. (MD) Nos.1460 to 1465 of 2017. The needful as indicated above shall be undertaken by the respondents within a period of eight weeks from the date of receipt of a copy of this order.”



11. With this direction, the writ petition stands disposed of. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (Records)

WEB COPY

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

- 1) The Principal Secretary to Government,
Higher Education Department,
St.George Fort, Chennai 600 009
- 2) The Commissioner,
Directorate of Technical Education,
Guindy, Chennai 600 025.

Order made in
W.P. (MD) No.8749 of 2020

Dated:
05.08.2020

CS: 02.09.2020 4P 3C