



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.10306 of 2020

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M.Muthumuniyandi (Retd.,)

... Petitioner

Vs.

1) The State of Tamil Nadu,
Rep. by its Secretary to the Government,
Social Welfare and NMP Department,
St.George Fort, Secretariat,
Chennai 600 009

2) The Accountant General,
No.259, Anna Salai,
Block -3, 2nd Floor, DMS Complex,
Teynampet, Chennai 600 006.

3) The Commissioner,
Social Welfare Department,
Commissionerate of Social Welfare,
Panagal Building, Chennai 600 015

4) The District Social Welfare Officer,
Social Welfare Department,
Virudhunagar District,
Virudhunagar.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents herein to pay the Provisional Pension and Gratuity to the petitioner w.e.f. 31.03.2020 with 12% of the interest for the belated payment as per the Rule-69 of the Tamil Nadu Pension Rules, 1978 on the basis of his representation dated 05.08.2020 within the time stipulated by this court and for other reliefs.

For Petitioner : Mr.J.Lawrence

For RR1,3 & 4 : Mr.M.Karuppasamy,
Government Advocate

For R2 : Mr.P.Gunasekaran



O R D E R

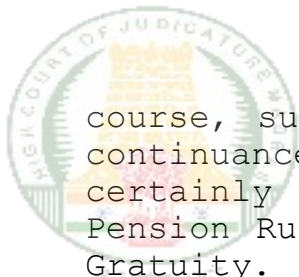
The prayer sought for in this writ petition is for a Writ of Mandamus, directing the respondents herein to pay the Provisional Pension and Gratuity to the petitioner w.e.f. 31.03.2020 with 12% of the interest for the belated payment as per the Rule-69 of the Tamil Nadu Pension Rules, 1978 on the basis of his representation dated 05.08.2020 within the time stipulated by this court and for other reliefs.

2. The petitioner was working in the post of Industrial Cooperative Supervisor, Annai Sivagami Women Tailoring Co-operative Society, Virudhunagar District. On attaining superannuation on 31.03.2020, the third respondent vide his proceedings dated 30.03.2020 has permitted the petitioner to retire from service, however without prejudice to the departmental proceedings initiated against him, that was pending, which shall be continued under Rule 9 of the Tamil Nadu Pension Rules, 1978 (hereinafter referred to as the 'Pension Rules'). In order to appreciate the same, the relevant portion of the order of the third respondent dated 30.03.2020 reads thus:-

"NOW, THEREFORE, it is hereby ordered that the said Tr.M.Muthumuniyandi, formerly Assistant (Grants Section) O/o the Commissionerate of Social Welfare, Chennai, (now Supervisor of Industrial Co-operative, District Social Welfare Office, Virudhunagar District) is permitted to retire from service on his reaching the date of superannuation on the afternoon of 31.03.2020 and the disciplinary proceedings initiated vide the reference 1st cited, pending against him shall be continued under Rule-9 of the Tamil Nadu Pension Rules, 1978 in accordance with the procedure laid down in the said Rules".

3. Though the petitioner was permitted to retire, of course, subject to Rule 9 of the Pension Rules as stated supra, the petitioner has not been paid the Provisional Pension as well as the Gratuity, for which, the petitioner is entitled under the provisions of Pension Rules. In order to get the same, the petitioner has given representations on 02.05.2020, 19.06.2020 and 05.08.2020. However, the respondents, since have not considered those representations so far and still the Provisional Pension and Gratuity also have not been disbursed to the petitioner, in order to get the same, the petitioner has moved this writ petition with the aforesaid prayer.

4. I have heard Mr.J.Lawrence, learned counsel appearing for the petitioner, who invited the attention of this Court to Rule 9(4) as well as Rule 69 of the Pension Rules and by relying upon the said Rules, the learned counsel for the petitioner would submit that, the petitioner since has been permitted to retire from service, of



course, subject to Rule 9 of the Pension Rules for the purpose of continuance of the disciplinary proceedings initiated against him, certainly under sub rule 4 of Rule 9 and read with 69(1) of the Pension Rules he is entitled to get Provisional Pension as well as Gratuity. Therefore, the learned counsel would submit that, since the said benefits have not been extended or given to the petitioner, he is entitled to get the Mandamus as sought for herein, he contended.

5. However, Mr.M.Karuppasamy, learned Government Advocate appearing for the respondents 1, 3 & 4 would submit that, since the disciplinary proceedings is pending, admittedly the stay can be continued, in view of the order, dated 30.03.2020. While invoking Rule 9 of the Pension Rules, the petitioner may not claim these benefits at this juncture, unless and until, the disciplinary proceedings is decided, such a benefit cannot be extended to the petitioner. Therefore, the prayer sought for in this regard in this writ petition cannot be accepted and be rejected.

6. However, Mr.P.Gunasekaran, learned standing counsel appearing for the second respondent would submit that, since by the very order of the third respondent, dated 30.03.2020, the petitioner was permitted to retire from service, of course ,with a condition that the disciplinary proceedings pending against him shall continue within the meaning of Rule 9 of the Pension Rules, sub- rule (4) of Rule 9 as well as Rule 69(1) which can very well be invoked in the case of the petitioner, and, accordingly, he may be entitled to get the Provisional Pension and Gratuity.

7. I have considered the said submission made by the learned counsel appearing for the parties and I have perused the materials placed before this Court.

8. In order to appreciate the said issue as raised by the learned counsel appearing for the petitioner, the relevant portion of the Pension Rules, as submitted above, is extracted hereunder:

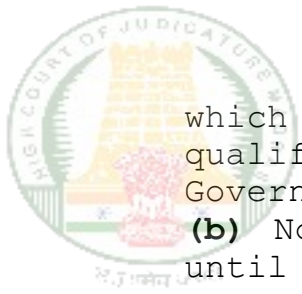
" 9. Right of Government to withhold or withdraw pension:-

....

(4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 60 or Rule 69, as the case may be, shall be sanctioned."

69. Provisional pension where department or judicial proceeding may be pending:-

(1) (a) in respect of a Government servant referred to in sub-rule(4) of Rule 9, the Head of office shall pay the provisional pension not exceeding the maximum pension



which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant.

(b) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon:

¹[Provided that no such gratuity, shall be withheld in respect of a Government servant who has been permitted to retire without prejudice to the departmental or judicial proceedings pending against him, where such departmental or judicial proceedings are only for administrative lapses not involving any pecuniary loss to the Government:]

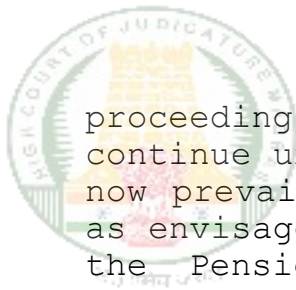
²[Provided further that where a Government servant, against whom a departmental or judicial proceedings involving pecuniary loss to Government is pending, is permitted to retire without prejudice to such departmental or judicial proceedings, a portion of gratuity may be authorized after deducting the maximum computed financial loss to the Government for which the Government servant is held liable, along with unrecovered Government dues if any, of such Government servants, with interest.]

9. Rule 9(4) has made it clear that, if a government servant retired on attaining the age of superannuation and against such government servant, if any disciplinary proceedings is continued, under sub-rule (2), a Provisional Pension as provided in Rule 60 or Rule 69 as the case may be, shall be sanctioned.

10. That means, merely because of the continuance of disciplinary proceedings of Rule 9(2), in which case, if the employee or government servant is permitted to retire, subject to Rule 9(2) of the Pension Rules, he would be entitled to get the Provisional Pension under Rule 9(4) as provided either under Rule 60 or Rule 69.

11. Accordingly, Rule 69 of the Pension Rules makes it clear that, any government servant referred to, under sub-rule (4) of Rule 9 of the Pension Rules, shall be paid the Provisional Pension, not exceeding the maximum pension, which would have been admissible on the basis of qualifying service. The first proviso to Rule 69(1)(b) of the Pension Rules, states that the Gratuity shall not be withheld in respect of the government servant, who has been permitted to retire without prejudice to the departmental proceedings or judicial proceedings pending.

12. In the case in hand, by the order dated 30.03.2010, the <https://hcservicescourts.gov.in/hcservices/> person was permitted to retire. However, the disciplinary



proceedings, which was pending against him at that time, shall continue under Rule 9 of the Pension Rules. Therefore, the situation now prevailing in the case of the petitioner can be exactly fit in as envisaged under Rule 9(4) and 69(1)(a) and proviso to 69(1)(b) of the Pension Rules.

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13. In view of the said provisions available in the Pension Rules, which are very well applicable to the case of the petitioner, in the given circumstances, as the petitioner has been already permitted to retire vide proceedings of the third respondent, dated 30.03.2020 and only the departmental proceedings pending against him shall continue within the meaning of Rule 9, that means, Rule 9(2) of the Pension Rules, then, there can be no impediment for invoking Rule 9(4) as well as 69(1)(a) and 60(1)(b) proviso of the Pension Rules. Accordingly, the petitioner shall be entitled to get the said relief of Provisional Pension as well as Gratuity.

14. In that view of the matter, this Court is inclined to dispose of the Writ Petition with the following orders:-

(i) that the respondents, especially the third respondent is hereby directed to consider the representations of the petitioner dated 02.05.2020, 19.06.2020 and 05.08.2020 and accordingly decide the same in the light of the aforesaid discussion, especially in the context of Rule 9(4) as well as 69(1)(a) and proviso to 1(b) and accordingly pass necessary orders for sanctioning the Provisional Pension as well as Gratuity payable to the petitioner in accordance with law and such orders shall be passed by the third respondent within a period of six weeks from the date of receipt of a copy of this order; and

(ii) On issuance of such order, the same shall be forwarded to the 2nd respondent, who shall on considering the same, take steps to disburse the aforesaid benefits i.e. Provisional Pension as well as Gratuity to the petitioner, within a period of four weeks thereafter and shall continue to pay the Provisional Pension till the completion of the disciplinary proceedings.

15. With these directions, the Writ Petition stands ordered accordingly. However, there shall be no order as to costs.

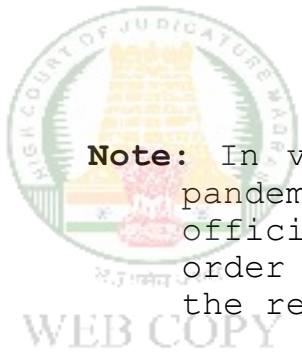
Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)



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 Secretary to the Government,
Social Welfare and NMP Department,
St.George Fort, Secretariat
Chennai 600 009
- 2) The Commissioner,
Social Welfare Department,
Commissionerate of Social Welfare,
Panagal Building,
Chennai 600 015
- 3) The District Social Welfare Officer,
Social Welfare Department,
Virudhunagar District,
Virudhunagar.
4. The Accountant General,
No.259, Anna Salai,
Block -3, 2nd Floor, DMS Complex,
Teynampet, Chennai 600 006.

+1 CC to the SPL GP (SR-15416[F] dated 31/08/2020)

+1 CC to Mr.J.LAWRENCE, Advocate (SR-15505[F] dated 01/09/2020)

Order made in
W.P. (MD) No.10306 of 2020

Dated:
28.08.2020

VR(CO)
CS(24.11.2020) 6P 7C