BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAISWAMY
and
THE HONOURABLE MR.JUSTICE T.RAVINDRAN

W.A.(MD) No.1455 of 2019
and
C.M.P.(MD) No.11753 of 2019

1.The Principal Secretary to Government
Revenue Department
Secretariat
Chennai-600 009

2.The Additional Chief Secretary and
Commissioner of Revenue Administration
Ezhilagam, Chepauk
Chennai-600 005 ... Appellants

-vs-

A.Periyakaruppan ... Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 05.12.2018, passed in W.P.(MD) No.18636 of 2013, on the file of this Court.

Prayer in WP(MD). 18636/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus, calling for the records of the first respondent relating to the impugned order G.O(2D) No.364 revenue (Ser-2)(1) Department dated 17.8.2012 and quash thes same and consequently direct the respondents to sanction full pension to the petitioner within a specified time frame that may be fixed by this Honble Court.

For Appellants : Mr.V.R.Shanmuganathan
Special Government Pleader

For Respondent : Mr.S.Visvalingam

J U D G M E N T

[Judgment of the Court was made by T.RAVINDRAN, J.]

Challenge in this writ appeal is made to the order dated 05.12.2018, passed in W.P.(MD) No.18636 of 2013.

2. Writ petition in W.P.(MD) No.18636 of 2013 has been filed by the respondent to issue a writ of certiorarified mandamus to call for the records of the first appellant relating to the order in G.O.(2D) No.364, Revenue (Ser-2)(1) Department, dated 17.08.2012, to quash the same and consequently, to direct the appellants to sanction full pension to the respondent, within a time stipulated by this Court.

3. Shorn of unnecessary details, suffice to state that in connection with the wrong issuance of ryotwari patta, in respect of forest land, to the family members of the deceased Kambal Chettiar, three charges were framed against the respondent with reference to the lapses committed by him referred to therein while he was working as Tahsildar, Aundipatti, Theni District and after obtaining his explanation, with reference to the same, enquiry was ordered to be commenced against him and the District Revenue Officer, Virudhunagar, who was appointed as the Enquiry Officer in the matter, had held that the charges levelled against the respondent are not proved. However, it is found that the Government had deviated from the findings of the Enquiry Officer and held that all the charges framed against the respondent are proved and directed him to submit his further representation, with reference to the abovesaid determination of the Government and following the same, the respondent had submitted his representation. Holding that the further representation submitted by the respondent was not convincing and as the Government had determined that all the charges framed against the respondent had been established, after soliciting the views of the Tamil Nadu Public Service Commission, with reference to the punishment to be imposed upon the respondent for the charges levelled against him, it is found that the Government had passed the final order on 06.04.2009 imposing the punishment of compulsory retirement on the respondent for the proven charges and accordingly, issued necessary orders.

4. Subsequent thereto, the Government had examined the case of the respondent under Rule 39(2) of the Tamil Nadu Pension Rules, 1978 and provisionally, decided to reduce 1/3rd of his pension and death-cum-retirement gratuity and further, after inviting the views of the Tamil Nadu Public Service Commission with reference to the same, by way of the order dated 17.08.2012, impugned in the writ petition, ordered that 2/3rd of eligible pension and death-cum-retirement gratuity be paid to the respondent, who has been compulsorily retired from service and ordered to reduce, as a penalty, 1/3rd of his eligible pension and death-cum-retirement gratuity and challenging the same, the writ petition has come to be levied by the respondent.

5. It is, thus, found that the respondent has not putforth any challenge to the determination of the Government holding that the charges levelled against him had been proved and the consequent punishment order of the compulsory retirement imposed on him by order dated 06.04.2009, but, only the subsequent order, dated 17.08.2012, has been impugned by the respondent in the writ petition.

6. The learned Single Judge, who had heard and disposed of the writ petition, after adverting to the facts of the case, proceeded to canvass the merits of the order, dated 06.04.2009, passed by the Government, imposing the punishment of compulsory retirement on the respondent for the proven charges levelled against him and further determined that the respondent is not guilty of any of the charges and the punishment imposed on the respondent by the Government smacks of bias and arbitrariness on the presumption that the respondent would have gained pecuniary benefit by granting pattas to the descendants of the deceased Kambal Chettiar and further noting that the proceedings initiated against the other officers, with reference to the subject charges, had been quashed and no proceedings had been initiated against one of the officers also, on that premise, determined that the punishment imposed on the respondent is unjust and concluded that the punishment awarded to the respondent cannot be sustained and consequently, allowed the writ petition preferred by the respondent. The abovesaid determination of the learned Single Judge is put to challenge by the appellants in this writ appeal.

7. According to the learned Special Government Pleader appearing for the appellants, the learned Single Judge has proceeded to canvass the merits of the punishment order imposed on the respondent without there being any challenge put to the same by the respondent and thereby, allowed the writ petition, therefore, according to him, on that premise alone, the impugned order is liable to be set aside.

8. The learned counsel appearing for the respondent contended that there is no need on the part of the Government to impose the punishment of compulsory retirement on the respondent and therefore, according to him, the learned Single Judge is justified in directing the payment of arrears of the entire retirement benefits and pension together with interest from the date of his retirement till the date of actual payment as ordered by him.

9. After considering the rival submissions, we are of the considered view that the learned Single Judge has erred in canvassing the merits of the order of punishment of compulsory retirement imposed on the respondent by the Government, vide order dated 06.04.2009, particularly, when no challenge had been put to the same by the respondent.

10. As noted above, on a perusal of the impugned order passed by the learned Single Judge, it is noted that he has only focussed on the merits of the order of punishment of compulsory retirement imposed on the respondent by the Government, dated 06.04.2009 and arrived at the conclusion that the punishment awarded to the respondent is unsustainable. However, when the order of punishment of compulsory retirement inflicted on the respondent has not been impugned in the manner know to law by the respondent and the respondent has only challenged the consequential order, dated 17.08.2012, directing the reduction of 1/3rd of eligible pension and death-cum-retirement gratuity and in such view of the matter, the learned Single Judge is found to have erroneously determined the correctness of the punishment order inflicted on the respondent and on that score alone, the impugned order is liable to be set aside.

11. Further, we also found that the entire order of the learned Single Judge was only adverting to the merits of the order of punishment of compulsory retirement inflicted on the respondent and consequently, directed the appellants to release the entire arrears of retirement benefits and pension with interest. However, as rightly contended by the learned Special Government Pleader appearing for the appellants, when the punishment order of compulsory retirement stands intact and not impugned on the part of the respondent in any manner, in such view of the matter, the learned Single Judge should have refrained from going into the merits of the punishment order inflicted on the respondent and instead, should have focused only on the order, dated 17.08.2012, passed by the first appellant ordering the reduction of 1/3rd of eligible pension and death-cum-retirement gratuity.

12. In the light of the abovesaid position, inasmuch as we have proceeded to hold that the reasonings of the learned Single Judge for allowing the writ petition is based on a wrong premise that the punishment order is put to challenge in the writ petition, in such view of the matter, we are of the opinion that the impugned order passed by the learned Single Judge is liable to be set aside and the matter should be remitted back to the learned Single Judge having the roster to determine the merits of the case and pass appropriate orders in accordance with law.

13. In the light of the abovesaid discussions, the impugned order, dated 05.12.2018, passed in W.P.(MD) No.18636 of 2013, is set aside and the matter is remitted back to the learned Single Judge having the roster to determine the merits of the case and pass appropriate orders in accordance with law.

14. Accordingly, the writ appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-I)

// True Copy //

/ /2020
Sub Assistant Registrar(CS)

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To

1.The Principal Secretary to Government
Revenue Department
Secretariat
Chennai-600 009

2.The Additional Chief Secretary and
Commissioner of Revenue Administration
Ezhilagam, Chepauk
Chennai-600 005

Copy to:
The Section Officer,
Writ Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.S.VISVALINGAM, Advocate (SR-2208[F] dated 21/01/2020)

+1 CC to M/s.SPL.GP (SR-2350[F] dated 22/01/2020)

W.A.(MD) No.1455 of 2019
and
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21.01.2020

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