

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.7359 of 2021

K. Ponnusamy

... Petitioner

-vs-

1. The Commissioner
Corporation of Chennai
Ripon Buildings,
Chennai 600 003.

2. The Zonal Officer
Zone No.XIII
Corporation of Chennai
L.B Road, Chennai - 20

3. The Health Officer
Corporation of Chennai
Ripon Buildings
Chennai 600 003.

... Respondents

Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents to settle the entire arrears of pension and other arrears payable in the terminal benefits after fixing the appropriate scale of pay from the year 1997 and by including the period of suspension for the purpose of calculating the total number of service and pass suitable order.

For Petitioner : Mr.S.Mohan

For Respondents : Mr.M.Ganesan
Standing Counsel

ORDER

This writ petition has been filed, seeking a direction to the respondents to settle the entire arrears of pension and other arrears payable in the terminal benefits after fixing the appropriate scale of pay from the year 1997 and by including the period of suspension for the purpose of calculating the total number of service and pass suitable order.

2. Mr.M.Ganesan, learned Standing Counsel takes notice for Respondents. By consent of both the parties, this writ petition is taken up for final disposal at the admission stage itself.

3. The case of the petitioner is that he joined the service of the Corporation of Chennai in the year 1972 in Health Department as Mazdoor. While so, the petitioner and three other persons were suspended for the charges that they had illegally sold a pesticide, namely, Baygon Concentrate belonging to the Corporation to some third parties. The second respondent has referred the matter to the Inspector of Police, Central Crime Branch, Chennai for investigation on the alleged issue of theft of the said pesticide and the same was closed as 'false'. Thereafter, the petitioner sent a representation to the first respondent in detail. Since there was no response from the respondent, the petitioner filed a writ petition and the same was allowed with a direction that the second respondent to complete the enquiry proceedings giving sufficient opportunities to him and pass final orders within 12 weeks from the date of receipt of a copy of the order unless the suspension order would be revoked automatically.

4. The respondents conducted enquiry and the order of suspension was revoked by order dated 01.09.1999. The petitioner was retired from the services of the Corporation of Chennai as Field Assistant with effect from 30.04.2004. The petitioner has not been given any increment, special grade and the pay was not revised from 1997 from the date of suspension though the suspension was revoked by the order of this Court. From the date of suspension till retirement he was paid the same salary on the ground of alleged pending charges and he was not paid the remaining 50% of the subsistence allowance. The Sub-Inspector of Police, Central Crime Branch has submitted the report to the Deputy Commissioner (Health), Corporation of Chennai that the complaint preferred against the petitioner and four others was closed as false. The disciplinary proceedings have not been commenced after reply to the Charge memo and the criminal complaint is also closed, even then the first respondent herein has not settled the terminal benefits despite representations. Therefore, the petitioner filed writ petition for disbursement of terminal benefits and other benefits payable to the petitioner and the same was disposed of with a direction to consider the same and pass orders within 6 weeks thereafter. When the petitioner sent a representation to the 2nd respondent along with a copy of the order, then the third respondent sent a reply stating that orders will have to be passed by the Government since he was retired pending charges and that the terminal benefits could be settled only after obtaining the orders from the Government. Since the respondents failed to obey the order, the petitioner filed contempt petition only then the office of the second respondent has served the show cause notice along with the report of the enquiry officer to reply within 2 days

from the date of receipt of the same. The petitioner submitted his reply denying all the findings in the report as there was no enquiry being conducted by the enquiry officer. The first respondent issued a show cause notice to show cause for which detailed reply was given denying all the charges, but the first respondent without considering the reply, passed an order directing the second respondent to recover a sum of Rs.500/- per month from the pension payable to him for three years. The petitioner suffered a lot by the order and he was not able to file any appeal as against the said order as he was receiving only Rs.1000/-. That apart, the pension has not been revised for long time, even today, he has been receiving a sum of Rs.8,420/- as monthly pension, whereas the immediate junior who retired along with him is receiving more than Rs.18,000/-. Though the petitioner has retired in the year 2004, he has been made to run from pillar to post to receive statutory benefits payable to him. Now since the petitioner is aged about 74 years and wholly depending on his pension and other terminal benefits for his daily needs and survivals, he has been making representations to the respondents in person. Despite the same, no action has been taken till date to pay the balance amount, hence the present writ petition.

5. Considering the facts and circumstances of the case and taking into account the fact that the petitioner's representation is already pending with the respondents and if the representation is not already disposed of earlier, the Writ Petition is disposed of with the following directions:

i) A direction is issued to the respondents herein to consider the representation preferred by the petitioner dated 04.01.2021 if the petitioner is found to be eligible and pass appropriate orders thereon, in accordance with law, after affording an opportunity of hearing to the petitioner and other persons, if any, who are likely to be affected, as expeditiously as possible, preferably within a period of 60 days from the date of receipt of a copy of this order;

ii) In case the petitioner is unable to appear for personal hearing, the petitioner is entitled to send a written submission within a period of one month from the date of receipt of a copy of this order through registered post or speed post and the same shall be treated as personal hearing. It is made clear that the petitioner can avail the opportunity of either personal hearing or filing written submission and not both;

iii) In case the petitioner fails to appear or file a written submission in time, the respondents shall pass orders based on the available records and the petitioner, cannot at a later point of time take a stand that opportunity of being heard is not given to the petitioner;

iv) The petitioner shall furnish Mobile Number, email ID, if any, etc., along with a copy of the representation dated 04.01.2021 and this order, to the respondents forthwith;

v) The respondents are directed to communicate the decision taken on the representation, to the petitioner within a period of three weeks from the date of decision taken thereon, by way of SMS/Email/registered post/speed post, so that there is no need for the petitioner to file contempt after expiry of the specified period. In case the authorities concerned fail to send communication to the petitioner, they will have to face the civil imprisonment in case of contempt proceedings. If they are unable to serve the order and the cover being returned un-served for one reason or the other, the same shall be kept in the file without opening it for the proof of delivery, so that the petitioner, later on, will not take a plea that the petitioner is not aware of the order. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

dpq
To:

1. The Commissioner
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Ripon Buildings,
Chennai 600 003.
2. The Zonal Officer
Zone No.XIII
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L.B Road, Chennai - 20
3. The Health Officer
Corporation of Chennai
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Chennai 600 003.

+1cc to Mr.S.Mohan, Advocate SR.No. 18311

A.SK(09.06.2021)

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