



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on :
23.12.2021

Orders Pronounced on :
05.01.2022

WEB COPY

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Writ Petition No.24909 of 2021

Prof.M.Sudheer, M.S.Ortho, D.Ortho,
(under suspension)

Professor of Orthopaedics,
Institute of Orthopaedics and Traumatology,
Madras Medical College and

Rajiv Gandhi Government General Hospital,
Chennai 600 003

Residing at No.2, T.T.K.Road 1st Cross Street,
Sriramnagar,
Chennai-600 018.

.. Petitioner

Vs.

1. Government of Tamil Nadu,
Rep. by Principal Secretary,
Health and Family Welfare (I-1) Department,
Secretariat, Chennai-600 009.

2. The Director of Medical Education,
Kilpauk, Chennai-600 010.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents herein to consider and dispose of the representations, dated 17.01.2018 and 20.02.2021 of the petitioner, permitting him to get retired from service on attainment of superannuation on 31.08.2017 for disbursement of the petitioner's retirement benefits along with pensionary benefits from the date of superannuation, namely 31.08.2017 till date of disbursal together with compound interest at the rate of 12% per annum on the retirement benefits and pensionary benefits to the petitioner under Rule 45-A of the Tamil Nadu Pension Rules.

For petitioner : Mr.A.Saravanan

For respondents : Mr.V.Veluchamy, Addl.G.P.

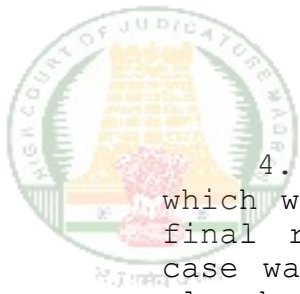


O R D E R

This Writ Petition is filed praying for issuance of a Writ of Mandamus to direct the respondents herein to consider and dispose of the representations, dated 17.01.2018 and 20.02.2021 of the petitioner, permitting him to get retired from service on attainment of superannuation on 31.08.2017 for disbursement of the petitioner's retirement benefits along with pensionary benefits from the date of superannuation, namely 31.08.2017 till date of disbursal together with compound interest at the rate of 12% per annum on the retirement benefits and pensionary benefits to the petitioner under Rule 45-A of the Tamil Nadu Pension Rules.

2. The petitioner was last employed as Professor of Orthopaedics, Institute of Orthopaedics and Traumatology, Madras Medical College and Rajaji Government General Hospital, Chennai. The petitioner attained the age of superannuation on 31.08.2017 but was not permitted to retire from service as he was placed under suspension vide G.O.(D)No.907 dated 20.04.2017. The reason for suspension of the petitioner was that he was arrested on 24.02.2017 on the basis of an FIR filed against him in the State of Uttar Pradesh and was released on bail only on 16.03.2017. Department charge sheet was also issued against the petitioner on 01.08.2017 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The substance of charge against the petitioner was, both in criminal case as well as the departmental action, he has borrowed a sum of Rs.20,00,000/- from one third party without obtaining prior permission from the appropriate authority and also he was facing criminal case lodged in the State of Uttar Pradesh at the instance of a private party under Sections 406, 420, 467, 408, 471 and 506 IPC and section 138 of N.I. Act. The petitioner appeared to have submitted a written statement of defence to the charge sheet on 22.08.2017 denying all the charges.

3. According to the petitioner a simple civil transaction was twisted as a criminal misconduct against the petitioner. However, an enquiry was conducted into the charges. On completion of the enquiry, a report was submitted on 12.02.2018 holding that Charge No.1 was proved namely borrowal of Rs.20,00,000/- from one third party and charge No.2 was found to be not proved in view of the pendency of the criminal case in State of Uttar Pradesh. The disciplinary authority agreed with the enquiry report vide proceedings dated 24.04.2018. In fact, the disciplinary authority found that even charge No.2 was proved in view of the criminal case pending against him in the State of Uttar Pradesh and the fact of his arrest and release on bail later were all matters of record.



4. In the meanwhile, it appeared that in the criminal case which was pending in the criminal Court in the State of U.P., a final report was filed in Crime No.291/2016 stating that the case was closed due to mistake of fact. A copy of the same has also been enclosed in the typed set of documents which has been relied upon by the learned counsel for the petitioner.

5. In view of the positive development in favour of the petitioner as to the closure of the criminal case against him, a representation was made by the petitioner on 20.02.2021 requesting the authority to retire him from service and grant him all benefits with effect from the date when he attained the age of superannuation. As there was no action forthcoming, the present writ petition has been filed with a prayer for issuance of writ of mandamus, directing the authorities to retire him from service.

6. Mr.A.Saravanan, the learned counsel appearing for the petitioner reiterated the above facts and also brought to the notice of this Court about the subsequent development of closure of the criminal case against the petitioner, as a mistake of fact. According to the learned counsel, there is no legal impediment for the respondent to pass orders retiring the petitioner from service as the disciplinary action initiated for the same set of charges as in the criminal case are no more valid and existing.

7. Mr.V.Veluchamy, the learned Additional Government Pleader appeared for the respondents. The learned Additional Government Pleader would have no quarrel with the submissions made by the learned counsel for the petitioner. The learned counsel has also acknowledged the fact that the criminal case initiated against the petitioner in the State of U.P. has been closed as a mistake of fact. The learned counsel also acknowledged the fact that the disciplinary action was premised only on the criminal case against the petitioner relating to the same transaction which formed the basis of charge No.1 which was held to be proved by the Enquiry Officer and accepted by the disciplinary authority.

8. In light of the above submissions of the learned counsel and also that the facts have not been controverted, this Court is of the view that the petitioner is entitled to succeed in this writ petition. Once the criminal case has been closed against the petitioner as a mistake of fact, the basis of the departmental action against the petitioner on the same set of facts and circumstances stood removed, thereafter. In the present circumstances, not allowing the petitioner to retire from service appears to be without any justification. Although, earlier when the petitioner was arrested and released on bail on his involvement in the criminal case, orders were passed



placing him under deemed suspension, rightly. However, such deemed suspension cannot be said to operate any further, after the criminal case itself was closed as a mistake of fact.

9. Though this Court is of the view that the prayer for Mandamus may not be an appropriate relief in the circumstances of the case, yet the petitioner having suffered suspension for more than 3 years and the criminal case itself has been closed as a mistake of fact, the relief that is to be granted to the petitioner might not be denied or refused on that account.

10. The fact of the matter is that the foundation for the departmental action is no more available because of the closure of the criminal case against the petitioner vide final report dated 16.06.2019. In such circumstance, the deemed suspension of the petitioner cannot be held to be valid any further and it ought to be recalled. Moreover, on behalf of the respondent, it has been admitted in unmistakable terms, that the departmental action was wholly premised on the criminal case registered against the petitioner. That being the case, the Court has no hesitation in granting the relief to the petitioner. The dispensation of justice ought not depend on the rigid construct of the prayer as found in the writ petition. The hallmark of the Justice delivery system is to deliver justice wisely overlooking the inadvertence crept into the prayer as sought in the writ petition.

11. Accordingly, the Writ Petition is allowed. The deemed suspension of the petitioner passed by the 1st respondent in G.O.(D)No.907 (Health and Family Welfare (I-1) Department, dated 20.04.2017 is hereby set aside as being no more valid.

12. The respondents are consequently directed to allow the petitioner to retire from service with effect from the date he attained the age of superannuation with all admissible retiral benefits due and payable to him.

13. The respondents are directed to pass appropriate orders in this regard within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True copy//

Sub Assistant Registrar

vsi



To

1. The Principal Secretary,
Government of Tamil Nadu,
Health and Family Welfare (I-1) Department,
Secretariat, Chennai-600 009.

2. The Director of Medical Education,
Kilpauk, Chennai-600 010.

+lcc to Mr.A.Saravanan, Advocate SR.No.913

W.P.No.24909 of 2021

SR(CO)
GMY(20/01/2022)