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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2021

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THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.26878 of 2018
and W.M.P.No.7844 of 2019

S.Ditto Prabhakaran ...Petitioner

Vs

1. The Secretary to Government Co-Operation,
Food and Consumer Protection Department,
Fort St.George,
Chennai-600 009.

2. The Registrar of Co-Operative Societies,
Kilpauk,
Chennai-10.

3. The Joint Registrar of Co-Operative Societies,
Nilgiris Region,
Nilgiris District.

4. The Deputy Registrar of Co-operative Societies,
Gobichettipalayam Circle,
Erode District ...Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying for the issuance of Writ of Certiorarified Mandamus or any other appropriate writ in the nature of writ or direction calling for records pertaining to the orders of the third respondent in R.C.No.238/2016/A1 dated 24.05.2018 in so for as it sanction provisional pension to the petitioner and quash the same and consequently direct the respondents to disperse all the retirement benefits with interest at 12% p.a.

For Petitioner : Mr.S.Kamadevan

For R1 : Mr.P.Ganesan
Government Advocate

For R2 to R4 : Mr.A.Selvendran
Special Government Pleader

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O R D E R

The petitioner herein, who had served as a driver under the 4th respondent herein, had retired from his service on reaching his age of superannuation on 31.05.2006. In connection with a alleged incident of having caused a road accident on 11.05.2009, the injured victim was awarded compensation by the Motor Accident Claims Tribunal in MCOP.No.318 of 2009, Karur, dated 08.12.2010, payable by the respondents herein. In view of the award of the Motor Accident Claims Tribunal, the respondents have contemplated to recover the award amount from the petitioner's pension benefits, consequent to which, the present impugned order dated 24.05.2018 was passed sanctioning provisional pension to the petitioner, in view of the contemplated action of the recovery.

2. In the meantime, the respondents have earlier issued an order of recovery dated 21.06.2013 which came to be challenged by the petitioner before this Court in W.P.No.25808 of 2013 and by an order dated 10.02.2017, the recovery order itself was quashed by placing reliance on the decision of the Hon'ble Division Bench passed in W.P.No.11002 of 1999 dated 07.07.1999 and holding that the driver who caused the accident cannot be held liable for the compensation ordered to the victims.

3. The learned Counsel for the petitioner would submit that in view of the earlier quashing of the recovery order, the subsequent impugned order granting provisional pension in contemplation of the recovery of the compensation awarded by the Motor Accident Claims Tribunal cannot be sustained.

4. On the other hand, the learned Government Advocate placed reliance on the statements made in the impugned order and submitted that owing to the mistake on the part of the petitioner, the Tribunal had awarded compensation to the victims, which the Government is entitled to recover from him. And therefore, he would submit that there is no infirmity in the impugned order granting provisional pension.

5. I have given careful consideration to the submissions made by the respective Counsels.

6. The impugned order sanctioning provisional pension cannot be sustained on two main grounds. Firstly, Rule 9(2)(b) of the Tamil Nadu Pension Rules mandates that in case the Government intends to execute departmental proceedings against a retired Government servant, the same shall be done only with the sanction of the Government and such proceedings should not be initiated for an incident which was prior to four years from the institution of the proceedings.

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7. This Court had an occasion to deal with the scope of Rule 9(2)(b) of Tamil Nadu Pension Rules, 1978, in the case of K.Vembu and others Vs. The Principal Secretary to Government and others passed in W.P.Nos.18612 to 18616 of 2018 dated 10.12.2021, by placing reliance on two decisions of the Hon'ble Full Bench of this Court in the case of C.Mathesu Vs. The Secretary to Government, Department of Revenue and others reported in 2013 (1) CWC 753 and T.Geetha Vs. Additional Chief Secretary /Commissioner of Revenue Administration, Chepauk, Chennai and others reported in 2020 (7) MLJ 415, had held that the Government cannot initiate departmental action against a retired Government employee, after the expiry of four years from the date of the event. The relevant portion of the order reads as follows:

> "2. Whenever a Government servant retires from service on attaining the age of superannuation and if the Government intends to initiate departmental action against such a person, the sanction of the Government is required to be taken under Rule 9(2)(b) of the Tamil Nadu Pension Rules, 1978, for which purpose, the event for which such departmental action is contemplated, should not have been taken place more than four years before the institution of such departmental action. For the sake of convenience, Rule 9(2)(b) of the Tamil Nadu Pension Rules is extracted hereunder:-
>
> "9. Right of Government to withhold or withdraw pension:-
>
> (1) ...
>
> (2) (a) ....
>
> (b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment-
>
> (i) shall not be instituted save with the sanction of the Government;
>
> (ii) shall not be in respect of any event which took place more than four years before such institution; and
>
> (iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the Procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service."
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> 3. This legal proposition has been ratified by the Hon'ble Full Bench of this Court in the case of C.Mathesu Vs. the Secretary to Government, Department of Revenue and others reported in 2013 (1) CWC 753.
>
> 4. The issue on the applicability of the date of commencement of the four-year period had also came up

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for consideration before the Hon'ble Division Bench of this Court in the case of T.Geetha Vs. Additional Chief Secretary/Commissioner of Revenue Administration, Chepauk, Chennai and others reported in 2020 (7) MLJ 415 and in paragraph No.16 of the said decision, the Hon'ble Division Bench had clarified that the four-year period shall be reckoned from the date of the event. The relevant portions of the said order reads as follows:-

> "16. As per G.O.(2D).No.430 dated 12.06.2014, the respondents were directed to institute departmental disciplinary proceedings under Tamil Nadu Pension Rules against the appellant as indicated in para 1 before 30.06.2014 since 4 years limitation period for initiating disciplinary action against the retired Government Servant expires on the above date. It is thus evident that limitation has been reckoned from the date of superannuation of the appellant, i.e. from 31.05.2011. The period of limitation of four years is not to be reckoned from the date of retirement or superannuation. It is to be reckoned from the date of even. Thus, the charge sheet dated 28.06.2014 was clearly without jurisdiction."
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> (5) ...
>
> (6) ....
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> 7. As already observed by me in the earlier paragraphs, initiation of departmental proceedings after a period of four years from the date of the event on which the Government servant is charges, is opposed to Rule 9(2) of the Tamil Nadu Pension Rules, as well as, the decision of the Hon'ble Full Bench in C.Mathesu's case(cited supra) and the orders of the Hon'ble Division Bench in T.Geetha's Case (cited supra). As such, the action of the respondents in contemplating departmental action against the aforesaid Rules and decisions, is unsustainable.”

8. The aforesaid order is self explanatory. As such the proposal of the respondents to recover the compensation amount from the petitioner cannot be maintained, since no Government sanction has been obtained in the present case for proceeding against the petitioner departmentally and also for the reasons that four years have lapsed since the event of, either the accident that occurred in 2009 or the award of the Tribunal which has been passed on 08.12.2010.

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9. Secondly, when the Government had already initiated recovery proceedings and this Court had quashed the recovery proceedings itself by observing that the driver of the vehicle cannot be held liable for the compensation awarded by the Motor Accident Claims Tribunal, and when no appeal has been filed as against the order of this Court, the sanctioning of the provisional pension in contemplation of a recovery of the amount, which action has already been quashed, cannot be sustained. This Court while quashing the earlier order of recovery dated 21.06.2013, had observed that the driver of the vehicle cannot be mulcted with the liability and therefore no recovery can be made from the driver. The relevant portion of the order is as follows:

> "Learned counsel for the petitioner also relied on the decision of this Court in W.P.No.4428 of 2006, between R.Anbalagan and The Director General of Police, Mylapore, Chennai 4 and others, wherein in paragraphs 5 and 6, it is observed as follows:
>
> 5. The petitioner was a driver when the accident took place on 31.05.1998. In similar circumstances, the Division Bench of this Court in W.P.No.11002 of 1999 by order dated 7.7.1999 held as follows:
>
> "The Department's action seeking recovery of the amount awarded by the Motor Accident Claims Tribunal from the Driver of the vehicle is wholly unsustainable as the respondent as the employer, is duty bound in law to pay the compensation amount. It is further stated therein, that the recovery proceedings made by the employer is misconceived and the said claim was rightly negatived by the Tamil Nadu Administrative Tribunal in O.A.No,6515 of 1996 by order dated 13.08.1998."
>
> Following the said order of the Division Bench, W.P.No.17856 of 2008 against recovery ordered against a Driver of a Police vehicle. The said order was approved by the Division Bench of this Court in the decision reported in (2009) 2 MLJ 849 (Sevugaperumal v. Superintendent of Police) - In para 14 the Division Bench held as follows:
>
> "14. Before us, the learned counsel for the petitioner has cited two judgments in order to show that in similar cases the Courts have held that compensation amount has to be paid by the department or by the employer concerned. Reliance was first

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placed on the judgment of a learned Single Judge of this Court in the case of R.Nagendra Boopathi V. Superintendent of Police, District Police Office, Salem, decided on 22.8.2008 passed in W.P.No.17856 of 2008. From the facts of the case, it appears that there was a mechanical failure of the vehicle involved and as a result of which there was an accident. Apart from that it also appears in that case that the driver of the vehicle, whose official duty was to drive the said vehicle, was a party before the Motor Accident Claims Tribunal and the Tribunal exonerated the driver. ....”

The Division Bench in the above cited decision held that if the police vehicle is driven by a driver of the Department and caused the accident, the driver cannot be held liable for the compensation paid or part thereof, and if a person has driven the vehicle, who was not the driver, the department can recover part of the compensation paid to the victims.

6. Following the above cited decisions of the Division Bench of this Court and that of mine, I hold that the impugned order is unsustainable and the order of recovery dated 1.7.2005, confirmed in appeal by order dated 18.11.2005, is quashed. The respondents are directed to repay the amount recovered from the petitioner within a period of two weeks from the date of receipt of copy of this order. No costs. Connected miscellaneous petition is closed.

13. Therefore, in the light of the aforesaid decisions of this Court, I have no hesitation to set aside the impugned order passed by the 3rd respondent. Accordingly, the impugned order passed by 3rd respondent is set aside. Liberty is granted to the 3rd respondent, if it is permissible under law, to initiate recovery proceedings against the petitioner in accordance with law.”

10. For the forgoing reasons, I do not find any legality in the impugned order dated 24.05.2018. Consequently, it requires to be held that the petitioner herein would be entitled for his full pension, apart from his death cum retirement gratuity amount. Moreover, since the petitioner herein had retired way back on 31.5.2016 and the respondents, though were aware of the fact that their earlier attempt to recover the compensation amount was quashed by this Court on 10.2.2017 itself, had ignored the same and had contemplated for further illegal recovery to the present impugned order, this Court is of the

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view that the petitioner would be entitled for interest on the retirement benefits, which can be imposed at the rate of 6% per annum.

11. In the light of the above observations, the impugned order of the third respondent in R.C.No.238/2016/A1 dated 24.05.2018, is quashed. Consequently, there shall be a direction to the 2nd respondent herein to forthwith disburse the death cum retirement benefits of the petitioner, along with all pensionary benefits, together with interest at the rate of 6% per annum on the accrued retirement benefits, from the date of retirement, till the date of actual disbursement, as expeditiously as possible, in any event, within a period of 4 weeks from the date of receipt of a copy of this order.

12. This Writ Petition stands allowed, accordingly. Consequently, the connected Miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

gd

To

1. The Secretary to Government Co-Operation,
Food and Consumer Protection Department,
Fort St.George,
Chennai-600 009.

2. The Registrar of Co-Operative Societies,
Kilpauk, Chennai-10.

3. The Joint Registrar of Co-Operative Societies,
Nilgiris Region,
Nilgiris District.

4. The Deputy Registrar of Co-operative Societies,
Gobichettipalayam Circle,
Erode District

+1cc to Mr.S.Kamadevan, Advocate SR.No.65937
+1cc to Government Pleader SR.No.66219, 66150

W.P.No.26878 of 2018

KSM(CO)
GMY(11/01/2022)

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