BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **06.01.2021**

CORAM:

THE HONOURABLE MR.JUSTICE **M.M.SUNDRESH**

AND

THE HONOURABLE MRS.JUSTICE **S.ANANTHI**

W.A.(MD)No.1253 of 2020

and

C.M.P.(MD)No.7152 of 2020

P.Muthuvel ... Appellant /Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by the Secretary to Government,
Revenue Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2. The Additional Chief Secretary/
Commissioner of Revenue Administration,
Ezhilagam, Chepauk, Chennai.

3. The District Collector,
Thoothukudi District,
Thoothukudi. ... Respondents/Respondents

Writ Appeal filed under Clause XV of Letters Patent, against the order dated 03.11.2020 passed in W.P.(MD)No.13620 of 2014.

Prayer in WP(MD). 13620/ 2014 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus calling for the records relating to orders passed by the 3rd respondent dated 7.8.2013 in proceedings no.A6/28212/2013 and consequential order dted 2.12.2013 in Na.Ka.No.A7/56378/2009 and quash the same and consequently direct the respondents to forthwith disburse the retirement/terminal, service, pension and other benfefits including DCRG benefits, GPF, Pay Commission Arrears, Special Provident Fund, commutation of pension , Regular pension with arrears along with reaasonable interest upon such payments, within a time period to be fixed by this Court.

For Appellant : Mr.N.Dilip Kumar

For Respondents : Mrs.J.Padmavathi Devi,
Special Government Pleader

JUDGMENT

[Judgment of the Court was delivered by **M.M.SUNDRESH, J.**]

This appeal has been preferred by the appellant, aggrieved over the order of the learned Single Judge, by which, the appellant was permitted to retire from service, but, the disciplinary proceedings were directed to continue by invoking Rule 9 of the Tamil Nadu Pensions Rules 1978 and consequently, forwarded the file to the Higher Authorities for taking action.

2. The charge against the appellant is with respect to the unauthorized absent. Incidentally, the appellant was suspended and not allowed to retire from service. Aggrieved over the same, the appellant filed a writ petition in W.P.(MD)No.6720 of 2011 before this Court. The learned Single Judge, after analysing the scope and ambit of Rule 56(1)(C) of the Tamil Nadu Government Servants Fundamental Rules and on considering the relevant materials, quashed the order of suspension and the order not permitting the appellant to retire from service. A finding has also been given with respect to the ineligibility of the appellant to attend the work due to his health condition and the charge memo dated 26.05.2011, pursuant to which, two orders, namely, the order of suspension and the order not permitting the appellant to retire from service, were passed, which was too trivial and passed at the verge of his retirement. Though the learned Single Judge made certain observations on merits, which are on the initiation of the disciplinary proceedings, which, in turn, would start with the charge memo, but, the same has not been quashed, perhaps, by inadvertence.

3. The aforesaid order has become final *inter se party*. Thereafter, the impugned orders, which sought to be assailed before us, were passed. The respondents invoked Rule 9 of the Tamil Nadu Pensions Rules and accordingly, proceeded with the disciplinary proceedings. The appellant once again laid a challenge before the learned Single Judge, which was dismissed accordingly and hence, the present appeal.

4. Mr.N.Dilip Kumar, learned counsel for the appellant submitted that one has to see the reasoning of the order passed by this Court in W.P.(MD)No.6720 of 2011 dated 15.06.2012. The non-inclusion of the charge memo in the portion of the order is only an oversight mistake. The reasonings adopted for quashing the suspension order and the order not permitting the appellant to

retire from service are trivial on the very initiation of the proceedings, namely, the issuance of a charge memo. One has to understand the tenor of the order passed. Therefore, the subsequent order cannot be sustained in the eye of law. This aspect has not been taken note of by the learned Single Judge.

5. The learned Special Government Pleader appearing for the respondents submitted that the order of the learned Single Judge on an earlier occasion in W.P.(MD)No.6720 of 2011 does not refer to the charge memo. Therefore, it was accordingly complied with. There is no bar in law for proceeding further.

6. By way of a reply, Mr.N.Dilip Kumar, learned counsel for the appellant, submitted that even assuming that it is so, Rule 9 of the Tamil Nadu Pension Rules, cannot be applied in a mechanical way. The Authority concerned, who invokes the said Rule, will have to come to a conclusion that the allegations are grave and serious. This aspect has not been done, while invoking the said provision and by ignoring the order of the Court.

7. Heard the learned counsel appearing for the appellant and the learned Special Government Pleader appearing for the respondents.

8. We do find force in the submissions made by the learned counsel for the appellant. The order of the learned Single Judge in W.P.(MD)No.6720 of 2011 binds the parties and a specific finding has been given on merits. Incidentally, it has been stated that the allegation made in the charge memo itself is very trivial and therefore, the respondents were justified in initiating the disciplinary proceedings at the verge of retirement of the appellant. Certainly, it is an oversight at the hands of the learned Single Judge as then he is not including the charge memo. At the time of quashing the other two proceedings, perhaps, the appellant could have brought to the notice of this Court at the relevant point of time. Be that as it may, while there is a non-compliance of Rule 9 of the Tamil Nadu Pension Rules, which, in fact, is not required at all, in view of the specific findings given by the learned Single Judge, the very continuation of the disciplinary proceedings thereafter, would be vitiated.

9. In such view of the matter, we have no hesitation in holding that the order of the learned Single Judge is required interference and this aspect has not gone into. The appellant has reached the age of superannuation nearly a decade ago. He is entitled for the benefit of the order dated 15.06.2012 which was construed in delinquent way by the respondents. In such view of the matter, we have no hesitation in holding that the appellant is entitled to succeed, by setting aside the order of the learned Single Judge. Accordingly, the order of the learned Single Judge stands set aside. The terminal and pensionary benefits of the

appellant will have to be paid within a period of twelve weeks from the date of receipt of a copy of this order.

10. In the result, this Writ Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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 Government,
Revenue Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2. The Additional Chief Secretary/
Commissioner of Revenue Administration,
Ezhilagam, Chepauk, Chennai.

3. The District Collector,
Thoothukudi District,
Thoothukudi.

+1 CC to M/s.N.DILIP KUMAR, Advocate (SR-204[F] dated 06/01/2021)

W.A.(MD)No.1253 of 2020
06.01.2021

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