



W.P.(MD)No.5708 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.5708 of 2020

and

W.M.P.(MD)Nos.4973 and 4975 of 2020

P. William

: Petitioner

Vs.

- 1.The Additional Chief Secretary to Government,
Home Department,
Secretariat,
St. George Fort,
Chennai.
- 2.The Director General of Police,
Chennai-4.
- 3.The Commissioner For Disciplinary Proceedings,
Trichy.
- 4.The Superintendent of Police,
Railway Police,
Trichy District.

: Respondents



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PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, Calling for the records relating to impugned proceedings impugned G.O.(D) No. 1537 dated 18.12.2017 issued by the 1st respondent and quash the same and consequently direct the respondents to grant all consequential service and monetary benefits to the petitioner with revision of pension payable to the petitioner.

For Petitioner : Mr.K.Samidurai
For Respondents : Mr.S.P.Maharajan
Special Government Pleader

ORDER

This writ petition has been filed to quash the impugned proceedings impugned G.O.(D) No. 1537 dated 18.12.2017 issued by the 1st respondent and consequently direct the respondents to grant all consequential service and monetary benefits to the petitioner with revision of pension payable to the petitioner.



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2. The learned counsel appearing for the petitioner would submit that the petitioner was appointed as Grade - II Police Constable on 10.01.1979 and promoted as Grade - I Police Constable on 15.01.1995. When he was working in Trichy Railway Police Station, he was placed under suspension on 29.08.1996 in connection with Vigilance and Anti Corruption Crime No.3 of 1996 under Rule 7 of Prohibition of Corruption Act 1988. Though a criminal case was not lodged against the petitioner, his case was referred in departmental enquiry in TDP No.1 of 1998 and enquiry officer conducted an enquiry and filed a report, however, no order was passed. Hence, the petitioner filed a writ petition before this Court in W.P.No.1843 of 2007 and this Court by order, dated 24.08.2011, directed the respondent to finalise the disciplinary proceedings. In the meantime, the petitioner reached the age of superannuation on 31.01.2012. The Government vide order in G.O.Ms.No.874 dated 22.10.2012 has permitted the petitioner to retire from service without prejudice to the disciplinary proceedings pending against him on 31.01.2012 and thereafter, the disciplinary proceedings came to an end by imposing a punishment of cut in



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pension at the rate of Rs.1,445/-. Challenging the same, the present writ petition is filed.

3. The learned counsel for the petitioner would further submit that initially the writ petition was filed on the ground that after retirement the Government have no power to continue the disciplinary proceedings in the absence of master and servant relationship, since the petitioner was permitted to retire from service vide G.O.Ms.No.874 dated 22.10.2012. Accordingly, he prayed for appropriate orders.

4. Per contra, the learned Special Government Pleader appearing for the respondents submitted that the issue arises in the present case is no longer *res integra* and settled by the Full Bench of this Court in **C.Mathesu Vs. The Secretary to Government, Revenue Department and Others** reported in **2013 (3) CTC 369**, wherein this court in paragraph No.27 makes it clear since the petitioner was permitted to retire on attaining the age of superannuation without prejudice to the disciplinary proceedings pending against him and the Full Bench of this Court states that the said proceedings



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can be permitted to be continued in terms of 9 (2) (b) of the Pension Rules and no major punishment can be imposed. In the present case, no major punishment was imposed, only a minor punishment to cut in pension in terms of Pension Rules which is legally permissible. Accordingly, he prayed for dismissal.

5. Heard Mr.K.Samidurai, learned counsel appearing for the petitioner and Mr.S.P.Maharajan, learned Special Government Pleader appearing for the respondents.

6. In similar circumstances the Full Bench of this Court rendered a judgment in **C.Mathesu Vs. The Secretary to Government, Revenue Department and Others** reported in **2013 (3) CTC 369**, in which paragraph No.27 reads as follows :

" 27. From the aforesaid discussion, the following broad principles emerge :

(xv) If a Government servant has been placed under suspension and not permitted to retire even after his attaining the age of superannuation in terms of



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Rule 56(1)(c) of the Fundamental Rules, the enquiry against him can proceed, and in that case, if charges of misconduct are proved, depending upon the nature of the charges, even the extreme penalty of dismissal or removal from service can be imposed.

(xvi) If there is any statutory provision for continuing the departmental proceedings like Rule 9(2) of the Pension Rules even after the Government servant has retired on attaining the age of superannuation, then the departmental proceedings already instituted before the retirement of the Government servant can be continued against the delinquent employee by treating him to be in service.

(xvii) If the Government servant has retired on attaining the age of superannuation and subsequently any departmental proceeding is to be instituted against him, in that event, under Rule 9(2)(b) of the Pension Rules, sanction of the Government is required to be taken and the event in respect of which the departmental proceedings are sought to be initiated should not have taken place more than four years before such institution.



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(xviii) In cases where the Government Servant is allowed to retire on attaining the age of superannuation or where the departmental proceedings are to be initiated after the retirement, there is no question of passing the order of dismissal or removal from service and only the pension can be withheld, withdrawn or reduced. The question of dismissal or removal of the said delinquent employee from service, therefore, does not arise.

(xix) Since in the present case, the appellant was permitted to retire on attaining the age of superannuation without prejudice to the disciplinary proceedings pending against him, in our considered opinion, the said proceedings can be permitted to be continued in terms of Rule 9(2)(b) of the Pension Rules."

7. In view of the above decision rendered by the Full Bench of this Court, though the petitioner was permitted to retire from service on 31.01.2012 and thereafter, a minor punishment was passed for cut in



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pension at the rate of Rs.1,445/-, which in terms of the Rule 9 (2)(b) of the the Pension Rules and the said action of the respondents was confirmed by the Hon'ble Full Bench of this Court in the above said decision. Hence, this writ petition is liable to be dismissed.

8. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

16.12.2022

Index : Yes / No

Speaking Order : Yes / No

RM



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M.DHANDAPANI,J.

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