



W.P.(MD).No.13808 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.10.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.13808 of 2015

and

M.P.(MD).No.1 of 2015

K.Thirumalsamy

... Petitioner

Vs.

1.The Commissioner of Municipal Administration,
Chepauk,
Chennai – 600 005.

2.The Commissioner,
Thoothukudi City Municipal Corporation,
Thoothukudi,
Thoothukudi District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No.19312/2013/Ma.Na.A3 dated 20.01.2015 on the file of the first respondent and the consequential order in Na.Ka.No. H1/1581/2012 dated 21.01.2015 on the file of the second respondent and quash the same as illegal to the extent of permitting the petitioner to retire with effect from 22.06.2013 and consequently to direct the respondents to permit the petitioner to retire from service from 21.01.2015 with all service and monetary benefits up to 21.01.2015 with re fixation of pension within the time stipulated by this Court.



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For Petitioner : Mr.S.Louis
For R-1 : Mrs.D.Farjana Ghoushia,
Special Government Pleader.
For R-2 : Mr.N.Ananda Kumar,
Standing Counsel.

ORDER

This Writ Petition is filed for Writ of Certiorarified Mandamus, to quash the impugned order dated 20.01.2015 and the consequential order dated to the extent of permitting the petitioner to retire with effect from 22.06.2013 and consequently to direct the respondents to permit the petitioner to retire from service from 21.01.2015 with all service and monetary benefits up to 21.01.2015 with re-fixation of pension.

2. The brief facts as stated in the affidavit are that the petitioner was appointed as Sanitary Inspector on 05.10.1989 and joined duty at Sattur Municipality and thereafter, the petitioner has served in various places. While serving in Thoothukudi City Municipal Corporation, the petitioner has rendered 23 years of service. Due to family circumstances, the petitioner intended to avail the Voluntary Retirement Scheme and issued notice dated 31.08.2012 and



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prayed to permit the petitioner to go on Voluntary Retirement. The respondents sought no objection from the various stations where the petitioner had previously served and from the Director of Vigilance and Anti-Corruption, Chennai. Finally, the second respondent issued No Objection certificate. However, the second respondent directed the petitioner to submit a fresh notice seeking to go on Voluntary Retirement Scheme, since the stipulated period of 90 days was already over. Hence, the petitioner submitted another notice dated 01.03.2013. The second respondent vide his proceedings dated 17.05.2013 forwarded the petitioner's application to the first respondent. However, the first respondent vide his proceedings dated 31.05.2013 informed that the request of the petitioner shall be rejected on the ground that 12 posts out of sanctioned strength of 18 posts of Sanitary Inspectors in Thoothukudi Corporation remained vacant. Therefore, the second respondent passed the consequential order dated 31.05.2013 rejecting the request of the petitioner for Voluntary Retirement Scheme. Aggrieved over the same, the petitioner had preferred W.P. (MD)No.9668 of 2013 and this Court vide order dated 20.06.2013 allowed the Writ Petition and directed the respondents to permit the petitioner to retire from service under Voluntary Retirement Scheme. After the order, the respondents issued a suspension order dated 22.06.2013 and thereafter issued a charge memo on the flimsy ground. The petitioner again preferred two Writ Petitions



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in W.P. (MD)Nos.10940 and 14132 of 2013. After all these litigations, finally the respondents allowed the petitioner to retire from service under Voluntary Retirement Scheme by passing the impugned order dated 20.01.2015. However, the respondents have fixed the date as the petitioner was permitted to retire from 22.06.2013, wherein, the respondents have granted retrospective effect. Aggrieved over the same, the present Writ Petition is filed.

3. The respondents have filed a counter narrating the same facts. The respondents stated that against the order, the respondents have preferred Writ Appeal in W.A.(MD).Nos.931 and 1203 of 2013, wherein, the Hon'ble Division Bench vide order dated 19.03.2014 eschewed the allegations of malafide against the Commissioner. However, the Voluntary Retirement petition was kept intact and directed the respondents to consider and pass orders. Since the petition was dated 2013, the respondents have granted Voluntary Retirement from the date of the application. Moreover, the petitioner has not served during the period from 2013 to 2015. Hence the petitioner is not entitled to service benefits and monetary benefits for the said period. Hence, the respondents prayed to dismiss this Writ Petition.



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4. Heard Mr.S.Louis, learned counsel for the petitioner, Mrs.D.Farjana Ghoushia, learned Special Government Pleader appearing for the first respondent and Mr.N.Ananda Kumar, learned Standing Counsel appearing for the second respondent and perused the records.

5. The contention of the respondents for denying the period from 2013 to 2015 is that the petitioner has not rendered any service during that period. Since the petitioner was placed under suspension and subsequently, a charge memo was issued, during this period the petitioner was out of employment. Hence, the petitioner is not entitled to any service and monetary benefits. This claim is absolutely erroneous, because during the suspension period, an employee cannot be expected to attend the work. For the subsequent period, the claim of the respondents is that the petitioner has not attended the duty in which the allegations were vehemently refused by the petitioner. It is the respondents who did not allow the petitioner to work. Even though the allegations against the Commissioner was eschewed in Writ Appeal, this Court can see some dispute between the petitioner and the respondents.



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6. Therefore, this Court is of the considered opinion that the petitioner's allegations ought to have been accepted. Therefore, the impugned order is set aside and the date of retirement is fixed as 21.01.2015. The respondents are directed to include the period from 23.06.2013 to 21.01.2015 as service period and grant all monetary benefits and re-fix the pension. The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.

7. In view of the above, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

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Index : Yes / No
Internet : Yes/ No
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S.SRIMATHY, J.

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