



W.P.No.6804 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2023

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P. No.6804 of 2020

and

W.M.P.Nos.8102 & 8103 of 2020

C.A.Rajan

Vs.

...

Petitioner

1. Chennai Metropolitan Water Supply and Sewerage Board,
Rep. by its Managing Director,
No.1, Pumping Station Road,
Chintadripet, Chennai 600 002.

2. Vigilance Officer / General Manager,
Chennai Metropolitan Water supply and Sewerage Board,
No.1, Pumping Station Road,
Chintadripet, Chennai 600 002.

3. The Enquiry Officer, /
Chief Engineer (Project) I
Chennai Metropolitan Water supply and Sewerage Board,
No.1, Pumping Station Road,
Chintadripet, Chennai 600 002.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, to call for the concerned records from the 2nd and 3rd Respondent, quash the order of the 2nd Respondent bearing Lr.No.CMWSSB/P&A/VC2/1439/2018, dated



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23.01.2020, Lr.No.CMWSSB/P&A/VC2/1439/2018, dated 03.03.2020 and the order of the 3rd Respondent, dated 10.12.2019 as illegal, arbitrary and contrary to law and consequently direct the Respondents to pay the petitioner provisional pension from 01.05.2014 onwards till now and continue to pay till the petitioner is retained in service and defer the disciplinary proceedings initiated in the charge memo No. CMWSSB/P&A/VC2/1437/2018 dated 29.04.2019 till the criminal proceedings initiated in C.C.No.2 of 2014 pursuant to the charges levelled against the petitioner are pending on the file of the Special Judge for cases under Prevention of Corruption Act, 1988, City Civil Court Campus, Chennai.

For Petitioner : Mr.R.Kamatchi Sundaresan

For Respondents : Mr.Krishna Ravindran,
Standing counsel

ORDER

This Writ Petition has been filed for the issuance of a Writ of Certiorarified Mandamus to call for the records from the Respondents 2 and 3, pertaining to Lr.No.CMWSSB/P&A/VC2/1439/2018, dated 23.01.2020, Lr.No.CMWSSB/P&A/VC2/1439/2018, dated 03.03.2020, quash the same and for a consequential direction to the respondents to pay the petitioner provisional pension from 01.05.2014 onwards.

2. The petitioner who was slapped with the allegation of corruption, has been placed under suspension from 12.08.2012. The petitioner had



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given a representation that he should be given provisional pension from the date of his retirement i.e., from may 2014 on considering the impugned order dated 23.01.2020 passed by stating that the petitioner has to furnish certain documents like Non Employment Certificate for the purpose of drawing eligible salary for the period during which his services were freezed.

3. Mr.R.Kamatchi Sundaresan, learned counsel for the petitioner submitted that the petitioner had reached the age of superannuation as on 30.04.2014. But so far, he was not granted subsistence allowance with provisional pension. It was further submitted that no rules in Government or Board contemplates furnishing of Non Employment Certificate in the event of accruing Provisional Pension to the employees.

4. However, Mr.Krishna Ravindran, learned Standing counsel appearing for the respondents submitted that as per “Regulation 35(2) of CMWSS Board Employees (Pay) Regulations, 1978”, the employee whose services were freezed due to his superannuation during the pendency of the



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disciplinary proceedings initiated against him, will be eligible to get salary not exceeding the pension accrued to the employee. It is submitted that the above payment is considered as a salary and hence the petitioner is bound to produce Non Employment Certificate. For the sake of clarity, Regulation 35(2) of CMWSS Board Employees (Pay) Regulations, 1978 is extracted hereunder:

“An employee under suspension on a charge of misconduct should not be required or permitted to retire on his reaching the date of compulsory retirement, but should be retained in service until the enquiry into the charge is concluded and a final order passed thereon. Whether such an employee is fully exonerated or not, he shall be considered to have been under extension of service for the period from the date of compulsory retirement to the date termination of the proceedings. During such an extension of the employee shall freeze at the level reached on the date of compulsory retirement and the salary during that period shall not exceed the pension which has accrued to the employee on that date.”

5. The CMWSS Board Employees (Pay) Regulations, 1978 does not speak about the payment of provisional pension or disciplinary



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proceedings as against the employees who had reached the age of superannuation. As against the petitioner, the proceedings are still pending from the year 2014 and the petitioner has crossed the age of superannuation by 30.04.2014. In view of the pending proceedings, he was not allowed to retire from service and his services were freezed. There is no quarrel on the point that during the freezed period of service, the petitioner is entitled to draw the salary not exceeding pension that might have accrued to him if he is allowed to retire. But the point here is whether the production of Non Employment Certificate is mandatory, when the petitioner is kept under suspension before reaching superannuation.

6. For getting subsistence allowance, the employer should produce the Non Employment Certificate.

7. At the conclusion of every departmental proceedings, the employee might be reinstated or not. Once he reaches the age of superannuation, it has to be decided whether he can be allowed to retire on date of his superannuation or he should be imposed with a punishment of



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removal from service depending upon the outcome of the enquiry proceedings. Even though the payment made to the petitioner is called as a salary, that nomenclature alone will not change the situation that had happened subsequent to the attaining the age of superannuation. It is only because of these reasons there is no regulation in CMWSS Board Employees (Pay) Regulations, 1978 or in the Tamil Nadu Pension Rules, 1978 which would stipulate that an employee is bound to produce Non Employment Certificate for receiving Provisional Pension even after he attained the age of superannuation. It is obviously because the person who is allowed to retire is entitled to get pension though he had chosen to undertake any post retirement employment, if he is otherwise eligible. The same logic should be applied to the case of those persons whose services have been freezed due to the pending disciplinary proceedings even after his attaining the age of superannuation. A person who has attained the age of superannuation cannot be compelled to undertake that he will not seek any employment, just because certain proceedings are pending against him. The position applicable to those persons whose services were freezed until



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and after they attained superannuation. It is as similar as that to those employees who had allowed to be retired and who are drawing pension.

8. Hence, I feel it is appropriate to quash a portion of the impugned order which insists the petitioner to produce Non Employment Certificate. Since the payment of Provisional Pension is a right of an employee whose services were already get expired, but the period subsequent to the date of superannuation is freezed due to some technical reasons, such condition would not be imposed.

9. In view of the above, a portion of the impugned order which insisted the petitioner to produce the Non Employment Certificate is alone set aside. The 1st respondent is directed to release the Provisional pension / any other payment which the petitioner is eligible as per Regulation 35(2) of CMWSS Board Employees (Pay) Regulations, 1978 from 01.05.2014 and the orders in this regard shall be passed within a period of four weeks from the date of receipt of a copy of this order. However, the petitioner is also obliged to go in person to the 2nd respondent Office on due intimation



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and fill up necessary forms if any by furnishing basic details like residential details etc., and get the cheque for the said payment.

10. With the above observation and direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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Index: Yes / No
Speaking order / Non-speaking order
vum

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