IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.04.2023

Coram:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P. No.30473 of 2014

P. Srinivasan ... Petitioner

Vs.

1.Government of Tamil Nadu,
Rep. by Secretary to Government,
Commercial Taxes and Registration Department,
Chennai- 600 009.

2.The Inspector General of Registration
Chennai- 600 028. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to pass a Writ of Certiorarified Mandamus, call for records relating to orders in (1) G.O.(D) No. 341, Commercial Taxes and Registration (K) Department, dated 06.08.2014 and (2) G.O. (D.).No. 341, Commercial Taxes and Registration (K) Department, dated 02.09.2014 of the 1st respondent and (3) Pro.No.42046/B1/2007 dated 20.01.2010 of the 2nd respondent to quash the same and to issue consequential directions to the respondents to permit the petitioner to retire from service on 31.07.2011 AN and to grant him all consequential service and monetary benefits in full.

For Petitioner	:	Mr.M. Ravi
For Respondents	:	Mr.U.M. Ravichandran Special Government Pleader

ORDER

The petitioner has filed this writ petition challenging the order dated 02.09.2014 by which order the petitioner's appeal as against removal from service was modified into one as compulsory retirement.

2. The petitioner was appointed in the respondent department on 01.09.1971. While he was serving as Sub Registrar, Kammapuram, Virudhachalam District, second respondent initiated disciplinary proceedings under Rule 17(b) of the Tamil Nadu Civil Service (discipline and Appeal) Rules on 20.06.2008.

3. The charges were regarding that the petitioner failed to disclose the source of income for his purshase of house, vehicle etc. After conduct of enquiry as stipulated in the statute, the 2nd respondent passed the

punishment of removal from service on 20.01.2010. Petitioner preferred statutory appeal dated 10.03.2010 to the first respondent-Government. Since the petitioner was at the age of verge of superannuation and he was imposed with the punishment of 'removal from service' and no orders passed in the statutory appeal, the petitioner preferred W.P.11749 of 2010. The said writ petition was disposed on 08.06.2010 with a direction to the first respondent to dispose of the appeal within a period of 12 weeks.

4. The statutory appeal was rejected as it was preferred with a delay of 4 days. Thereafter the petitioner filed another W.P.No.1396 of 2011 as against the said order passed by the statutory authority. This court by order dated 24.09.2010 directed the 1st respondent to consider the appeal on merits and in accordance with law.

5. Purusuant thereo, the 1st respondent modified the punishment 'Removal from service" into one of "Compulsory retirement". The first respondent ordered that pension and gratuity applicable as per Rules 39 of

Tamil Nadu Pension Rules, is payable to the petitioner.

6. The contention raised by the learned counsel for the petitioner is that since the punishment is modified into one of compulsory retirement and that the petitioner was held to be entitled for pension and gratuity benefits by order dated 02.09.2014, by considering the past conduct of the petitioner and his service rendered nearly for 30 years without any disciplinary proceedings, a direction may be issued to the respondents to permit the petititoner to retire from service on 31.07.2011 A.N. and to grant him consequential service and monetary benefits.

7. Respondent filed counter affidavit stating that the department by following due procedure of enquiry awarded punishment and thereafter, modified the same taking note of attendant circumstances and therefore, the prayer sought by the petitioner need not be entertained.

8. It is settled proposition of law that compulsory retirement does not

amount to removal from service and the said punishment imposed on an officer as a Penalty would not involve loss of benefit already earned. The officer dismissed or removed does not get pension which he has earned. But an officer who is compulsorily retired does not lose any part of the benefit that he has earned. On compulsory retirement he will be entitled to the pension etc. that he has actually earned. There is no diminution of the accrued benefit.

9. Once the penalty of the petitioner has been converted into compulsorily retirement, the same shall relate back to the date of dismissal and the petitioner shall be entitled to pension from the said date. i.e, the date when the dismissal order had come into effect. Taking into consideration the passing of impugned order dated 02.09.2014, modifying the punishment "dismissal from service" into one of "compulsory retirement", this court is inclined to direct the respondents that the arrears of pension shall also be paid to the petitioner. The above said direction shall be carried out by the respondents within a period of eight weeks from the date of receipt of a copy of this order. Follwing the principle "No work, No pay", it is made clear that

since the petitioner has not worked in the respondent department after the punishment imposed earlier, the salary and other benefits sought for by the petitioner would not arise for consideration.

10. This writ petition is partly allowed on the terms indicated above. No costs. Consequently connected miscellaneous petition is closed.

11.04.2023

Index:Yes/No
Internet:Yes/No
Speaking Order: Yes/No
Neutral citation: Yes/No
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To
1.The Secretary to Government,
Government of Tamil Nadu,
Commercial Taxes and Registration Department,
Chennai- 600 009.

2.The Inspector General of Registration
Chennai- 600 028.

J.NISHA BANU, J.,

Jer/Nvsri

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