



W.P.No.17295 of 2018

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.17295 of 2018

P.Chinnaiah (died)

1.Nagammal

2.C.Ramachandran

3.Rajalakshmi

4.C.Selvapandiyan

...Petitioners 1 to 4 /
LR of the Petitioners

Vs.

1. The Government of Tamil Nadu
rep. by its Principal Secretary,
Revenue Department,
Secretariat,
Chennai - 600 009.

2. The Principal Secretary/
Commissioner of Revenue Administration,
Disaster Management and Mitigation Department,
Ezhilagam,
Chennai - 5.



W.P.No.17295 of 2018

3. The Commissioner,
Tribunal for Disciplinary Proceedings,
No.14, Visvasanthi Nagar,

Madurai - 17.

... Respondents

(Petitioners 1 to 4 impleaded as petitioners as per orders of this Court dated 02.11.2023 in W.M.P.No.4316 of 2023 in W.P.No.17295 of 2018 by VBSJ)

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent bearing No. Ser.V[2]/ 48570/ 2011 dated 16.07.2012 [2] Order bearing No. R.A - 2[2]/ 49521/ 2013 dated 21.09.2017 and [3] Order bearing No. R.A-2[2]/ 49521 2013 dated 01.02.2018 and quash the same and consequently direct the respondents to grant the superannuation benefits by allowing the petitioner to retire from service with effect from 30.06.2010 with all consequential benefits.

For Petitioner : Mr.R. Ramesh

For Respondents: Mr.M.Muthusamy

Government Advocate for R1 to R3



W.P.No.17295 of 2018

ORDER

WEB COPY

This petition has been filed to quash the order of the 2nd respondent and consequently, to direct the respondents to grant the superannuation benefits by allowing the petitioner to retire from service with effect from 30.06.2010 with all consequential benefits.

2.It is the case of the legal representatives of the petitioners that the petitioner P.Chinnaiah was appointed as Village Assistant on 01.06.1972. He was regularised from service as per G.O.Ms.No.521, dated 17.06.1990, which came into effect from 01.06.1995. The respondents framed the following charges against the petitioner:

"On 07.08.2006, one Kumaresan of Vengaipatti @ Madurapuri Village, Tirupattur Taluk, Sivagangai District, has approached the North Singampmari Village Administrative Officer Mr.M.Rathina Velu, for transfer of patta for the lands purchased by him to do all the works for transfer of patta, the Village



W.P.No.17295 of 2018

WEB COPY

Administrative Officer demanded Rs.1,700/- and Rs.150/- to each Village Assistant including me and another Village Assistant Mr.Chellakannu. A case under Section 7 of the Prevention of Corruption Act, 1988, was registered. Subsequently, on 27.09.2006 at about 03.30 p.m. the Village Administrative Officer, Rathnavelu, received Rs.2,000/- through Village Assistant, Chellakannu in the presence of witnesses at Singampuri Village, Administrative Officer, thereby, I was alleged to have violated Rule 21 of the Tamil Nadu Service Conduct Rules, 1972."

3.It is the further case of the petitioner that in the disciplinary proceedings, the Enquiry Officer gave his findings that the charges levelled against the petitioner was proved. On the basis of the findings, the 2nd respondent without adverting to the evidence and the written arguments submitted by the petitioner, upheld the findings of the 3rd respondent and passed the impugned order dated 16.07.2012 of compulsory retirements from service with effect from 30.06.2010.



W.P.No.17295 of 2018

WEB COPY

Aggrieved over the same, the petitioner filed an appeal on 05-10-2012 to the 1st respondent.

4.In the Criminal proceedings in F.I.R.No.1 of 2008 of Vigilance and Anti Corruption Wing, Sivagangai, the petitioner was not one of the accused persons and in the Final Report filed before the Criminal Court, the petitioner was not arrayed as accused. The department proceedings also also on the same set of facts and the same set of evidence which cannot be overlooked by the 2nd respondent before passing the impugned order of compulsory retirement from service. Since no order had been passed on appeal, the petitioner was constrained to file a Writ Petition in W.P.No.25279 of 2014 before this Court for a direction to consider the appeal dated 05-10-2012 by the 1st respondent. This Court on 17.09.2014 was pleased to allow the Writ Petition and directed the 1st respondent to consider the appeal dated 05.10.2012 and pass



W.P.No.17295 of 2018

WEB COPY

orders in accordance with Law. But, the above direction was not implemented by the respondents. Therefore, the petitioner sent a notice dated 19.01.2015 to the respondents to implement the orders of this Court. Since no orders have been passed the petitioner filed Contempt Petition No.921 of 2017 and it was closed. Thereafter, the 2nd respondent again passed an order dated 21.09.2017 modifying the punishment order passed by the 2nd respondent on the ground that the Government had issued Letter No.35088/Ser-7(2)/2012-18, Revenue Department, dated 28.04.2016 that the punishment order dated 16.07.2012 passed by the 2nd respondent should be given effect to from the date of passing of the order dated 16.07.2012 instead of 30.06.2010. The

order of the 2nd respondent who was the Disciplinary



W.P.No.17295 of 2018

WEB COPY

Authority had once again passed order on appeal instead of the 1st respondent passing order on appeal.

5. Thereafter, on 01.02.2018, the very same 2nd respondent had once again chosen to pass another punishment order on appeal to enhance the punishment order from that of compulsory retirement to further order of impose of a penalty of 1/3rd cut in the entitled pension per month for a period of 15 years. This order was passed by the very same Authority. All the three punishment orders were passed by the very same Authority, i.e., the 2nd respondent as original Authority and as an Appellate Authority. After attaining the age of superannuation on 30.06.2010, the petitioner is denied of his legitimate pension and retiral benefits till date. Hence, this petition.

6. The respondents filed their counter stating that before the Tribunal at Madurai in Disciplinary Proceedings



W.P.No.17295 of 2018

WEB COPY

No.2/2008, the Tribunal had conducted inquiry under the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955, and after completion of enquiry, the Tribunal had sent a report to the Government and the Government have transmitted the said findings to the Commissioner of Revenue Administration and directed to take further action in accordance with Rule 10(b) of the Rules. If the head of the Department on consideration of such report proposes to impose any of the penalties referred to in Rule 8, the head of the Department shall follow the entire procedures in Clause(a) of the Rules. Therefore, the Commissioner of Revenue Administration imposed the punishment of compulsory retirement to the petitioner with effect from 30.06.2010 for violation of Rule 20(1) vide proceedings dated 16.07.2012. Thereafter, the petitioner filed the appeal to the Government on 05.10.2012. As per instructions received from the Government, dated 28.04.2016, the 2nd respondent ordered punishment of



W.P.No.17295 of 2018

WEB COPY

compulsory retirement from service to the petitioner from the date of issue of the order. On the directions issued by this Court in W.P.No.(MD).25279 of 2014, the 1st respondent remitted the case to the 2nd respondent stating that the 2nd respondent had given an errata to the earlier order passed on 15.07.2012 and issued revised order dated 21.09.2017. The order passed by the 1st respondent dated 21.09.2017 is only an errata for the order issued on 16.07.2012. Hence, passing orders on the appeal petition dated 05.10.2012 by the Government does not arise. Therefore, the contempt petition filed by the petitioner was closed.

7.As per Rule 14(2) of the Tamil Nadu Pension Rules, 1978, consequent to the punishment of compulsory retirement, a penalty of 1/3 cut in the entitled pension per month for a period of 15 years was imposed on the petitioner under Rule 39(5) of the Tamil Nadu Pension Rules, 1978, and



W.P.No.17295 of 2018

WEB COPY

communicated to the petitioner and he received and acknowledged the same on 28.02.2018 and saving clause was given in the order. The petitioner has not preferred any appeal against the above order. Aggrieved over the same, the petitioner has filed the present Writ Petition.

8.In the counter, the respondents further stated that the Tribunal for disciplinary proceedings, Madurai, had framed charges against one P.Chinnaiah, Village Assistant, North Singampunari Group, Thirupathur, for his involvement in demand and acceptance of bribe from one Kumaresan for transfer of patta for the lands purchased by him. Thereafter, enquiry was conducted in TDP No.2 of 2008 and the Tribunal sent report to the Government. The Tribunal for Disciplinary Proceedings have enquired four prosecution witnesses and held the charges are proved. Therefore, the petitioner had violated Rule 20(1) of the Tamil Nadu Government Servants



W.P.No.17295 of 2018

WEB COPY

9.The learned counsel appearing for the petitioner would submit that the 2nd respondent again passed an order dated 21.09.2017 modifying the punishment order passed by the 2nd respondent on the ground that the Government had issued order dated 28.04.2016 that the punishment order dated 16.07.2012 passed by the 2nd respondent should be given effect to from the date of passing of the order dated 16.07.2012 instead of 30.06.2010. He would further submit that the order of the 2nd respondent who was the Disciplinary Authority had once again passed order on appeal instead of the 1st respondent passing order on appeal. Thereafter, on 01.02.2018, the very same 2nd respondent had once again chosen to pass another punishment order on appeal to enhance the punishment order from that of compulsory retirement to further order of impose of a penalty of 1/3rd cut in the entitled



W.P.No.17295 of 2018

WEB COPY

pension per month for a period of 15 years. This order was passed by the very same Authority. He would submit that all the three punishment orders were passed by the very same Authority, i.e., the 2nd respondent as original Authority and as an Appellate Authority. After attaining the age of superannuation on 30.06.2010, the petitioner is denied of his legitimate pension and retiral benefits till date.

10.The learned counsel appearing for the respondents would submit that on the directions issued by this Court in W.P.No.(MD).25279 of 2014, the 1st respondent remitted the case to the 2nd respondent stating that the 2nd respondent had given an errata to the earlier order passed on 15.07.2012 and issued revised order dated 21.09.2017. The order passed by the 1st respondent dated 21.09.2017 is only an errata for the order issued on 16.07.2012. Hence, passing orders on the appeal petition dated 05.10.2012 by the Government does not arise.



W.P.No.17295 of 2018

WEB COPY

Therefore, the contempt petition filed by the petitioner was closed. As per Rule 14(2) of the Tamil Nadu Pension Rules, 1978, consequent to the punishment of compulsory retirement, a penalty of 1/3 cut in the entitled pension per month for a period of 15 years was imposed on the petitioner.

11.Heard the learned counsel for the petitioner and the learned counsel for the respondents, and perused the materials available on record.

12.On going through the orders passed by the respondents, it could be seen that the charges levelled against the petitioner has been proved during the enquiry proceedings. As per Rule 14(2) of the Tamil Nadu Pension Rules, 1978, consequent to the punishment of compulsory retirement, a penalty of 1/3 cut in the entitled pension per month for a period of 15 years was imposed on the petitioner under Rule



W.P.No.17295 of 2018

WEB COPY

39(5) of the Tamil Nadu Pension Rules, 1978, and communicated to the petitioner and he acknowledged the same on 28.02.2018. The Authorities have considered the claim made by the petitioner and modified the order of punishment. The petitioner has not preferred any appeal against the said order. Rule 14(2) of CCA Rules provide for imposing punishment of compulsory retirement as a result of disciplinary action. If he is retired as a result of disciplinary action as a penalty, an appropriate authority may impose such penalty on pension or Gratuity or both and allow pension and Gratuity not less than two thirds and not more than full compensation entitlements.

13. According to the petitioner, the petitioner has not involved directly in demanding the bribe amount and he has not demanded any amount from the complainant. After attaining the age of superannuation on 30.06.2010, the



W.P.No.17295 of 2018

WEB COPY

petitioner is denied of his legitimate pension and retiral benefits till date. In view of the same, this Court is not inclined to interfere with the orders passed by the respondents with regard to compulsory retirement which is in order. This Court only sets aside the order of penalty of 1/3 cut in the entitled pension per month for a period of 15 years. The respondents are directed to calculate the pension amount without any deduction from 2012 onwards and disburse the same to the petitioner without any interest.

14.The legal representatives of the petitioner have been impleaded and the parties are directed to send a representation to the petitioner along with Death Certificate and the Legalheirship Certificate to enable the respondents to pass appropriate orders from the date of his death for getting family pension.



W.P.No.17295 of 2018

WEB COPY

Accordingly, this Writ Petition is disposed of. No costs.

02.11.2023

Index : Yes/No
Speaking order:Yes/No
Neutral citation:Yes/No
mps

To

1. The Government of Tamil Nadu
rep. by its Principal Secretary,
Revenue Department,
Secretariat,
Chennai - 600 009.
2. The Principal Secretary/
Commissioner of Revenue Administration,
Disaster Management and Mitigation Department,
Ezhilagam,
Chennai - 5.
3. The Commissioner,
Tribunal for Disciplinary Proceedings,
No.14, Visvasanthi Nagar,
Madurai - 17.



WEB COPY



W.P.No.17295 of 2018

V.BHAVANI SUBBAROYAN, J.

mps

W.P.No.17295 of 2018

02.11.2023