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WP.No.5199/2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.08.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.5199/2016

M.Peer Mohamed

... Petitioner

Versus

1.The Director of Fire Service,
Directorate of Office,
Tamil Nadu Fire and Rescue Department
Egmore, Chennai 600 008.

2.The District Fire Officer
Tamil Nadu Fire and Rescue Department
South Chennai, Ashok Nagar
Chennai.

3.The Station Fire Officer
Tamil Nadu Fire and Rescue Department
Ashok Nagar, Chennai.

...
Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the 2nd respondent in Na.Ka.No.7750/௮1/2015 dated 22.12.2015 and quash the same and direct the 2nd respondent to sanction the



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service and pensionary benefits to the petitioner within the period to be stipulated by this Court.

For Petitioner : No appearance
For Respondents : Mr.R.Needhi Perumal, GA

ORDER

- (1) The writ petition has been filed in the nature of a certiorarified mandamus seeking records of the 2nd respondent herein, the District Fire Officer, Tamil Nadu Fire and Rescue Department, South Chennai, Chennai, in Na.Ka.No.7750/ ஆ1/2015 dated 22.12.2015 and to quash the same and to direct the respondents to sanction service and pensionary benefits to the petitioner.
- (2) The petitioner has, by now, attained the age of superannuation. He had been selected as Fireman through the Employment Exchange on 30.12.1980 in Proceedings No.17009/B1/80 dated 30.12.1980 and further proceedings dated 01.12.1980 and 03.12.1980 respectively. He had completed three months of training and was appointed as Fireman at Ambattur Fire Office. He was then transferred to Tiruchendur, Nagercoil and finally, posted at Ashok Nagar, in



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Chennai. In the affidavit, the petitioner claims that in January 1992, he became sick and bedridden and lost consciousness. He claims that he was given Siddha treatment. He also claimed that he lost his memory. He claimed that he was continuously in bed. He then regained consciousness in August 2015 and realized that he had been appointed as Fireman and was working as Fireman under the respondents. He also claimed that he had worked for a period of 11 years and seeking pensionary benefits, he had made an application on 24.08.2015. By a communication which is sought to be impugned, it is claimed that the respondents had removed him from service as a 'deserter' under the provisions of the Tamil Nadu Civil Services Rules. It is claimed that the petitioner had been removed from service and he further claimed that proper notice was not sent to him. After the order had been communicated, he gave a further representation on 25.01.2016 in which he claimed that the monetary benefits which are due and payable to him, namely, the General Provident Fund may at least be paid to him.



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- (3) In the counter affidavit, it had been stated that the petitioner was working as Fireman in Ashok Nagar Fire and Rescue Station and he then obtained medical passport and 12 days medical leave from Egmore Police Hospital, but did not report to duty after the expiry of the leave period. He absented himself till 27.05.1992. Thereafter, Disciplinary Proceedings under Rule 17[b] of the Tamil Nadu Civil Services [Discipline and Appeal] Rules, were initiated and charges were also framed. The Tapal sent to the residence of the petitioner had been returned with an endorsement 'left without instructions'. Finally, the petitioner was considered as 'deserted duty' and punishment of removal from service was imposed by the proceedings of the 2nd respondent in PR.No.10/1992 dated 24.09.1992. That particular order is not under challenge in the present writ petition.
- (4) The respondents in their counter affidavit, had also raised an apprehension and a suspicion that the petitioner for the long period of 23 years, would have probably gone abroad seeking better employment. They have specifically denied and disputed the petitioner's statement that he became sick, that he took treatment in



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Siddha and that he lost his consciousness and that when he regained consciousness in the year 2015, he realized that he was actually in service in the Fire Service Department. These statements of the petitioner have been very specifically denied by the respondents. More significantly, the petitioner had not questioned the order of removal from service. He had not raised any issue about the procedure adopted during the enquiry. In the impugned order, it had been communicated to the petitioner that he had already been removed from service and that therefore, the respondents are not liable to pay any pension. However, it had been stated that the General Provident Fund amount which had accrued to the credit of the petitioner's salary account, would be paid to him. Thereafter, the petitioner himself had given a further representation to the respondents on 25.01.2016 seeking payment of the said General Provident Fund amount.

- (5) It is contended on behalf of the respondents herein that the petitioner had deliberately absented himself from duty and even before this Court had not produced any document to show that he was taking



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treatment when he had suffered illness and that, he had lost consciousness and that he regained consciousness. It is specifically contended on behalf of the respondents that the petitioner had come up with a false case and that there is every possibility that he would have gone abroad seeking better employment. It is therefore contended that since he had been removed from service, the respondents cannot pay the pensionary benefits to the petitioner herein. It is also contended that since the petitioner had not questioned that particular order of removal from service, that order has attained finality. It is therefore stated that only the General Provident Fund amount which is credited to the GPF Account of the petitioner, will alone be payable to the petitioner herein.

- (6) Though the matter had been listed today on a specific request, there is no representation on behalf of the petitioner herein.
- (7) However, on the earlier hearing date on 04.07.2023, this Court had reduced the issue only to payment of General Provident Fund for 11 years of service. Therefore, it is to the knowledge of the learned counsel for the petitioner that this is the only relief which the



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petitioner could be granted by this Court.

(8) The impugned order is therefore retained. The writ petition stands **dismissed**. But, however a direction is given to the respondents that the General Provident Fund amount which is payable to the petitioner herein may be paid. The respondents may make a conscious effort to find out the records since the records relate to nearly about three decades back and after tracing it out, may effect necessary payment, within a period of six months from the date of receipt of a copy of this order. No costs.

28.08.2023

AP

Internet : Yes

To

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C.V.KARTHIKEYAN, J.,

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