IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.32885 of 2022
and W.M.P.No.32287 of 2022

J.S.Ali
S/o.Abdul Jabbar ...Petitioner

Vs

1. Director of Municipality Administration,
   No.75, MRC Nagar, Santhome High Road,
   Chennai – 600 028.

2. Director,
   Local Fund Audit,
   Integrated Complex for Finance Department,
   4th Floor, Nandanam,
   Saidapet, Chennai – 600 035.

3. The Regional Director of Municipal Administration,
   Vellore – 12.

4. The Commissioner,
   Villupuram Municipality, Villupuram – 605 602.

5. The Commissioner,
   Thiruthuraipoondi Municipality,
   Thiruthuraipoondi – 614 713.

6. The Commissioner,
   Panruti Municipality,
   Panruti. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for records of the 4th respondent in proceedings Na.Ka.No.6440/2019/C1 dated 30.06.2022 and quash the same insofar as conditions 1 to 3 and consequently directing the respondents to sanction my pension and release all my retirement benefits and arrears of pension immediately.

For Petitioner	: Mr.V.Jayaprakash Narayanan
For Respondents	: Mr.P.Gurunathan Additional Govt. Pleader [R1 to R3]
	Mr.D.Ravichander Special Government Pleader [R4 to R6]

ORDER

This writ petition has been filed to quash the impugned proceedings in Na.Ka.No.6440/2019/C1 dated 30.06.2022 issued by the fourth respondent insofar as conditions 1 to 3 and consequently directing the respondents to sanction the petitioner's pension and release all my retirement benefits and arrears of pension immediately.

2. The petitioner had reached the age of superannuation on 30.06.2022 and was permitted to retire by the respondents alleging that while he was serving as Junior Assistant during the year 2014-2015 there

was a audit objection and that he has received excess pay from January 2006 to December 2016, therefore, his retirement and pensionary benefits have been withheld through the proceedings of the fourth respondent dated 30.06.2022, challenging the same the present writ petition has been filed.

3. Admittedly, no proceedings were initiated against the petitioner to substantiate that some excess payment was received by him for the period from January 2006 to December 2016. This apart, it is not the case of the fourth respondent also that such excess payment have been received owing to the misrepresentation made by the petitioner. Above all, the audit objection relates to a period commencing from January 2006, which is after about 16 years and the respondents have now acted upon through such audit objection by withholding the petitioner's retirement benefits.

4. There is yet another aspect of the matter. The fourth respondent is not empowered under any statute or regulation to withhold the retirement benefits.

5. The learned Special Government Pleader would vehemently oppose the contention of the petitioner and placed reliance on Rule 9(1)(b) of the Tamil Nadu Pension Rules, 1978 empowers them to withhold the retirement benefits.

6. I am not in agreement with such submission made by the learned Special Government Pleader. Rule 9(1)(b) would apply only when any pecuniary loss has occurred and that has been found out in the departmental or judicial proceedings and the pensioner is found guilty of grave misconduct or negligence during the period of service. When admittedly no disciplinary proceedings have been initiated against the petitioner, but the pensionary benefits has been entirely withheld owing to the audit objections, Rule 9(1)(b) will not come to the rescue of the fourth respondent herein.

7. In this regard, the learned counsel appearing for the petitioner has relied upon the following decisions of the Hon'ble Supreme Court as well as the Full Bench of this Court:

1. ***State of Jharkhand and Ors. Vs. Jitendra Kumar Srivastava***

reported in ***[(2013) 12 SCC 2019]***

2. ***N.Kandhimatinathan and Ors. Vs. Commissioner*** reported in ***[2021 SCC online Mad 14543]***
3. ***C.Mathesu Vs.The Secretary to Government and Ors.*** reported in ***[2013 (3) CTC 369]***

8. The relevant portion in the case of ***C.Mathesu Vs.The Secretary to Government and Ors.*** reported in ***[2013 (3) CTC 369]*** is reads as under:

> "*13. Rule 32 of the Pension Rules provides for grant of superannuation pension to a Government servant who retires at a particular age. The Explanation to Rule 32 provides the different age when a Government servant would retire. The Note at the end of Rule 32 provides that a Government servant who is under suspension on a charge of misconduct shall not be required or permitted to retire, but shall be retained in service until the enquiry into the charge is concluded and a final order is passed by a competent authority.*
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> *14. The provisions of Rule 56(1) under the Fundamental Rules deal with retirement on superannuation. It only provides that a Government servant*

who has been placed under suspension shall not be permitted to retire, but shall be retained in service until the enquiry into the charge of misconduct etc. is concluded and a final order is passed by the competent authority. Whereas, under Rule 9 of the Pension Rules, the Government has been given a right to withhold or withdraw pension. It provides for continuance of the departmental proceedings instituted while the Government servant was in service or even after his retirement and if the Government servant is found guilty of causing loss of revenue to the Government or otherwise found guilty of grave misconduct or negligence during the period of his service, then the Government can withhold or withdraw, either in part or full, his pension. Thus, the two provisions operate in different fields.

....

28. From the aforesaid discussion, the following broad principles emerge :

(xv)If a Government servant has been placed under suspension and not permitted to retire even after his attaining the age of superannuation in terms of Rule 56(1)(c) of the Fundamental Rules, the enquiry against him can proceed, and in that case, if charges of misconduct are proved, depending upon the nature of the charges, even the

extreme penalty of dismissal or removal from service can be imposed.

(xvi)If there is any statutory provision for continuing the departmental proceedings like Rule 9(2) of the Pension Rules even after the Government servant has retired on attaining the age of superannuation, then the departmental proceedings already instituted before the retirement of the Government servant can be continued against the delinquent employee by treating him to be in service.

(xvii)If the Government servant has retired on attaining the age of superannuation and subsequently any departmental proceeding is to be instituted against him, in that event, under Rule 9(2)(b) of the Pension Rules, sanction of the Government is required to be taken and the event in respect of which the departmental proceedings are sought to be initiated should not have taken place more than four years before such institution.

(xviii)In cases where the Government Servant is allowed to retire on attaining the age of superannuation or where the departmental proceedings are to be initiated after the retirement, there is no question of passing the order of dismissal or removal from service and only the pension can be withheld, withdrawn or reduced. The

question of dismissal or removal of the said delinquent employee from service, therefore, does not arise.

(xix)Since in the present case, the appellant was permitted to retire on attaining the age of superannuation without prejudice to the disciplinary proceedings pending against him, in our considered opinion, the said proceedings can be permitted to be continued in terms of Rule 9(2)(b) of the Pension Rules."

9. Thus, the entire action on the part of the fourth respondent by withholding the petitioner's pensionary and retirement benefits is totally illegal. If that so, the petitioner would be entitled for payment of interest on the withheld sum from the date retirement, till the date of his actual disbursement. Such entitlement for grant of statuory interest as per Rule 45-A of the Tamil Nadu Pension Rules, 1978 would be 10% on the gratuity amount and the petitioner would be entitled for the same. For the remaining dues, interest at the rate of 6% would be reasonable.

10. In the light of the above, there shall be a direction to the respondents 1and 6 to forthwith pass orders, notionally retiring the

petitioner with effect from 30.06.2022 and disburse the entire retirement and pensionary benefits together with interest at the rate of 10% on the gratuity amount payable to the petitioner and 6% on the other dues.

11. Such passing of orders and disbursement of dues shall be made atleast within a period of four weeks from the date of receipt of a copy of this order.

12. With the above observations, this writ petition stands allowed. No costs. Connected miscellaneous petition is closed.

28.06.2023

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

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M.S.RAMESH,J.

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