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Review Application No.35 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.03.2023

PRONOUNCED ON : 31.03.2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Review Application No.35 of 2023

in

W.P.No.22908 of 2015

1.The Secretary to Government of Tamil Nadu,
Rural Development Department,
Secretariat,
Chennai – 600 009.

2.The Director of Rural Development,
Saidapet, Chennai – 600 015.

3.The District Collector,
Tiruvallur District.
Tiruvallur.

... Applicants

Vs.

Thiru N.Selvarajan

... Respondent

Prayer in Review Application No.35 of 2023: Review Application filed under Order 47 Rule 1 read with Section 114 of Civil Procedure Code, to review the order dated 14.07.2022 passed by this Court in W.P.No.22908 of 2015.

Prayer in W.P.No.22908 of 2015: Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in G.O.(D).No.278, Rural Development and Panchayat Raj (E2) Department dated 27.05.2015 and to



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quash the same and consequently to direct the 1st respondent to grant pension and to settle the pensionary benefits due, pursuant to the retirement of the petitioner on 31.01.1993.

For Applicants

: Mr.S.Ravichanran

Additional Government Pleader

For Respondent

: Mrs.Malarvizhi Udaya Kumar

ORDER

The Review Application has been filed to review the order dated 14.07.2022 passed in W.P.No.22908 of 2015.

2. The facts in nutshell are that the respondent was appointed in Government service as Grama Sevak on 01.06.1956. The respondent was suspended from service vide G.O.(3D) No.3, Rural Development Panchayat Raj Department dated 29.01.1993. In view of suspension, the respondent was not permitted to retire from service vide G.O.(3D) No.4, Rural Development Panchayat Raj Department on 29.01.1993. Subsistence Allowance was sanctioned to the respondent vide District Collector, Kancheepuram District in proceedings dated 21.03.1993. Thereafter, in proceedings dated 03.06.2003, the respondent was permitted to retire from service on 31.01.1993 subject to the result of the criminal case, which was pending during the relevant point of time. The criminal case was registered under the provisions of the Prevention of Corruption Act, 1988. In respect of the departmental disciplinary proceedings, the respondent was imposed



with the punishment of “withholding of the entire pension payable to the petitioner” vide G.O.(D).No.278, Rural Development Panchayat Raj Department dated 27.05.2015.

3. The error apparent brought to the notice of this Court by the review applicants are that the respondent was not entitled for subsistence allowance, since he was allowed to retire from service with effect from 31.01.1993 and further, he was convicted in a criminal case and further, he was allowed to retire from service without prejudice to the criminal case, which was pending in the year 2003.

4. In respect of the criminal case registered under the Prevention of Corruption Act, 1988, the respondent was convicted. Thus, the Government imposed the punishment of “withholding of the entire pension payable to the petitioner” in proceedings dated 27.05.2015. When the punishment of withholding of the entire pension payable to the respondent was imposed on him, question of grant of pension would not arise at all.



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5. The respondent, who filed the writ petition in W.P.No.22908 of 2015, made a representation before this Court that he was placed under suspension on the last day of his retirement and the order of suspension was revoked in the year 2003 and therefore, the respondent is entitled for subsistence allowance for the period from 1993 to 2015.

6. The review application as of now clarified that in G.O.(D).No.316, Rural Development Panchayat Raj Department dated 03.06.2003, the order of suspension issued to the respondent / employee was revoked and the respondent was permitted to retire from service on 31.01.1993 in the year 2003. Thus, the question of Subsistence Allowance will not arise for the reason that the subsistence allowance was issued, when the delinquent officer was under suspension. But in the present case, the respondent was permitted to retire from service in the year 2003 itself with effect from 31.01.1993 and he was allowed to retire without prejudice to the criminal case, which was pending during the relevant point of time. Thus, the respondent was granted subsistence allowance, when he was under suspension. However, he was allowed to retire from service by order dated 03.06.2003 with effect from 31.01.1993. Therefore, question of granting



subsistence allowance from August 2005 would not arise at all.

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7. In the present case, the respondent was permitted to retire from service with effect from 31.01.1993, which was his original date of superannuation. The respondent was allowed to retire from service as per G.O.(D).No.316, Rural Development Panchayat Raj Department dated 03.06.2003. Thereafter, the final order in the departmental disciplinary proceeding was issued in proceedings dated 27.05.2015, imposing the penalty of withholding of the entire pension payable to the petitioner. Therefore, the petitioner was not under suspension from August 2005 to 27.05.2015, the date on which the final order was passed.

8. The respondent was imposed with the punishment of withholding of entire pension. The punishment was imposed, in view of the fact that the respondent was convicted in the criminal case registered against him under the provisions of the Prevention of Corruption Act, 1988. Thus, the respondent is not eligible for Subsistence Allowance from August 2005 till the date of passing of final orders.



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9. In view of the fact that the punishment of withholding of the entire pension was imposed and the respondent is not entitled for any pensionary benefits on account of the conviction order passed by the competent Criminal Court in a corruption case. These facts, which were not elaborated by the review applicants, when the respondent was heard and therefore, the review applicants have stated that the error apparent in this regard is to be reviewed.

10. When the entire benefit of pension has been withhold under the provisions of the Tamil Nadu Pension Rules, 1978, this Court is of the considered opinion that the respondent is not eligible for any pensionary benefits or pension. Regarding the Subsistence Allowance, the respondent is not entitled for the same from August 2005, since he was permitted to retire from service through the proceedings of the year 2003 with effect from the year 1993. Thus, this Court has no hesitation in forming an opinion that there is an error apparent in granting the relief of subsistence allowance to be paid by the review applicants from August 2005 to 27.05.2015, the date on which the final order was passed.



11. In view of the facts and circumstances, the review application

No.35 of 2023 stands allowed and consequently, the writ petition filed by the respondent in W.P.No.22908 of 2015 stands dismissed. No costs.

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31.03.2023

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Index : Yes

Speaking order

Neutral Citation : Yes



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S.M.SUBRAMANIAM, J.

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