IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2023

CORAM

THE HON'BLE Mr. JUSTICE **C.V.KARTHIKEYAN**

W.P.No.2651 of 2017
and
W.M.P.Nos.2598 & 2599 of 2017

D. Jayapalan .. Petitioner

Vs.

1.The Commissioner
The Corporation of Chennai,
Ribbon Building,
3, Periyar E.V.R.Salai,
Chennai – 600 003.

2.The Pension Officer
The Corporation of Chennai,
Ribbon Building,
3, Periyar E.V.R. Salai,
Chennai – 600 003.

3.The Zonal Officer/Assistant Commissioner
Corporation of Chennai,
36B, Pullah Avenue, Shenoy Nagar,
Chennai – 600 030. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order in proceeding Z.O.VIII.R.D.C.No.R1/1583/2009 dated 25.04.2016 of the 3rd respondent, the Zonal Officer/Assistant Commissioner, Corporation of Chennai, 36B, Pullah Avenue, Shenoy Nagar, Chennai – 600 030 and to quash the same and to direct the respondents to claim and disburse the retiral amount due to the petitioner arising out of his 33 years 4 months 12 days of service rendered to the corporation with 18% interest from 01.02.2006 and the consequential revision of pension based on his last drawn pay of Rs.15,000/- and the arrears thereof.

For Petitioner .. Mr.K.Thennan

For Respondents .. Mr.G.T.Subramanian

ORDER

This writ petition has been filed in the nature of a Certiorarified Mandamus to call for the entire records relating to the impugned order in proceedings Z.O.VIII.R.D.C.No.R1/1583/2009 dated 25.04.2016 issued by the 3rd respondent / Zonal Officer / Assistant Commissioner, Corporation of Chennai and to quash the same and direct the respondents to claim and disburse of retirement amount to the petitioner.

2.The petitioner, had studied in the old 11th standard pattern prior to introduction of 10 + 2 years of Higher Secondary course. In the year 1977-1978, the medium of instruction for every school in Tamil Nadu was for school study till 11th standard and one year of Pre-university course and three years of Degree course. The petitioner had studied the said 11th standard, but had failed in the 10th standard. He was initially appointed as Gollah on 19.09.1972 by the Commissioner of Chennai Corporation. He was then posted as Rent Collector on 13.10.1972 and promoted to Tax Collector on 16.07.1973. His services as Tax Collector was regularized with effect from 05.09.1975 by an order of the Revenue Officer, Corporation of Chennai dated 02.08.1979. He retired on attaining the age of superannuation as Senior Tax Collector on 31.01.2006. He had totally served under the Chennai Corporation for 33 years, 4 months and 12 days. He claimed that he was entitled for pension, gratuity and commutation of pension and other retirement benefits. Unfortunately, he was paid only the provisional pension of Rs.3,834/- with effect from 01.02.2006. The reason given was that he had failed in his 10th standard.

3.The respondents had overlooked the basic fact that the petitioner was studying under the 11th standard school studying and had not completed his 11th standard and had failed in his 10th standard and had discontinued his studies and thereafter been appointed as Gollah. That is the only reason why the retirement benefits of the petitioner had been withheld by the respondents.

4.The petitioner had filed several writ petitions questioning the action of the respondents. Finally, the impugned order came to be passed by the 3rd respondent on 25.04.2016. This was an order after an enquiry conducted by the respondents.

5.One ground raised by the petitioner was that the said order was passed without granting opportunity and even if granted, the said opportunity or representation given by the petitioner was never considered by the respondents. This stands out to be an issue of fact.

6.The learned counsel for the respondents was directed to produce the relevant records in this connection. It is seen that questioning the show cause notice and other proceedings, the petitioner had actually given a written explanation on 05.08.2014. The respondent placed reliance on the note from the Zonal Officer to the Regional Deputy Commissioner dated 27.06.2014, wherein, reliance was placed on an internal communication dated 11.11.2008 and the Government order in G.O.Ms.No.764 dated 02.08.1986 with respect to those who failed in 10th standard. But unfortunately, for the respondents, this particular internal communication or the Government order would not apply to the petitioner herein, since the petitioner had retired from service on attaining the age of superannuation on 31.01.2006.

7.The assertion by the learned counsel for the petitioner that therefore, the respondents have improperly withheld the retirement benefits is correct and the Court will have to direct that the retirement benefits of the petitioner will have to be necessarily released to the petitioner herein.

8.In the order impugned, it had been very categorically stated that the petitioner had not passed the 10th standard. It must be stated that the petitioner had studied the original 11th standard medium and therefore, the failure of him to pass school, cannot be held against the petitioner herein, since what the respondents meant was the 10 + 2 course and the petitioner having failed in the 10th standard public examination. That was never done for the petitioner herein, when the public examination or the State Board Examination was only on completion of the 11 standard.

9.The entire reasonings of the respondents on that particular ground will have to be set aside by this Court. No other reasoning has been given except to find fault with the petitioner. It had also been stated that the pay of the petitioner had been revised notionally. But there is no reason as to why the petitioner should not be paid for the service rendered by him. He had been successively promoted from the post of Gollah, which he originally joined on 19.09.1972 and owing to diligent service had been promoted as Rent Collector, Tax Collector and his services had been regularised as Tax Collector and he retired on attaining the age of Superannuation as Senior Tax Collector. Having discharged such duties, it is only appropriate that necessary monetary benefits are granted to the petitioner herein.

10.With the above observations, the impugned order is therefore set aside and a direction is given to the respondent to calculate the pensionary benefits payable to the petitioner, as he had retired from service on 31.01.2006, taking into consideration each and every year of his service and the successive promotion, which had been granted by the respondents to the petitioner herein. Disbursement of all the retirement benefits taking into consideration the entire period of service as 33 years, 4 months and 12 days has to be done within a period of sixteen weeks from the date of receipt of a copy of this order. Accordingly, this writ petition stands allowed. No costs. Consequently, connected writ miscellaneous petitions are closed.

26.09.2023

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Index:Yes/No
Internet:Yes/No
Neutral Citation:Yes/No
Speaking order:Yes/No

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C.V.KARTHIKEYAN,J.

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