IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.A.No.1813 of 2019
and
C.M.P.No.12304 of 2019

1. The Government of Tamil Nadu,
Represented by its
Secretary to Government,
Revenue Ser2(2) Department,
Fort St.George,
Chennai – 600 009.

2. The Principal Secretary and Commissioner
of Revenue Administration,
Chennai – 600 005.

3. The District Collector,
Kancheepuram. ... Appellants

-Vs-

K.Murugaiah,
Assistant Commissioner of Excise (Compulsory Retd.),
Kancheepuram. ... Respondent

PRAYER : Writ Appeal under Clause 15 of the Letters Patent, to set aside the order dated 27.08.2014 made in W.P.No.15392 of 2014 and allow the writ appeal.

For Appellants : Mr.R.Kumaravel

		Additional Government Pleader
For Respondent	:	Mr.K.S.Viswanathan Senior Counsel for Ms.T.Hemalatha

J U D G M E N T

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.)**

This intra Court appeal has been directed against the order passed by the writ Court dated 27.08.2014 made in W.P.No.15392 of 2014.

2. That the respondent herein was working as Assistant Commissioner of Excise and at that time, due to disciplinary proceedings, he had been awarded with a punishment of compulsory retirement by Government Order in G.O.(2D)No.411, Revenue Ser 2(2) Department, dated 30.07.2009. The said punishment has been inflicted against him and since he had challenged the said punishment unsuccessfully, he had no other option except to accept the punishment. Accordingly, he had undergone the punishment.

3. After two years, the appellant Government thought it fit to cut his pension as $2/3^{rd}$ instead of full pension by invoking Rule 39(1) of the Tamil Nadu Pension Rules, 1978.

4. In this context, even though the view of the Tamil Nadu Public Service Commission was obtained and accordingly, they issued G.O.(2D)No.181, Revenue [E2 (2)] Department, dated 11.04.2011 imposing the punishment of cut in his pension into only 2/3rd, the said order passed by the Government in G.O.(2D)No.181 cited *supra* is under challenge before the writ Court.

5. The learned Judge, who heard the matter, had allowed the said writ petition on the ground that, in respect of similarly placed persons, the issue was decided and concluded by the judgment of the Division Bench of this Court in W.A.No.850 of 2013 dated 01.04.2014. Therefore, the present case also is similarly placed and hence, the learned Judge allowed the writ petition filed by the respondent by the order impugned herein.

6. Assailing the said order, Mr.R.Kumaravel, learned Additional Government Pleader appearing for the appellant Government would contend that, as per Rule 39(1) of the Tamil Nadu Pension Rules, against a Government servant compulsorily retired from service a penalty may be granted by the authority competent to impose such penalty, by cut in pension or gratuity or both at a rate not less than two-thirds and not more than full compensation

pension or gratuity or both admissible to him on the date of his compulsory retirement. But, under sub-rule 2 of Rule 39 of the said Rules, before making such an order, the Tamil Nadu Public Service Commission shall be consulted.

7. Relying upon this provision, the learned Additional Government Pleader would contend that, in the 1st order, i.e., G.O.(2D)No.411 dated 30.07.2009, the compulsory retirement punishment was inflicted. Following the same, when the Government decided to cut the pension only into 2/3rd as contemplated under Rule 39 (1) r/w 39 (2) of the said Rules, such a consultation was made with the Tamil Nadu Public Service Commission and the Tamil Nadu Public Service Commission also gave its consent on 18.01.2011, based on which only the order in G.O.(2D)No.181 dated 11.04.2011 was passed, whereby the pension for the respondent delinquent has been cut into 2/3rd instead of full pension.

8. This aspect since has not been considered in proper perspective especially in the context of Rule 39 (1) and (2), the order impugned cannot be sustained, he contended.

9. However, Mr.K.S.Viswanathan, learned Senior Counsel appearing for

the respondent would submit that, insofar as the punishment of compulsory retirement as awarded by G.O.(2D)No.411 dated 30.07.2009 is concerned, though that has been agitated, he became unsuccessful, therefore, the punishment has been imposed against him has become final and he has undergone the punishment.

10. At the time of imposing such punishment, no decision was made by the Government to cut the pension and the decision with regard to inflicting the punishment of compulsory retirement as well as to withhold of 1/3rd pension must have been taken simultaneously, for which, the concurrence of the Tamil Nadu Public Service Commission ought to have been obtained.

11. Since that has not been done as the G.O.(2D)No.411 was issued on 30.07.2009 and the subsequent decision to cut the pension was issued under G.O.(2D)No.181 dated 11.04.2011, such kind of split action cannot be taken, which would amount to double jeopardy, for which, the Rule does not support.

12. In support of his contention, the learned Senior Counsel appearing for the respondent has relied upon the judgment of the Hon'ble Division Bench of this Court in W.A.No.850 of 2013 in the matter of ***R.Gnanasekaran vs. The***

Government of Tamil Nadu and others dated 01.04.2014 and also another judgment in W.A.No.661 of 2015 dated 01.06.2015 in the matter of the ***Government of Tamil Nadu and another vs. T.Jeyajothi.***

13. He would also submit that, as against the order passed in W.A.No.850 of 2013, the Government preferred a Special Leave Petition before the Hon'ble Supreme Court, which was also dismissed by order dated 14.09.2015, therefore, the view taken by the two Division Benches having been confirmed by the Hon'ble Supreme Court, where the simultaneous decision ought to have been taken for which, under Rule 39 (1) of the said Rules, the decision has to be taken and services have to be retained insofar as the Government servant against whom such a punishment of compulsory retirement was proposed, since it has not been proposed and has not been inflicted, such an action subsequently taken cannot be sustained.

14. This being the legal position, the learned Senior Counsel would contend that the order passed by the learned Judge has to be sustained.

15. We have considered the said submissions made by the learned counsel appearing for both sides and perused the materials placed before this

Court.

16. Even though Rule 39 (1) and (2) of the Tamil Nadu Pension Rules appears to support the contention made by the learned Additional Government Pleader that after getting the concurrence from the Tamil Nadu Public Service Commission, such kind of decision can be taken to withhold the pension into 2/3rd instead of full pension after making such compulsory retirement punishment inflicted against the delinquent, however, if we look at the decision that has been made consistently by two Division Benches of this Court confirmed by the Hon'ble Supreme Court, the position is different.

17. In the first decision, i.e, in W.A.No.850 of 2013, the argument advanced on behalf of the delinquent is as follows:

> *"6. Mr.K.Raja, learned counsel appearing for the appellant, would submit that admittedly while imposing punishment of compulsory retirement on the appellant vide G.O.(2D)No.174, dated 01.11.2007, the first respondent did not reserve any right either under Rule 9 or under Rule 39(1) and (2) of the Tamil Nadu Pension Rules and therefore, the subsequent order, dated 15.12.2008, deducting pension to 2/3rd and recovering a sum of Rs.74,782/- from DCRG, is not all in tune with the above said statutory rule and hence prays for interference."*

18. Having considered the same, the Division Bench has held as follows:

> *"8. Admittedly, at the time of passing the order or compulsory retirement vide G.O.(2D)No.174, dated 01.11.2007, the first respondent Government did not reserve any right either under Rule 9 or under Rule 39(1) and (2) of the Tamil Nadu Pension Rules. The appellant, after receipt of the order of compulsory retirement, since terminal benefits have not been settled, filed Writ Petition No.12131 of 2008, implying that he was not interested in challenging the order of compulsory retirement. This Court, by the order dated 21.07.2008, directed the Government to pass orders sanctioning terminal benefits to the appellant, after obtaining remarks from the Tamil Nadu Public Service Commission. Therefore, the first respondent had passed G.O.(2D)No.181, dated 15.12.2008, granting 2/3rd of his eligible pension and recovering a sum of Rs.74,792/-. Since the first respondent did not reserve its right to deduct pension and to recover a portion of amount from DCRG at the time of passing the order of compulsory retirement, the order dated 15.12.2008 is unsustainable in law and on facts."*

19. This position has been further fortified by another Division Bench judgment in the matter of ***Jeyajothi*** cited *supra* in W.A.No.661 of 2015, where the learned Single Judge order which was impugned in the said writ appeal

itself had been taken into aid.

20. In the said case also, the subsequent Division Bench has discussed the issue in detail and passed the following orders:

> *"6. The other plea projected on behalf of the Appellants before this Court is that when the charge of corruption is established only after pension was sanctioned, then, it is not possible to invoke the Rule 6 of Tamil Nadu Pension Rules, 1978.*
>
> *7. The Learned Special Government Pleader for the Appellants relies on the Full Bench Decision of this Court in* ***Mathesu V. Secretary to Government, Revenue Department, Chennai # 9 and Others reported in 2013 (3) CTC at Page 369 at Special Page 371*** *whereby and whereunder it is observed and held as follows:-*
>
> > *"....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."

8. It is to be borne in mind that the 1st Appellant / Government of Tamilnadu by means of a G.O.(D) No.39, Commercial Taxes and Registration (K) Department dated 07.02.2011 had converted the 'Punishment of Removal from Service' in respect of the Respondent/Petitioner into that of 'Compulsory Retirement'. Also that, the 1st Appellant on 08.05.2012 issued a G.O.(D) No.178, Commercial Taxes and Registration (K) Department in and by which a standard amount of 30% from Pension and Death-cum-Retirement Gratuity was ordered to be deducted.

9. In the present case on hand, it cannot be lost sight that at the time of issuance of G.O.(D) No.39, Commercial Taxes and Registration (K) Department dated 07.02.2011, the Government had not reserved any right to deduct pension and to recover the portion of amount from DCRG in respect of the Respondent/Petitioner. In a similar situation, the Division Bench of this Court in W.A.No.850 of 2013 had observed that when the Respondent-Government did not reserve any right to deduct pension and to recover the portion of amount from

DCRG at the time of passing the order of Compulsory Retirement, they cannot pass such an order at a later point of time."

21. It is further to be noted that the view taken by the Division Bench in ***Ganasekaran*** case in W.A.No.850 of 2013 having been confirmed by the dismissal of the Special Leave Petition by an order dated 14.09.2015 by the Hon'ble Supreme Court, the law has been settled in this regard.

22. According to the said settled proposition of law, if the employer i.e., State Government has not reserved any right either under Rule 9 or under Rule 39 (1) and (2) of the Tamil Nadu Pension Rules, 1978, such kind of action for the second time to inflict the said punishment of withholding 1/3rd of the pension of an employee who has already been suffering with the punishment of compulsory retirement is not permitted. This position, as has been held by the Division Bench in the said judgment has been upheld upto the Hon'ble Supreme Court, against which no decision can be taken by the Government.

23. Here in the case in hand, exactly that has been the situation. The Government has already passed an order of compulsory retirement by G.O.(2D)No.411 dated 30.07.2009, at that time, the Government has not

reserved their right either under Rule 9 or under Rule 39(1), however, independently, subsequently after two years on 11.04.2011, G.O.(2D)No.181 was issued imposing further punishment, of course, as contemplated under Rule 39(1) and (2) by withholding the pension to only $2/3^{rd}$ instead of full pension. That action on the part of the respondent is not supported by the legal proposition that has been declared by this Court as confirmed by the Hon'ble Supreme Court.

24. In view of the same, the approach of the learned Single Judge who has passed the impugned order is a right approach and therefore, it cannot be said to be an erroneous one.

25. In the result, this writ appeal fails, hence it is liable to be dismissed. Accordingly, it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.K., J.) (K.B., J.)
08.08.2023

NCC : Yes
Index : Yes
Speaking Order : Yes

vji / KST

To

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   Secretary to Government,
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   Chennai – 600 009.

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