BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.01.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.13803 of 2020
and
W.M.P.(MD)No.11452 of 2020

M.Mareesan,
Accounts Officer (Retired),
Tamil Nadu Textbook and Educational Services Corporation,
Chennai. ... Petitioner

Vs.

1. The Managing Director,
   Tamil Nadu Textbook and Educational Services Corporation,
   E.V.K.Sampath Maligai,
   No.68, College Road,
   Chennai - 600 006.

2. Tamil Nadu Textbook and Educational Services Corporation,
   Represented by its Member Secretary,
   E.V.K.Sampath Maligai,
   No.68, College Road,
   Chennai - 600 006.

3. The Assistant Director,
Directorate of Local Fund Audit,
No.571, Officers Building,
4th Floor, Veterinary Hospital Campus,
Anna Salai, Nandanam,
Chennai – 600 035. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records on the file of the second respondent in connection with the impugned order of rejection issued by him in his proceedings in R.C.No. 1088/A1/2020, dated 08.09.2020 and quash the same as illegal and arbitrary and consequently, direct the respondents to release the withhold amount a sum of Rs.72,075/- and conveyance allowance from 01.07.2014 to 30.04.2018 along with interest.

For Petitioner	:	Mr.G.Thalaimutharasu
For Respondents	:	Mr.S.Shaji Bino Special Government Pleader

O R D E R

This Writ Petition has been filed to call for the records of the impugned order of rejection passed by the second respondent vide proceedings in R.C.No.1088/A1/2020, dated 08.09.2020, quash the same as illegal and arbitrary and consequently, direct the respondents to release the withhold amount of Rs.72,075/- and conveyance allowance from 01.07.2014 to 30.04.2018 along with interest.

2. The case of the petitioner is that he was appointed as Junior Assistant through direct recruitment on 27.01.1987 and thereafter, he was promoted as Assistant Director (Admin) on 09.01.2012 and he was transferred to the post of Accounts Officer. He made an application before the General Manager of the respondent Corporation in the year 1994 for conveyance allowance of his disability with relevant records. On receipt of the same, the General Manager has allowed the conveyance allowance to the petitioner from 11.07.1994. While so, on 23.10.2014, he was issued with a charge memo under Rule 5(b) of Part-II of Tamil Nadu Textbook and Educational Services Corporation Conduct Rules, on ten counts of charges, in which, first five charges are connected to his disability and conveyance allowance. On receipt of the charge memo, he has submitted his explanation that the charges were issued only at the instigation of some employees and the conveyance allowance was granted to him only after scrutinizing the records and, the doubt raised after 20 years is not sustainable one. Hence, he preferred an appeal before the Director, Government Institute of Rehabilitation, Medicine, K.K.Nagar, Chennai and got a certificate that he is having disability of 65% vide letter of Competent Authority dated

24.10.2014. Subsequently, on the basis of the enquiry report, the first respondent exonerated him from all charges besides the dispute regarding percentage of disability. In the meanwhile, due to issuance of charge memo, the first respondent has passed an order dated 11.09.2014 stopping the conveyance allowance issued to the petitioner. Subsequent to the exoneration of the charges, the petitioner has made numerous representations as well as after his retirement to release the conveyance allowance, but the same has not been considered till the date of retirement.

3. It is the further case of the petitioner that the first respondent has informed to the petitioner that there is an audit objection in respect of conveyance allowance to a tune of Rs.72,075/- and instructed him to remit the same. Immediately on 07.02.2018, he made a representation stating that he has produced the certificate of disability at 65% as certified by the Competent Authority and requested to relieve him from unwarranted audit objection. Thereafter on 30.04.2018, he attained superannuation, but the respondents without any notice or opportunity of hearing, had withhold conveyance allowance of Rs.72,075/- from his retirement benefits. On

noticing the same, he made various representations to the first respondent to release his conveyance allowance and to pay the arrears of conveyance allowance from 01.07.2014 to till the date of retirement. But the second respondent, vide impugned order dated 08.09.2020 rejected his request on the ground that the third respondent has declined to remove the para of audit objection and therefore his request could not be considered. Hence, the present Writ Petition has been filed.

4. The learned counsel appearing for the petitioner would submit that admittedly the petitioner entered into service in the year 1987 and he obtained medical certificate of disability of 65% from the Competent Authorities, based on which, the petitioner was paid conveyance allowance and the petitioner has received conveyance allowance till 2014 only. However, due to anonymous petition, the conveyance allowance was stopped from 2014 onwards and at the time of retirement, the conveyance allowance of Rs.72,075/- paid to the petitioner with withheld and they refused to pay the conveyance allowance to the petitioner is not sustainable one and the impugned order is passed based on the audit objection which is

unsustainable one. Once the Competent Authority issued a disability certificate in favour of the petitioner, the petitioner is entitled to receive the conveyance allowance and refusal to pay the conveyance allowance to the petitioner is injustice and accordingly, he prayed for allowing the Writ Petition.

5. The learned Special Government Pleader appearing for the respondents would submit that the petitioner had entered in to service in the year 1987 and at the time of joining as Junior Assistant in the Corporation, he has produced the Medical Certificate issued by a Civil Surgeon wherein nothing was mentioned about his physical disability. But on 11.05.1988, he had produced a Medical Certificate which shows that he was disabled person and the percentage of his disability was 20%. The said certificate was issued by Ortho Specialist in fractures and Bone diseases, Civil Assistant Surgeon, Government Rajaji Hospital, Madurai. It appears that the petitioner once again on 11.07.1994 produced a Medical Certificate stating that he was disabled to the extend of 65% issued by the Civil Surgeon Specialist Orthopedic Surgery, Government Hospital, Pudukottai, based on

which he was found eligible to claim the conveyance allowance, since an orthopedically handicapped employee will be eligible for the conveyance allowance only if he has a minimum of 40% permanent partial disability of either upper or lower limbs or 50% permanent partial disability of both upper and lower limbs together as per G.O.(Ms).No.667, Finance (Pay Commission Department), dated 27.06.1989. Accordingly, the petitioner has been paid conveyance allowance from 11.07.1994. Subsequently, the Government in the letter dated 22.07.2013 has enclosed an anonymous petition making a complaint against the petitioner, who was as Accounts Officer during 2013 regarding getting conveyance allowance by producing false certificate on his disability. The respondent Corporation has referred the matter to the Chairman, Rajiv Gandhi Government General Hospital requesting to check up the disability of the petitioner and the petitioner has appeared before the Medical Board on 04.07.2014. On examination of the physical status, the Medical Board confirmed his physical disability as 20%. vide its letter dated 07.07.2014. As per the report of the Medical Board, the petitioner will not be eligible to claim the benefit as per G.O.(Ms).No.667, dated 27.06.1989, since his physical disability is less than the minimum of

40%. The conveyance allowance allowed every month has been stopped from 01.07.2014. He made a representation on 01.07.2014 to the Executive Committee by producing the certificate of the District Disabled Rehabilitation Medicine, K.K.Nagar as 65% in person, without obtaining prior permission from the respondent Corporation.

6. The learned Special Government Pleader further stated that the Local Fund Audit / third respondent has raised many observations in letter dated 22.05.2019. In a nutshell it is categorically stated by the third respondent that the petitioner himself approached in person to get the certificate of disability as 20%, 40%, 45% and 65% from time to time which is contrary to the actual disability of the individual. Hence there was a need to clarify the discrepancies in the percentages of the disability of the individual. Accordingly, the respondents have issued impugned communication as per the rules provided in the Service regulation of TNTB and ESE Conduct Rules.

7. Heard the learned counsel appearing for the parties and perused

the materials placed before this Court.

8. The facts in the present case are not in dispute. Admittedly, the petitioner entered in to service in the year 1987 and at the time of joining as Junior Assistant in the Corporation, he has produced the Medical Certificate issued by a Civil Surgeon wherein nothing was mentioned about his physical disability. But on 11.05.1988, he had produced a Medical Certificate which shows that he has having disability of 20% and the same was issued by Ortho Specialist in fractures and Bone diseases, Civil Assistant Surgeon, Government Rajaji Hospital, Madurai. The petitioner was once again on 11.07.1994 produced a Medical Certificate stating that he was disabled to the extend of 65% issued by the Civil Surgeon Specialist Orthopedic Surgery, Government Hospital, Pudukottai. Based on his latest Medical Certificate, he is entitled to claim the conveyance allowance as per G.O.(Ms).No.667, Finance (Pay Commission Department), dated 27.06.1989. The petitioner has been paid conveyance allowance from 11.07.1994. Subsequently, the Government in the letter dated 22.07.2013 has enclosed an anonymous petition making a complaint against the

petitioner, who was as Accounts Officer during 2013 regarding getting conveyance allowance by producing false certificate on his disability. The respondent Corporation has referred the Chairman, Rajiv Gandhi Government General Hospital requesting to check up the disability of the petitioner and the petitioner has appeared before the Medical Board on 04.07.2014. On examination of the physical status, the Medical Board confirmed his physical disability as 20%.

9. In view of the different certificates obtained by the petitioner mentioning the disability as 20%, 40%, 45% and 65%, the charge memo was issued. The petitioner was referred to Rajiv Gandhi Government Hospital, Chennai and the Medical Board opined that the petitioner was suffering only 20% of disability. In view of the subsequent Medical Board opinion, the respondents stopped the conveyance allowance from 2014 onwards and withheld an amount of Rs.72,075/- from his retirement benefits, which is perfectly in order, and cannot be interfered with. Further, the petitioner retired in the year 2018 and after a five years, no affirmative direction can be issued in favour of the petitioner, contrary to the expert

opinion dated 07.07.2014. That apart, the impugned order has been issued based on the audit objection raised by the third respondent pursuant to the different certificates produced by the petitioner from time to time and the impugned order has been issued following the Service regulation of TNTB and ESE Conduct Rules. Hence, the prayer sought for in the Writ Petition cannot be granted. The Writ Petition is suffers from laches and accordingly, the same is liable to be dismissed.

10. For the reasons aforesaid, this Writ Petition is devoid of merits and, accordingly, the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

19.01.2023

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

vji

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