



W.P.(MD)No.7135 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.02.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.7135 of 2018

and

W.M.P.(MD)No.6871 of 2018

P.Vairamani

... Petitioner

Vs.

1. The Commissioner and Director of Rural Development,
Ezhilagam,
Esplande, Chennai.

2. The Principal,
Rural Extension Training Centre,
T.Kallupatti, Madurai District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the second respondent in Na.Ka.No.90/2009/A1, dated 09.02.2018 and quash the same on the ground that the same is arbitrary, illegal and without any legal basis and consequently, direct the second respondent to pay the benefits to the petitioner by re-fixing the pay and other emoluments in terms of the Service Rules.



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For Petitioner : Mr.R.Aravindan

For Respondents : Mr.G.V.Vairam Santhosh
Additional Govt. Pleader for R1

ORDER

This Writ Petition has been filed to call for the records of the impugned order passed by the second respondent in Na.Ka.No.90/2009/A1, dated 09.02.2018, quash the same and consequently, direct the second respondent to pay the benefits to the petitioner by re-fixing the pay and other emoluments in terms of the Service Rules.

2. The case of the petitioner is that he joined the services of the second respondent-Institute in the year 1988 and he was made permanent. Thereafter, a charge-memo was issued in the year 2003 and after a detailed departmental enquiry, he was placed under compulsory retirement on 02.05.2005. Since the punishment inflicted on the petitioner is without any basis, he was constrained to file an appeal to the Government as contemplated under the Service Rules. The Government has passed the order in G.O.(Ms)No.362, Rural Development and Local Administration



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Department, dated 29.06.2007 confirming the punishment of compulsory retirement given to the petitioner and the same was challenged before this Court in W.P.(MD)No.10532 of 2010 and this Court interfered with the said order by order, dated 23.11.2011, with a direction to the Government to consider the appeal of the Petitioner afresh.

3. The petitioner submitted a detailed reply after the orders passed in the Writ Petition mentioned *supra* and as per G.O.(D)No.528 dated 09.10.2012, the punishment order was interfered with and he was directed to be reinstated in service. The petitioner, pursuant to the order, dated 24.11.2015 of the first respondent, joined the service on 21.12.2015 and to his shock and surprise, received a communication that the pensionary amount granted pursuant to the order of compulsory retirement would be recovered from him. According to him, the respondents have no authority to pass such an order when the charges have already been held as not proved and he has been reinstated in service. Hence, he filed a Writ Petition before this Court in W.P.(MD)No.1371 of 2017 and this Court by order dated 14.02.2017 issued a direction to extend the monetary benefits for the period



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on which reinstatement was ordered by this Court till the date on which actually the petitioner was reinstated i.e., 21.12.2015 and also allowed for the deduction of the amount, if any amount payable by the petitioner to the Department. Without considering the order passed by this Court, the second respondent has passed the impugned order for recovery of the amount by way of fixing the basic salary of the petitioner at Rs.5,200/- per month. The respondents have not paid the salary payable to him even after his reinstatement. The second respondent has paid the petitioner only a consolidated pay of Rs.10,000/- per month without proper re-fixation of his salary. Further, the second respondent has gone to the extent of deducting a sum of Rs.8,000/- from the consolidated amount of Rs.10,000/- paid to him, from the month of February 2017. The second respondent has challenged the order passed in W.P.(MD)No.1371 of 2017 by way of Writ Appeal in W.A.(MD)No.1346 of 2017 and no stay has been granted in favour of the Department. The Department is bound to pay the actual dues to the petitioner as per the order passed in W.P.(MD)No.1371 of 2017, till the matter is finally resolved by this Court. Challenging the impugned order dated 09.02.2018, the present Writ Petition has been filed.



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4. The learned counsel appearing for the petitioner would submit that earlier the respondents have decided to recover a sum of Rs.10,000/- from the petitioner and pursuant to the direction issued by this Court, instead of dropping all the recovery proceedings, they decided to recover Rs.8,000/- from the petitioner is not sustainable one. Accordingly, he prayed for allowing the Writ Petition.

5. The learned Special Government Pleader appearing for the first respondent would submit that as against the order passed by this Court in W.P.(MD)No.1371 of 2017, Writ Appeal in W.A.(MD)No.1346 of 2017, is pending before this Court and the order in W.P.(MD)No.1371 of 2017 dated 14.02.2017 makes it clear that the monetary benefits may be extended after deducting the amount payable to the Department by the petitioner which can be paid in installments. Pursuant to the order passed by this Court, the petitioner has also given a consent letter to deduct the amount on 05.01.2018 and based on the consent letter given by the petitioner, the present impugned order is passed which cannot be interfered with.



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6. Heard the learned counsel appearing for the petitioner and perused the materials placed before this Court.

7. The facts in the present case are not in dispute. Admittedly, the petitioner was placed under compulsory retirement on 02.05.2005 by the first respondent and the same was challenged before this Court in W.P. (MD)No.10532 of 2010 and this Court, interfered with the said order by order dated 23.11.2011, with a direction to consider the appeal of the petitioner afresh. Pursuant to the direction issued by this Court, as per G.O. (Ms)No.528, dated 09.10.2012, the punishment order was interfered with and he was directed to be reinstated in service. The petitioner, pursuant to the order dated 24.11.2015 of the first respondent, he joined the service on 21.12.2015 and subsequently, he was retired on 31.05.2020. Subsequent to the reinstatement, there was a recovery order of Rs.10,000/- from the petitioner, which was challenged before this Court in W.P.(MD)No.1371 of 2017. This Court by order dated 14.02.2017 disposed the Writ Petition with a direction to extend the monetary benefits from the date of the order of



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reinstatement till the date on which actually the petitioner was reinstated and also allowed for the deduction of the amount, if any payable by the petitioner to the Department.

8. Though the petitioner is entitled to be reinstated in the year 2012, however the petitioner was reinstated only in the year 2015 and hence, the respondents are bound to pay the wages for the above said purpose of the reinstatement along with allowances. Pursuant to the order dated 14.02.2017, the petitioner has given consent letter on 05.01.2018 to agree to recover a sum of Rs.8,000/- instead of Rs.10,000/- till the disposal of the Writ Appeal in W.A.(MD)No.1346 of 2017. Once the petitioner has given an undertaking before the Authority who accepted for recovery of Rs. 8,000/-, later he does not have a right to file a Writ Petition to challenge the present impugned order. Hence, this Writ Petition is liable to be dismissed since based on the undertaking given by the petitioner alone the present impugned order is passed.



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9. Accordingly, this Writ Petition is dismissed with liberty to the petitioner to work out the remedy in the manner known to law after disposal of the Writ Appeal in W.A.(MD)No.1346 of 2017. No costs. Consequently, connected Miscellaneous Petition is closed.

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

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To

1. The Commissioner and Director of Rural Development,
Ezhilagam,
Esplande,
Chennai.

2. The Principal,



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T.Kallupatti,
Madurai District.



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