



W.P.(MD).No.12599 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.12599 of 2016

M.K.Ravindran

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Represented by its Principal Secretary,
Health and Family Welfare Department,
Fort St.George,
Chennai.

2.The Director of Drugs Control,
No.359, Anna Salai,
Chennai – 600 006.

3.The Assistant Director of Drugs Control,
Madurai Zone,
No.5, Ramaiah Street,
Gandhi Nagar,
Madurai – 20.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 1st respondent in G.O.(D).No.565, Health and Family Welfare (D2) Department, dated 21.4.2016,



W.P.(MD).No.12599 of 2016

quash the same and consequently direct the 1st respondent to issue suitable orders for sanctioning full Pension and Gratuity to the petitioner within the time frame that may be fixed by this Court.

For Petitioner : Mr.R.Subramanian

For Respondents : Mr.M.Suresh Kumar,
Additional Government Pleader.

ORDER

This Writ Petition is filed challenging the Government Order dated 21.4.2016 and consequently direct the 1st respondent to issue suitable orders for sanctioning full Pension and Gratuity to the petitioner.

2. The petitioner while he was working as Assistant Director of Drugs Control, Madurai Zone, disciplinary proceedings were initiated framing a charge on 10.11.2009 in TDP Case No.4/2009 and the charge against the petitioner is that he was in possession of asserts and pecuniary resources in his name and his wife name, namely, Suriyakala which is disproportionate to his known sources of income to the extent of Rs.5,04,570/- during the period from 01.01.2000 to 31.12.2005. After trial, it was held that the petitioner was in possession of disproportionate asserts to the tune of Rs.2,11,390/- and it would



W.P.(MD).No.12599 of 2016

be of 10.42% of his income. Therefore, the Tribunal vide disciplinary proceedings dated 24.09.2013 held that the charge framed against the petitioner was proved. The Disciplinary Authority had sought for the view of Tamil Nadu Public Service Commission (TNPSC) and the TNPSC had given its remarks vide proceedings dated 24.02.2015. After considering the nature of allegation and the nature of evidence, the respondents have imposed the punishment of compulsory retirement vide G.O.(D).No.603, Health and Family Welfare (D2) Department, dated 14.05.2015. However, the respondents have not reserved any right in the said Government Order to award further punishment or to make any deduction from his pension and DCRG. However, the Government after lapse of 1 year from the date of imposing the punishment of compulsory retirement awarded another punishment by way of reducing 25% of interest and DCRG vide impugned G.O.(D).No.565 Health and Family Welfare (D2) Department dated 21.04.2016. In the said Government Order, the Government has stated that the petitioner is eligible for 75% of both DCRG and Pension. The contention of the petitioner is that the respondents failed to considered the principles laid down by the Hon'ble Division Bench in W.A.No.661 of 2015 in the case of *Government of Tamil Nadu Vs T.Jeyajothi*, wherein, the said Hon'ble Division Bench has held since the respondents failed to reserve to



W.P.(MD).No.12599 of 2016

reduce the amount, the respondents cannot reduce further amount. Hence, the contention of the petitioner is that the first respondent while awarding the punishment under G.O.(D).No.603 dated 14.05.2015 did not reserve any right to deduct Pension and DCRG. After lapse of one year, the respondents have passed G.O.(D)No. 565 dated 21.04.2016 deducting 25% of both DCRG and pension. Aggrieved over the same, the petitioner has filed this Writ Petition.

3. The respondents have filed a counter stating that after due enquiry, the Commissioner, Tribunal for disciplinary proceedings, Madurai has submitted his report holding that the charges were proved. After following the relevant procedures, the first respondent imposed the punishment of compulsory retirement. Before finalizing the disciplinary case, the TNPSC was also consulted. After verifying the records, the compulsory retirement was imposed vide G.O.(D).No.603 dated 14.05.2015. After compulsory retirement as per Rule 39(1) of the Tamil Nadu Pension Rules, 1978, the first respondent provisionally decided to sanction 75% of both DCRG and Pension as required under Rule 39(2) of the said rules. Thereafter, the TNPSC in its view, agreed the provisional decision of the Government and guided to sanction the same as per the said Rule 39(1). After examination, the Department accepted the views of



W.P.(MD).No.12599 of 2016

the TNPSC and 75% of both DCRG and Pension was sanctioned. As per Rule 32 of the Tamil Nadu Pension Rules, 1978, a superannuation pension is granted to a Government Servant compulsorily retired from service as a penalty may be granted by the authority competent to impose such penalty, 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. In view of the above rule position, the Government sanctioned pension and DCRG not less than 2/3rd of the full compensation pension, gratuity and consulted the TNPSC under Rule 39(2) of the Tamil Nadu Pension Rules. After following the procedures, the Government has issued an order, based on the above said rules. The judgment passed in W.A.No.661 of 2015 cannot be taken as the precedent and the same is not applicable to the present case. Therefore, the respondents prayed to dismiss this Writ Petition.

4. Heard Mr.R.Subramanian, learned counsel for the petitioner and Mr.M.Suresh Kumar, learned Additional Government Pleader for the respondents and perused the records.



W.P.(MD).No.12599 of 2016

WEB COPY

5. It is an admitted fact that the petitioner was charged for the possession of disproportionate assets to the tune of Rs.2,11,390/- and it would be of 10.42% of his income. The learned counsel appearing for the petitioner relied on the judgment rendered by the Division Bench in W.A.No.661 of 2015, wherein, it is stated that at the time of issuance of punishment, the Government has not reserved any right in deducting the pension or recover the portion of amount from DCRG or other benefits. In similar circumstances, another Division Bench judgment rendered in W.A.No.850 of 2015 has also 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 the later point of time. Moreover, the term gratuity is reward for a long and meritorious service rendered by the employee. It is not the gift or the debt. Therefore, the learned counsel appearing for the petitioner submitted that the issue is settled as per the aforesaid Writ Appeal judgment. Therefore, the respondents cannot deduct the amount after lapse of 1 year the pension and gratuity to the tune of 25%.



W.P.(MD).No.12599 of 2016

6. The only ground that was raised by the petitioner is that the respondents have imposed the punishment after lapse of one year but the learned Additional Government Pleader appearing for the respondents submitted that in the present case, the order was passed based on the Tribunal orders. After consulting the TNPSC, a proposal was submitted to impose compulsory retirement. Again, the TNPSC was considered for imposing punishment under Rule 39(1) of the Tamil Nadu Pension Rules, 1978. Under Rule 39(1) of the said Rules, the Government is empowered to deduct 25% of both Pension and DCRG, since the Government has imposed the punishment after lapse of one year, the same cannot be construed that the Government has not reserved his right. As far as the first Government Order is concerned, it has only proposed imposed punishment in accordance to law. As per law, under 39(1) of the said Rule, the Government is empowered to grant full pension or to deduct 25%. The Government has decided to deduct 25%. Moreover, it is the case of disproportionate asserts. Therefore, this Court is not inclined to interfere with the order. Moreover, the said Writ Appeal judgment was rendered based on the facts of the case and hence the same is not applicable to the present facts of the case.



W.P.(MD).No.12599 of 2016

7. Hence, this Writ Petition is dismissed. There shall be no order as to costs.

12.04.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr

To

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W.P.(MD).No.12599 of 2016

S.SRIMATHY, J.

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W.P.(MD).No.12599 of 2016

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