IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2024

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THE HON'BLE MR.JUSTICE BATTU DEVANAND

W.P.No. 20846 of 2018
and WMP.No.24471 of 2018

R.Surendhiran ..Petitioner

Vs

1. The Managing Director,
Tamil Nadu Housing Board,
No.493, Anna Salai,
Nandanam, Chennai-35.

2. The Administrative Officer,
Tamil Nadu Housing Board,
NO.493 Anna Salai,
Nandanam, Chennai-35.

3. The Executive Engineer and
Administrative Officer,
Tirunelveli Housing Unit,
EB Colony, Tirunelveli-11.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records in Memo No.PNT.4/52217/11, dated 30.01.2012 on the file of second respondent quash the same and to direct the second respondent to disburse the full pension with arrears and all attendant retirement benefits to the petitioner with effect from 01.02.2012.

For Petitioner : Mr.A.Immanuel

For Respondents : Mr.D.Venkatesan RR1 to 3
Standing Counsel

ORDER

The writ petition has been filed seeking to quash the Memo dated 30.01.2012 on the file of second respondent and to direct the second respondent to disburse the full pension with arrears and all attendant retirement benefits to the petitioner with effect from 01.02.2012.

2. Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the respondents and perused the materials available on record.

3. The case of the petitioner is that he was appointed as Maistry in Madurai Housing Unit of Tamil Nadu Housing Board on 27.09.1973 and he was promoted as Works Clerk on 01.07.1977. The petitioner was further promoted as Junior Assistant on 19.03.1987 and transferred to Tirunelveli Housing Unit in April 2005. The petitioner was further promoted as

Assistant on 03.03.2009 and as Superintendent on 15.07.2011. The petitioner retired from service on 31.01.2012 on attaining superannuation. While permitting the petitioner vide memo dated 30.01.2012 to retire from service, it is mentioned in the said memo that the petitioner was permitted to retire from service without prejudice to pending Local Fund Audit objections in para No.22/2005-2006 II half year. Subsequently, on 04.10.2012, the respondents passed orders sanctioning of pension for a sum of Rs.8,925/- Against the action of the respondents, in issuing memo dated 31.01.2012 wherein the petitioner was permitted to retire mentioning there that he was permitted to retire without prejudice to pending audit para and for non disbursing the full pension, the petitioner submitted a representation to the respondents on 04.11.2013.

4. The grievance of the petitioner is that the said representation is not considered till date and the audit issue was not settled so far and the petitioner is not paid full pension and all other attendant retirement benefits till now from the date of his retirement. Under these circumstances, the petitioner has constrained to file this writ petition before this Court.

5. On behalf of the respondents, a counter affidavit has been filed wherein it is stated that the Local Fund Audit has pointed out monitory loss of Rs.30.15/- lakhs in the allotment of house scheme for the Palai Phase II & III Schemes of TNHB in audit para No.22/2005-06- II half year. Out of total loss, the petitioner is responsible to the tune of Rs.4,39,414/- This objection was raised by the Audit Department, while the petitioner was in service. Accordingly, the petitioner was permitted to retire from service on 31.01.2012 on superannuation, without prejudice to the pending audit objections and he was sanctioning provisional pension, due to the pendency of the audit objection. It is also averred in the counter affidavit that only after the settlement of the audit objection, after recovering of loss suffered by the Board, the other retirement benefits such as DCRG, etc., would be sanctioned to the petitioner as per the Rules in force.

6. The learned counsel for the petitioner submits that the alleged loss caused to the Board as pointed out by the Local Fund Audit in its para No.22/2005-2006 II half year is pertaining to the year 2005-2006. Even

before retirement of the petitioner or after retirement, till date, based on the said audit para, no notice is issued to the petitioner calling for his explanation for the allegations made against him. The learned counsel for the petitioner has drawn the attention of this Court to Rule 9(2)(b)(ii) of the Tamil Nadu Pension Rules, 1978, wherein it is provided that "*the departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment- (ii) shall not be in respect of any event which took place more than four years before such institution*".

7. Relying on the said Rule, the learned counsel for the petitioner submits that as the petitioner retired in the year 2012, the departmental proceedings shall not be instituted against the petitioner for any event which took place for more than four years before such institution.

8. On the other hand, the learned Standing Counsel for the respondent opposed the said contention saying that the Rule 9(2)(b)(ii) is applicable to the departmental proceedings only and it is not applicable to the issues

pointed out by the Audit Department.

9. This Court gave anxious consideration to the submission advanced by the respective counsel and carefully examined the materials available on record.

10. It is an admitted fact that the said Local Fund has pointed out certain objections in its audit para No.22/2005-06 II half year with regard to the monetary loss caused to the Board to the extent of Rs.4,39,414/- by the petitioner. It is also an admitted fact that as per the avernments of the counter affidavit of the respondents that no departmental proceedings have been instituted against the petitioner so far. It is also an undisputed fact that the petitioner was permitted to retire from service on 31.01.2012 by the proceedings of the respondents. It is also an admitted fact that the petitioner was sanctioned oral provisional pension in the light of the audit paras by order dated 04.10.2010. It is also an admitted fact that though the audit department raised certain objections in the year 2005-2006, the respondents did not take further steps till now to settle the issue. It appears that notice is

also not issued to the petitioner till now or no charge memo was issued to the petitioner as of now. The respondents are contending that only after the settlement of the audit objections, after recovering of loss suffered by the Board, the other retirement benefits would be sanctioned to the petitioner.

11. In the considered view of this Court, such contention of the respondents is unreasonable, irrational and not acceptable to the Court as it is against to the legal procedure. As and when, the Audit Department raised objection in the year 2005, it is the legitimate duty of the respondent to take appropriate steps to settle the issue. Without doing that, keeping the issue pending from they year 2012 and taking stand that only after the settlement of the audit objections, they would sanction all retirement benefits to the petitioner is against to the law. The lethargic attitude of the respondents also established by their inaction in considering the representation submitted by the petitioner on 04.11.2013.

12. Considering all these factual aspects and in the considered opinion of this Court, it is appropriate to direct the respondents to settle the

audit issues within a period of three weeks from today and to take steps to disburse the full pension with arrears and all attendant benefits to the petitioner with effect from 01.02.2012 to meet the interest of justice.

13. Accordingly, the writ petition is allowed with a direction to the respondents to settle the issue of objections raised by the Audit Department within a period of three weeks from today and to disburse the full pension with arrears and all other benefits to the petitioner w.e.f. 01.02.2012 within a period of two weeks thereafter.

Consequently, connected miscellaneous petition is closed.

No costs.

23.02.2024

rli
Index : Yes/No
Internet: Yes/No
Speaking order/ Non speaking order

Note: Issue order copy on 27.02.2024

To

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No.493, Anna Salai,
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