



W.P.(MD).No.3359 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.3359 of 2023

and

W.M.P(MD)Nos.3111 & 3112 of 2023

and

W.M.P(MD)No.9831 of 2023

M.Premkumar

... Petitioner

Vs.

1.The Agricultural Production Commissioner
& Principal Secretary to Government,
Fort St. George,
Chennai-600 009.

2.The Accountant General,
Anna Salai,
Chennai-600 018.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to impugned G.O.3D.No.112, Agriculture, Farmer Welfare (Ve.Ni.8) Department, dated 17.08.2022 passed by the first respondent and quash the same.



W.P.(MD).No.3359 of 2023

For Petitioner : Mr.VR.Shanmuganathan
For R1 : Mr.S.Shaji Bino
Special Government Pleader
For R2 : Mr.P.Gunasekaran

ORDER

The instant writ petition has been filed challenging the order passed by the first respondent herein on 17.08.2022, wherein, the first respondent has chosen to invoke Rule 39 of the Tamil Nadu Pension Rules, 1978 and has proceeded to effect a cut in pensionary benefit as well as in payment of gratuity.

2. The petitioner herein was working as Agricultural Development Officer in Kalaiyarkovil, Sivagangai District and he was issued with a charge memo and after enquiry, he was found guilty of the charges. The petitioner was imposed with a punishment of Compulsory Retirement along with recovery of Rs.28,250/- (Rupees Twenty Eight Thousand Two Hundred and Fifty only) under G.O(3D) No.112, Agriculture, Farmer Welfare (Ve.Ni.8) Department, dated 17.08.2022. In the said G.O., the Government has reserved its rights to initiate proceedings under section 39 of the Tamil Nadu Pension Rules, 1978.



W.P.(MD).No.3359 of 2023

3. As a consequences to the order of Compulsory Retirement, dated 07.05.2021, the present impugned order has been passed by the first respondent under G.O(3D) No.112, Agriculture, Farmer Welfare (Ve.Ni.8) Department, dated 17.08.2022, wherein, the first respondent had effected 1/3rd cut in the pensionary benefits and 1/3rd cut in the gratuity amount invoking Rule 39 of the Tamil Nadu Pension Rules, 1978. This order is under challenge in the present writ petition.

4. According to the learned counsel appearing for the writ petitioner whenever the appointing authority decides to impose a punishment of Compulsory Retirement and seeks the opinion of the Tamil Nadu Public Service Commission, only a consolidated order has to be passed invoking Rule 39 of the Tamil Nadu Pension Rules, 1978. However, in the present case, when the Compulsory Retirement order was passed on 07.05.2021, they have passed only an order of recovery to an extent of Rs.28,250/- and there was no whisper about the reduction in the pensionary benefits or gratuity. He had further contended that before passing the impugned order, no notice was issued to him or any enquiry was conducted.



W.P.(MD).No.3359 of 2023

5. Per contra, the learned Special Government Pleader appearing for the first respondent contended that the petitioner has not challenged the order of Compulsory Retirement, therefore, invocation of Rule 39 of Tamil Nadu Pension Rules, 1978 is only a consequential proceedings and hence, the question of issuing notice or conducting an independent enquiry does not arise. He has further contended that when a minimum penalty has been imposed under Rule 39 of the Tamil Nadu Pension Rules, the question of granting an opportunity to the writ petitioner before passing such an order also would not arise, hence, he prayed for sustaining the order passed by the first respondent.

6.I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

7. It is not in dispute that the writ petitioner has suffered an order of Compulsory Retirement on 07.05.2021, wherein, the Government has reserved its rights to initiate independent proceedings under Rule 39 of the Tamil Nadu Pension Rules. A perusal of the Rule 39 of the Tamil Nadu Pension Rules, 1978 indicates that when a Government servant is compulsorily retired from service as a penalty may be imposed 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. However, the Government is mandated



W.P.(MD).No.3359 of 2023

to consult the Tamil Nadu Public Service Commission before such order is passed.

8.The learned counsel appearing for the writ petitioner had relied upon the first proviso to Rule 6(2) of the Tamil Nadu Pension Rules, 1978 and contended that any reduction in pension or gratuity can be made only after giving reasonable opportunity to the employee. A perusal of Rule 6(6)(b) of the Tamil Nadu Pension Rules, 1978 indicates that Rule-6 is not applicable where the pension is reduced invoking Rule 39 of the Pension Rules. Therefore, the said contention is not sustainable.

9.The Hon'ble Supreme Court in a judgment reported in **(2008) 14 SCC 151 (Sahara India (firm), Lucknow Vs. Commissioner of Income Tax, Central-I and another)** in paragraph No.32 has held as follows:

*“32.The upshot of the entire discussion is that the exercise of power under **Section 142 (2A) of the Act leads to serious civil consequences and, therefore, even in the absence of express provision for affording an opportunity of pre-decisional hearing to an assessee and in the absence of any express provision in Section 142 (2-A) barring the giving of reasonable opportunity to an assessee, the requirement of observance of principles of***



natural justice is to be read into the said provision.

Accordingly, we reiterate the view expressed in Rajesh Kumar's case (supra). ”

10.The Hon'ble Supreme Court in a judgement reported in **(2011) 2 SCC 258 (Automotive Tyre Manufacturers Association Vs. Designated Authority and others)** in paragraph No.80 has held as follows:

“80.It is thus, well settled that unless a statutory provision, either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the Court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences which obviously cover infraction of property, personal rights and material deprivations for the party affected.....”

11.In view of the judgments of the Hon'ble Supreme Court, it is clear that unless the statute or rule expressly prohibits a pre-decisional hearing, it should be read into the said provision and an opportunity should be granted before passing an order entailing civil consequences, even in the absence of an express provision for pre-decisional hearing. In the present case, the impugned



W.P.(MD).No.3359 of 2023

order inflicts reduction in pensionary and gratuity benefits of the writ petitioner. The said order is likely to have a life long civil consequences upon the writ petitioner. In such circumstances, it is clear that the order impugned in the writ petition is clearly in violation of the principles of natural justice and the same is liable to be set aside.

12. In view of above such deliberation, the order impugned in the writ petition is hereby set aside. The matter is remitted back to the first respondent herein for passing order afresh on merits and in accordance with after affording due opportunity to the writ petitioner.

13. With the above said observations, the writ petition stands allowed. No costs. Consequently connected miscellaneous petitions are closed.

05.08.2024

Index : Yes / No
Internet: Yes / No
NCC :Yes / No
am



W.P.(MD).No.3359 of 2023

WEB COPY

To
1.The Agricultural Production Commissioner
& Principal Secretary to Government,
Fort St. George,
Chennai-600 009.

2.The Accountant General,
Anna Salai,
Chennai-600 018.



WEB COPY



W.P.(MD).No.3359 of 2023

R.VIJAYAKUMAR,J.,

am

W.P.(MD).No.3359 of 2023

05.08.2024