



W.P.(MD).No.13649 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.13649 of 2024

and

W.M.P.(MD).Nos.12014 & 12015 of 2024

T.Prakasam

... Petitioner

VS

1. The Additional Chief Secretary to Government,
Water Resources Department,
Chennai-600 005.

2. The Chief Engineer (General),
Water Resources Department,
Chennai-600 005.

3. The Deputy Secretary,
TamilNadu Public Service Commission,
Chennai-600 003.

4. The Accountant General (A&E) of TamilNadu,
No.361, Anna Salai,
Chennai-600 018.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned order made by the 1st Respondent vide G.O.(D).No.80, Water



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Resources (D1) Department dated 13.05.2024 and quash the same and consequently direct the respondents to grant the admissible monthly pension of Rs.60,030/- received by the petitioner without any reduction.

For Petitioner	: Mr.M.Rajarajan
For Respondents No.1 & 2	: Mr.S.Shaji Bino, Special Government Pleader
For Respondent No.3	: Mr.J.Anandkumar Standing Counsel
For Respondent No.4	: Mr.P.Gunasekaran

ORDER

The instant writ petition has been filed by a retired Superintending Engineer of Public Works Department, challenging the order of the first respondent, wherein, a sum of Rs.41,000/- per month is sought to be recovered from the pension by invoking Rule 39 of Tamil Nadu Pension Rules, 1978.

2. The petitioner herein, who was working as Superintending Engineer in Public Works Department, had faced disciplinary proceedings. In the said proceedings, final order has been passed by the Principal Secretary to Government by way of G.O.(D).No.280 Public Works (E1) Department, dated 30.09.2019. Paragraph No.7 of the said Government Order is extracted hereunder:

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“7. The Government, after careful and independent examination of the case again along with the views of the TamilNadu Public Service Commission, have decided to confirm the provisional conclusion to impose the punishment of “Compulsory Retirement” on Thiru.T.Prakasam, Superintending Engineer (under suspension and not allowed to retire from service on 31.07.2013 AN), Public Works Department. Accordingly, the Government Order that the punishment of “Compulsory Retirement” be impose on Thiru.T.Prakasam, Superintending Engineer (under suspension and not allowed to retire from service on 31.07.2013AN), Public Works Department, for the charges held partly proved and proved, as the case may be, against him, along with the recovery of Rs.21,778/- from his DCRG for the loss caused by him to the Government Orders on the grant of pension and DCRG under Rule 39 of the Tamil Nadu Pension Rules, 1978 will be issued separately.”

3. In continuation of the above said imposition of punishment, the impugned Government Order in G.O.(D).No.80, Water Resources (D1) department dated 13.05.2024 has been passed, and the Paragraph No.7 of the said Government Order is extracted as follows:

“7. The Government after careful and independent examination of the case once again with the relevant records along with the views of the TamilNadu Public Service Commission, accepted the views of



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the Commission and confirmed the provisional conclusion of fixing the pension of Thiru.T.Prakasam, Superintending Engineer (Compulsory Retired), Water Resources Department, under Rule 39 of the Tamil Nadu Pension Rules, 1978, at the rate of Rs.41,000/- (Rupees forty one thousand only) per mensem, being the two third value of his admissible pension and order accordingly.”

4. According to the learned counsel appearing for the petitioner, the order impugned in this writ petition has been issued without issuing any notice to the petitioner or conducting any enquiry. He further contended that a sum of Rs.21,778/- has already been recovered from the retirement benefits. The instant order of recovery from the pension ought not have been issued. Hence, he prayed for allowing this writ petition.

5. The learned counsel appearing for respondent Nos.1 and 2, by filing counter, had contended that the order impugned in this writ petition is only a consequential order, and once the petitioner offered with an order of compulsory retirement, the rejection of pension will be consequential in nature. In view of Rule 39 of Tamil Nadu Pension Rules, the question of issuing notice or conducting an enquiry does not arise, and also the question of granting an opportunity to the petitioner before passing order does not arise.



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8. A perusal of Rule 39 of the Tamil Nadu Pension Rules, 1978 reveals that when a Government servant is 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. However, prior to passing of the said order, the Government is mandated to consult the Tamil Nadu Public Service Commission. In the present case, before passing the impugned order, the authorities have consulted with Tamil Nadu Public Service Commission and obtained opinion from them on 14.03.2024.

9. A perusal of Rule 39 of the Tamil Nadu Pension Rules reveals that the discretion has been conferred upon the competent authority to impose penalty on reduction of pension not less than two-thirds and not more than full compensation. Whenever, the discretion is granted to the authority, before exercising such discretion, the authority has to certainly issue a notice to the concerned person who is likely to be affected.



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10. 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 reiterated the view expressed in Rajesh Kumar's case (supra).”

11. The Hon'ble Supreme Court in a judgment 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



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order has adverse civil consequences which obviously cover infraction of property, personal rights and material deprivations for the party affected.....”

12. In view of the judgements of the Hon’ble Supreme Court of India, 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 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 this writ petition is clearly in violation of the principles of natural justice and the same is liable to be set aside.

13. In view of the above such deliberations, 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 law after affording due opportunity to the writ petitioner. In case, if the first respondent arrives at a finding to reduce the pension after conducting enquiry any excess pension paid to the writ petitioner shall be recovered.



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14. With the above said observations, the writ petition stands allowed.

No costs. Consequently, connected miscellaneous petitions are closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Additional Chief Secretary to Government,
Water Resources Department,
Chennai-600 005.

2. The Chief Engineer (General),
Water Resources Department,
Chennai-600 005.

3. The Deputy Secretary,
TamilNadu Public Service Commission,
Chennai-600 003.

4. The Accountant General (A&E) of TamilNadu,
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R.VIJAYAKUMAR,J.

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