



W.A.(MD).No.2258 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 20.12.2024

CORAM

**THE HONOURABLE MR.JUSTICE M.S.RAMESH
AND
THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE**

W.A.(MD).No.2258 of 2024

and

C.M.P.(MD).Nos.15783 and 15784 of 2024

The Municipal Commissioner,
Keelakarai Municipality,
Keelakarai,
Ramanathapuram.

... Appellant/4th Respondent

Vs.

1.S.Marudhu

... 1st Respondent/Writ Petitioner

2.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Municipal Administration and
Water Supply Department,
Secretariat,
Chennai – 600 009.

3.The State of Tamil Nadu,
Rep. by its Additional Chief Secretary to Government,
Municipal Administration and
Water Supply Department,
Secretariat,
Chennai – 600 009.



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4.The Director of Municipal Administration,
Urban Administrative Office Campus,
75, Santhome High Road,
Raja Annamalaipuram,
Chennai - 28.

5.The Sub Office Treasury,
O/o. The Sub Office Treasury,
Ramanathapuram.

... Respondents 2 to 5/
Respondents 1 to 3 & 5

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the impugned order dated 02.07.2024 passed in W.P.(MD).No.6844 of 2023 on the file of this Court.

For Appellant	: Mr.R.Baskaran Additional Advocate General assisted by Mr.K.Saravanan Standing Counsel
For R-1	: Mr.Mohamed Zamil for M/s.Ajmal Associates
For R-2 to R-5	: Mr.S.Shaji Bino Special Government Pleader

JUDGMENT

(Judgment of the Court was made by M.S.RAMESH,J.)

This Writ Appeal has been filed against the order of the learned Single Judge in W.P.(MD).No.6844 of 2023 dated 02.07.2024.



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2. On the ground that the first respondent herein, while serving as a Municipal Commissioner, had caused huge revenue loss to the appellant Municipal Administration, he was placed under suspension on 30.03.2016 and was not allowed to retire from service on attaining the age of superannuation on 31.03.2016. Subsequently, through G.O.(D)No.363, Municipal Administration and Water Supply (ME2) Department dated 25.10.2021, the order of suspension came to be revoked and the first respondent was permitted to retire from service with effect from 31.03.2016. However, through proceedings dated 09.11.2022, the fourth respondent had passed an order by placing reliance on Rule 9(4) and 69 of the Tamil Nadu Pension Rules, 1978 (hereinafter referred to as 'the Rules'), sanctioning only the provisional pension for the period between 01.04.2016 and 30.09.2017, with admissible DA and other eligible allowances, with effect from 01.10.2017. The action of sanction of provisional pension was in view of a letter of the Director of Vigilance and Anti-Corruption (DVAC) dated 29.01.2021, wherein, a detailed enquiry was proposed against the first respondent herein.

3. When the first respondent herein had challenged the said order dated 09.11.2022, in W.P.(MD).No.6844 of 2023, the Writ Petition came to be



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allowed, by setting aside the order dated 09.11.2022, with a consequential direction to the respondents therein/authorities to release the entire pension along with the eligible retirement benefits. The order of the Writ Court is under challenge in this intra-Court appeal.

4. The learned Additional Advocate General appearing for the appellant submitted that the first respondent herein was responsible for causing huge revenue loss to the appellant and a criminal case was also registered against him, pursuant to an enquiry conducted by the DVAC in FIR No.21/2024 dated 11.09.2024 and the same is pending. It is his further submission that when the DVAC had taken up the investigation and the same is pending, the first respondent would be eligible for only the provisional pension under Rule 9(4) and 69 of the Rules and therefore, there was no illegality in the order impugned in the Writ Petition. According to the learned Additional Advocate General, the Writ Court had not properly appreciated these facts and therefore, the direction to pay full pension and release the retirement benefits, requires interference.

5. The learned counsel appearing for the first respondent however submitted that when the employee was permitted to retire from service on 25.10.2021, the appellant and the official respondents had no authority to



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withhold the pension and extend him with only the provisional pension. With such a submission, he reiterated the findings in the order impugned before us and sought for dismissal of the Writ Appeal.

6. Before adverting to the submissions made by the respective counsels, the authority of the appellant herein, to withhold the entire retirement benefits and release the provisional pension, requires consideration. According to the appellant, the aforesaid order was passed by invoking Rule 9(4) and Rule 69 of the Tamil Nadu Pension Rules, 1978.

6.1. Rule 9 deals with the rights of the competent authority to withhold or withdraw pension. Under Sub-rule (1)(a) of Rule 9, when a Government servant is found guilty of grave misconduct, pursuant to a departmental or judicial proceeding, the competent authority is authorised to withhold or withdraw the pension of the Government servant. Sub-rule (1)(b) authorizes the competent authority to recover the pecuniary loss from the pension or DCRG benefits, when the pensioner is found guilty of grave misconduct or negligence in any departmental or judicial proceedings. Sub-rule (2) refers to the departmental proceeding initiated under Sub-rule (1), which shall be continued against the Government servant after his retirement and concluded by the competent



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authority as if the Government servant had continued in service. Sub-rule (4) of Rule 9 provides for sanctioning of provisional pension to the Government servant, who has retired on attaining the age of superannuation and against whom any departmental proceedings are continued under Sub-rule (2).

6.2. Rule 69 provides for the mode in which the provisional pension may be regulated, where departmental or judicial proceedings are pending against the Government servant.

7. The appellant herein has invoked Rule 9(4) and 69 of the Tamil Nadu Pension Rules for withholding the pensionary benefits and releasing the provisional pension alone on the ground that an enquiry has been taken up against the first respondent herein by the DVAC. However, the Government, through orders passed in G.O.(D)No.363 Municipal Administration and Water Supply (ME2) Department dated 25.10.2021, had subsequently revoked the suspension order of the first respondent and permitted him to retire from service with effect from 31.03.2016. On the date when the said Government order was passed, no departmental enquiry was pending against the first respondent herein.



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8. Rule 9 provides for the authority of the appellant to withhold pension or sanction provisional pension to the Government servant only when any departmental or judicial proceeding has concluded and the pensioner has been found guilty for grave misconduct or negligence or when such departmental or judicial proceedings are pending. When it is admitted by the appellant/authorities themselves that no departmental proceedings were initiated against the first respondent herein or was any judicial proceeding pending, we fail to understand as to how the appellants can place reliance on an alleged enquiry by the DVAC in order to invoke Rule 9 or Rule 69. The criminal case registered by the DVAC against the first respondent and 11 others was only on 11.09.2024 in FIR No.21/2024. When the appellant/authorities had no authority or powers under the Tamil Nadu Pension Rules to withhold the DCRG benefits or sanction provisional pension, since no departmental or judicial proceeding was pending against him, their action, which culminated in passing of the order dated 09.11.2022, cannot be legally sustained. On the other hand, the first respondent herein would be legally eligible to receive the entire pension, together with the retirement benefits.



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9. The learned Single Judge had rightly appreciated all these aspects and held that since the first respondent herein was allowed to retire from service, the appellant has no authority to put in the provisional pension or deny him the eligible retirement benefits. We find no reason to interfere with the findings of the Writ Court.

10. Accordingly, the Writ Appeal stands dismissed. Consequently, there shall be a direction to the appellant and the official respondents herein to forthwith comply with the directions passed in W.P.(MD).No.6844 of 2023 dated 02.07.2024, for release of the full pension and eligible retirement benefits, within a period of two (2) weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(M.S.R.,J.) (A.D.M.C.,J.)
20.12.2024

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

1. The Principal Secretary to Government,
The State of Tamil Nadu,
Municipal Administration and
Water Supply Department,
Secretariat,
Chennai – 600 009.
2. The Additional Chief Secretary to Government,
The State of Tamil Nadu,
Municipal Administration and
Water Supply Department,
Secretariat,
Chennai – 600 009.
3. The Director of Municipal Administration,
Urban Administrative Office Campus,
75, Santhome High Road,
Raja Annamalaipuram,
Chennai - 28.
4. The Sub Office Treasury,
O/o. The Sub Office Treasury,
Ramanathapuram.



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M.S.RAMESH,J.
and
A.D.MARIA CLETE,J.

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