
(2014) 08 MAD CK 0201
In the Madras High Court
Case No : Writ Petition No. 22084 of 2012

C. Chinnakannu

APPELLANT

Vs

The Deputy Executive Officer Khadi

RESPONDENT

Date of Decision : 18-08-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 408, 409, 467, 468

Citation : (2014) 08 MAD CK 0201

Hon'ble Judges : D. Hari Paranthaman, J

Bench : Single Bench

Judgement

D. Hari Paranthaman, J.—Heard both sides. By consent, the writ petition is taken up for final disposal.

2. The petitioner was working as a Superintendent in the respondent Board, which is equivalent to the post of Village Industrial Co-operative Officer, coming under Group B. He was placed under suspension on 29.03.2005 and by an order dated 29.10.2005, he was not permitted to retire from service, when he reached the age of superannuation and he was continued in suspension.

3. The grievance of the petitioner is that he is paid only 50% of the wages as subsistence allowance, while he is entitled to 75% of the wages as subsistence allowance. Hence, he has filed this writ petition, seeking for a direction to the respondents to pay him 75% of the wages as subsistence allowance.

4. Counter affidavit is filed by the first respondent, wherein it is stated that though the first respondent issued order revising the subsistence allowance from 50% to 75%, the same was not paid @ 75% since the amount exceeded the provisional pension eligible to him. In this regard, para 6 of the counter affidavit is extracted hereunder:

6..... As per the rules contained in FR and also the instructions issued by the Government from time to time, the subsistence allowance of the individual kept under suspension beyond the date of retirement should not exceed the

provisional pension that would be eligible for him if he is permitted to retire on the date of his superannuation. Further beyond the date of his retirement, the pensioner is not eligible for sanction of HRA and CCA along with his subsistence allowance. Though the first respondent issued orders revising the subsistence allowance payable to the petitioner from 50% to 75%, while calculating the subsistence allowance due to the petitioner @ 75%, it is found that the said amount exceeded the provisional pension eligible to him which is violation to the instructions contained in FR and existing Government Orders. This was also objected by the Audit and hence the orders revising the subsistence allowance of the petitioner from 50% to 75% issued by the first respondent could not be given effect to by the second respondent.

5. In view of the same, I am not inclined to issue direction as sought for by the petitioner in this writ petition.

6. Today, the learned counsel for the respondent Board has produced a written instruction dated 16.08.2014 received from the first respondent and the same is extracted hereunder:

The Details of The Disciplinary and Criminal Cases Pending Against Thiru C. Chinnakannu Superintendent/Village Industrial Co-Operative Officer (Under Suspension)

1) Charges were framed under regulation 34(b) of Tamilnadu Khadi and Village Industries Board's service regulations against Thiru C. Chinnakannu Superintendent/Village Industrial Co-operative Officer for having committed certain serious irregularities while working as liquidator in the Reid Timber and Black smithy Co-operative Society, Thiruvottiyur, by creating bogus receipts, writing false accounts, lettering out of the society on rent etc., thereby causing loss to the tune of Rs. 20.00 lakhs.

2) Charges were framed under regulation 34(b) of Tamilnadu Khadi and Village Industries Board's service regulations against the above individual for having committed certain irregularities noticed in the sale of land and building of Sembarambakkam Hand Pounding rice Co-operative Society and loss to the tune of Rs. 3.19 lakhs when he worked as a Special Officer of the above society.

In the above two disciplinary actions, all the formalities have been completed since he is coming under B group officer necessary proposal was sent to Government for issuing final order vide Board's letter dated 7.12.2011. The Government have called for further particulars to the Board the same was sent to the Government on 18.03.2014. The criminal case is pending against the individual in the same issue.

3) Charges were framed under regulation 34(b) of Tamilnadu Khadi and Village Industries Board's service regulations against the above individual for having committed certain irregularities noticed in the lease of land belonging to Thiruvottiyur Cooperative Society land in the society without getting prior

permission from the Chief Executive Officer/Registrar (when he worked as the Special Officer). Final report was received and the same is under process.

Criminal Action:

1) Criminal case filed against him in Cr. No. 3/2006 under section 408, 409, 467, 468, 471, 477(A), 109 IPC dated 31.1.2000 by the Inspector of Police, CCIW, CID, Kancheepuram relating to the irregularities noticed in the Thiruvottiyur Reid Timber Co-operative Society. The case is pending in the Judicial Magistrate I Court Kancheepuram.

2) Criminal case filed against him in Cr. No. 2/2007 under Section 408, 468, 477(A) IPC dated.... by the Inspector of Police, CCIW, CID, Kancheepuram relating to the irregularities noticed in the Sembarapakkam Hand Pounding Rice Co-operative Society. The case is pending in the Judicial Magistrate I Court Kancheepuram.

He was placed under suspension on 29.03.2005.

Since he attained his age of superannuation on 31.10.05 and since three charges and two criminal cases were pending on him on the above date, he was not permitted to retire on the date of his superannuation but orders under FR 56(1) (c) issued on him placing the petitioner under deemed suspension beyond the date of retirement.

7. In these circumstances, I am of the view that the third respondent Government shall pass orders on the proposal dated 07.12.2011 of the first respondent. Further, it is stated in para 2 of the written instructions that when the Government sought for further particulars, the same was also given on 18.03.2014. Hence, there is no reason for the Government to keep the proposal pending for the past three years, particularly when the employee retired from service long back in 2005.

8. In the light of the statement made in para 2 of the written instructions, the Secretary to Government, Handloom, Textiles and Khadi Craft Department, Government of Tamil Nadu, Secretariat, Chennai 600 009 is suo motu impleaded as third respondent in the writ petition and the impleaded third respondent is directed to pass orders on the proposal dated 07.12.2011 of the respondent Board, on merits and in accordance with law, within a period of four months from today.

9. The writ petition is disposed of with the above observation and direction. No costs.