

(2011) 04 MAD CK 0002

In the Madras High Court

Case No : Writ Petition No. 19889 of 2010

Dr. R. Nedunchezhiyan

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 08-04-2011

Acts Referred:

Citation : (2011) 04 MAD CK 0002

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : R. Vijayakumar, for the Appellant; Lita Srinivasan, G.A., for the Respondent

Final Decision : Dismissed

Judgement

T. Raja, J.—The Petitioner Dr. Nedunchezhiyan has come to this Court by filing the present writ petition to call for the records relating to

the Letter No. 22246/AH1/2006-3 dated 16.06.2010 issued by the 1st Respondent and to quash the same as being illegal, arbitrary and

unconstitutional and consequently direct the Respondents to grant all the terminal benefits due to the Petitioner on the basis of his superannuation

dated 31.05.2007 with all attendant benefits with interest at 12% per annum.

2. The learned Counsel appearing for the Petitioner has made two submissions:

Firstly, the Petitioner was charge sheeted for staying away from duty without proper leave application. The enquiry officer held two out of four

charges were proved. The Petitioner reached the age of superannuation on 31.05.2007. Thereafter, the 1st Respondent passed the order on the

basis of the enquiry officer's report, not permitting the Petitioner to retire on attaining the age of superannuation. Therefore, the order was

challenged by the writ petition in WP. No. 26037 of 2007. This Court disposed of the writ petition with a direction to complete the enquiry within two months and pass final orders within two months thereafter, failing which, it was held that the proceedings would be deemed to have been dropped. The time limit expired on 03.12.2007. The Respondents have not complied with the orders passed by this Court and the order will have to be given effect.

3. However, the Petitioner was shocked to receive an order dated 30.09.2008 compulsorily retiring the Petitioner from service. Thereafter, the

Petitioner filed another writ petition in WP. No. 28265 of 2008. The learned single judge of this Court by an order dated 30.09.2008 allowed the

writ petition by directing the Respondents to allow the Petitioner to retire from service with effect from 31.05.2007 and to pay him all the terminal

benefits without any delay. The said order was not complied with, which forced the Petitioner to file Contempt Petition in Cont. P. No. 1018 of

2009 against the order dated 22.01.2009 in WP. No. 28265 of 2008. During the pendency of the Contempt Petition two writ appeals in W.A.

Nos. 114 and 115 of 2010 have been preferred by the Respondents as against the order passed by the learned single judge. W.A. Nos. 114 and

115 of 2010 by order dated 25.01.2010 were dismissed and the First Bench of this Court while passing the detailed order directed the Appellants

to release all the service benefits of the Respondent at the earliest on the footing that he has retired honourably on 31.05.2007. In spite of the order

passed in the above mentioned writ appeals, the 1st Respondent passed the present impugned order without holding any enquiry before passing

the impugned order seeking pension cut of Rs. 50/-per month for a period of one year. The said impugned order is now challenged.

4. The learned Counsel for the Petitioner submitted that the impugned order is not only contrary to the order passed by the Division Bench in W.A.

Nos. 114 and 115 of 2010 dated 25.01.2010, but also against the principles of natural justice. Because, no notice was given or no enquiry was

held before passing the impugned order. On that basis he sought to set aside the impugned order by allowing the present writ petition.

5. The learned Government Advocate has made an attempt to defend the impugned order, in view of the order passed by the Division Bench in

W.A. No. 114 and 115 of 2010 dated 25.01.2010.

6. I do not find any justification whatsoever from the Respondents in passing the impugned order cutting Rs. 50/-per month from the Petitioner's

monthly pension. As already referred to above, the case of the Petitioner was considered in WP. No. 28265 of 2008 by an order dated

22.01.2009 challenging the correctness of the order, directing the Respondents to allow the Petitioner to retire from service with effect from

31.05.2007 with payment of all the terminal benefits. The said order was challenged by filing the Writ Appeal in W.A. Nos. 114 and 115 of 2010.

The Division Bench of this Court by order dated 25.01.2010 issued the directions. For ready reference, the said directions are extracted below:

5. As for as this appeal is concerned, the learned Government Pleader submits that the learned single judge ought to have passed the order

interfering with the order that the departmental authorities has passed. Now, what is to be seen is that the order passed by the departmental

authorities is an order of compulsory retirement. We fail to understand as to what is the purpose in passing this order when the Respondent had in

fact otherwise retired on 31.05.2007. This is unnecessarily damaging his service and the order impugned in this writ appeal has been passed on the

basis of the order impugned in the first writ appeal. Therefore, we see no reason to interfere with this order and this writ appeal is also dismissed.

The directions issued by the Division Bench go to show that the Respondents have made an attempt to find fault with the Petitioner for no reasons.

The last few lines of the Division Bench order in the writ appeals state that all the service benefits of the Respondent are to be released at the

earliest on the footing that he has retired honourably on 31.05.2007. In spite of these orders the Respondents had issued the impugned order, that

too, without holding any notice or enquiry. Therefore the impugned order is not only against the principles of Natural Justice but also not in fine

tune as the order passed by the First Bench in W.P. Nos. 114 & 115 of 2010 dated 25.01.2010 accordingly same is set aside.

7. In the result, the writ petition is allowed. This Court, instead of imposing cost upon the Respondents, to compensate the agony suffered by the

Petitioner, deems fit to direct the Respondents to pay all the terminal benefits within a period of two weeks from the date of receipt of the copy of

this order, failing which the Respondents are liable to pay interest @ 12% from the date of the order dated 25.01.2010 passed by the First Bench

in W.P. Nos. 114 & 115 of 2010. No costs. Consequently, the connected miscellaneous petitions are closed.