P.V.ASHA, J.

W.P.(C) No.3081 of 2013

Dated this the 7th day of August, 2015

JUDGMENT

The former Chairman and Members of Kerala Public Service Commission (PSC for short) have filed this Writ Petition challenging Ext.P8 order issued by Government, to the extent it denies them pension at least at 44% of their revised salary with effect from 1.1.2006 ordered as per Ext.P6. All the petitioners including the first petitioner who retired from PSC as Chairman, were appointed initially as Members of PSC from outside Government service. As per Article 316 of the Constitution of India, the Chairman and other Members of PSC of a State are appointed by the Governor of the State. One half of the Members of PSC shall be persons who at the dates of their appointments have held office for at least 10 years either under the Government of India or under the Government of a State. Petitioners belonged to the other 50% who are appointed from outside. Article 318 provides that the State may make regulations determining the number of Members of the

Commission and their conditions of service. Under the Proviso to Article 318, conditions of service of a member of PSC shall not be varied to his disadvantage after his appointment.

2. The first petitioner in this case, who was the former Chairman of PSC was appointed as a member on 13.12.1999; appointed as Chairman on 19.8.2000 and retired from service on 19.8.2006. The second petitioner was appointed as Member on 15.3.2001; appointed as Chairman on 19.8.2006 and retired from service on 30.8.2011. Petitioners 3, 4 and 5 were appointed as Members on 16.3.2001, 31.12.2004 and 31.12.2004 respectively and retired from service on 15.3.2007, 31.12.2010 and 31.12.2010 respectively.

3. In exercise of the powers conferred under Article 318 of the Constitution of India, the Kerala Public Service Commission (Composition and Conditions of Service of Members and Staff) Regulations, 1957 were framed. Regulation 7 was substituted as per Ext.P1-G.O.(Ms) No.466/77/GAD dated 29.12.1977 providing that the Chairman and a Member of the Commission appointed from outside Government service shall on retirement after

completion of 6 years service be paid pension at a fixed rate of Rs.562.20/- and Rs.450.00/- respectively. It was provided that the Chairman or a Member of the Commission who retired from service before 1st April 1974 on completion of 6 years service shall be eligible for pension admissible for a Chairman or a Member of the Commission who retired from service before 1.4.1974 shall be ¼th of the actual amount of salary drawn by him at the time of retirement. Thereafter by Ext.P2 order dated 19.9.1988, the pension to the Chairman and Members of PSC were revised and the Chairman/Members were ordered to be given pension at the rate of Rs.250/- per completed year of service. The maximum pension to the Chairman/Members was fixed as Rs.1,500/- per month. It was also provided that they should have completed a minimum of two years service as Chairman/Members in order to be eligible for pension. That amendment was brought about with effect from 1.9.1987. Thereafter by Ext.P3 order dated 6.11.1995 Regulation No.7 was again amended raising the pension from Rs.1,500/- to Rs.2,100/-. While so Government issued orders as per Ext.P4 on

30.6.2003 revising salary of the Chairman from Rs.6,700/- to Rs.22,850/- and salary of the Members from Rs.6,250/- to Rs.20,500/- respectively with effect from 1.6.2003. Consequent to this Ext.P5 order was issued on 16.7.2009 revising pension of Chairman and Members. There it was provided that pension will be fixed at the rate of Rs.1,500/- per completed year of service in the case of those who retired on or after 1.7.2004. At the same time the maximum pension was limited to Rs.9,000/- per month. In the case of those who were appointed from the service in Government of Kerala and who opted for the combined service their pension was fixed with respect to the existing basic pension along with fitment benefit and 59% of the DA. In the case of those who retired on or after 1.7.2004, there was no revision of pension but only calculation of pension based on salary. Thereafter by Ext.P6 Government order dated 27.12.2010 the pay and allowances of the Chairman and Members of PSC was revised on par with the District Judges (super time scale) and District Judges Selection Grade. Accordingly pay of Chairman was fixed as Rs.76,450/- whereas that of Members was fixed as

Rs.70,290/- with effect from 1.1.2006.

4. In this background PSC addressed the Secretary to Government, General Administration Department as per Ext.P7 letter dated 12.5.2011, pointing out that the revision of pay and allowances of the Chairman and Members of PSC with effect from 1.1.2006, on par with the District Judges Super Scale and District Judges Selection Grade respectively and that pension in the case of District Judges who retired prior to 1.1.2006 is 50% of the minimum of the pay of the post held at the time of retirement as revised from time to time and in the case of those who retired on and after 1.1.2006 is 50% of the pay last drawn. But at the same time even though the pay and allowances were revised on par with them, there was no corresponding revision of pension, in the case of Chairman and members of PSC. Therefore PSC requested Government to revise the pensionary benefits of Chairman and members, revising the same as 50% of the pay and requested that may be revised as Rs.5,500/- for the Members and Rs.6,000/- for Chairman for every completed year of service. In the meanwhile another letter was also sent by PSC

following Ext.P7 letter, on 11.8.2011, which is produced along with Ext.P10 in the reply affidavit of the petitioner in which PSC pointed out that the Members/Chairman appointed from outside Government service were paid Rs.1,500/- per completed year as pension when their pay was Rs.20,500/- and Rs.22,850/- respectively. They requested that in view of the revision of pay of the Members and Chairman at Rs.70,290/- and 76,450/- corresponding hike in the pension be granted. It was also pointed out that the denial of family pension to Members and Chairman was also not proper. While requesting for corresponding revision of pension, it was also pointed out that the number of retired non official Members or the Chairman are negligible and the annual financial burden will be meagre. PSC had in its meeting held on 13.8.2012, decided that 50% of the maximum existing Pay + DA without ceiling with allied benefits like family pension etc. as prevailing in Government of India will be accepted as pensionary benefits. It was specifically mentioned therein that the Chairman and Members are appointed from Government service or outside etc. and also in relaxation of the relevant Regulations in the PSC

Regulations Act, 1957. It was decided to request the Government to implement the new pensionary benefits. Pointing out these aspects, the Secretary, PSC addressed the Principal Secretary to the Government, General Administration Department in Ext.P10 representation dated 11.8.2011 requesting to adopt a unification in the retirement benefits to all the Members irrespective of the fact that they are drafted from service or not, exclusively for their service in the Commission and to adopt the one rank one pension in that case fixing pension at the rate of 50% of the maximum of pay without ceiling or other allied benefits. It is thereafter Ext.P8 order was passed by the Government on 11.10.2012, whereby the Government ordered revision of pension in the case of those who are appointed from outside Government service and retired prior to 1.1.2006. In their case a revised amount of Rs.1,900/- per completed year of service was ordered as pension per month. In the case of the Members the maximum pension per month was limited to Rs.11,400/- (1900 x 6). There was no maximum limit fixed for the Chairman. The rate of pension of Chairman and Members appointed from outside

Government service was revised with effect from 1.7.2009 as Rs.2,800/- with a maximum pension at the rate of Rs.16,800/- for the Members. In the case of those who had prior service under the State Government or Central Government and opted for combined service, the Dearness Allowance, fitment benefit were to be added with existing basic pension. The pension was fixed based on the existing basic pension along with 49% Dearness Relief. As per Annexure (1) of this order the revised pension is to be fixed as Rs.14,343/-. Petitioners have produced Ext.P9 order issued by Government on 12.5.2009 in the case of retired State Judicial Officers and Chairman/Members of PSC, according to which Judicial Officers, Chairman and Members of PSC will be eligible for 54% dearness relief on their pension with effect from 1.7.2008. That means the dearness relief is payable at central rate, whereas Ext.P8 provides for dearness relief only at state rates.

5. The learned Senior counsel for the petitioners pointed out that there has been upward revision only in pension, from time to time and whenever there was a revision of salary there

was a corresponding enhancement in the pension. The pension which was equivalent to 25% of the pay and allowances of the petitioners at the time when Ext.P1 order was issued was raised to 40.5% when Ext.P2 order was issued on 19.9.1988; it was increased to 43.88% and thereafter to 44% of the salary. But in the course of time, despite the hike effected in pay, the respondents fixed the maximum pension of the Chairman and Members, that too in the case of those who are appointed from outside, at the rate of Rs.9,500/- per completed year, on account of which the amount which the Chairman/Members will get as pension came to Rs.11,400/-, reducing the percentage from 44 to 21.9 % in the case of Chairman and 23.9% to the Members.

6. The PSC has filed a counter affidavit supporting the claim of the petitioners pointing out the arbitrariness involved in reducing pensionary benefits.

7. The respondents have filed a counter affidavit as well as an additional counter affidavit. It is pointed out that the pension in the case of the petitioners have been fixed in accordance with regulations 7 and 7(a) and it was found that as per these

regulations further enhancement is not possible and respective pay and pension has already been fixed.

8. The learned Government Pleader pointed out that Government can consider the matter if the writ petition is disposed of with a direction to reconsider the matter with reference to the documents included in Ext.P10. According to the learned Government Pleader the materials made available as per Ext.P10 were not before the Government while passing Ext.P8 order.

9. The learned Senior counsel for the petitioners relied on the judgment of the Apex Court in ***P.Ramakrishnam Raju Vs. Union of India and others*** *(2014 (12) SCC 1)*, in which the Apex Court declared that denial of full pension in the case of those who were elevated from the Bar are concerned, for want of minimum number of years of service was arbitrary and directed payment of full pension in the case of such High Court Judges/Supreme Court Judges holding that there was discrimination in ordering pension in their case. Further the judgment of the Apex Court in ***D.S.Nakara and others vs.***

union of India *[1983 (1) SCC 305]*, ***Indian Ex-Services League and others Vs. Union of India*** *[1991 (2) SCC 104]*, ***Chairman, Railway Board and others Vs. C.R.Rangadhamaiah and others*** *[1997 (6) SCC 623]* (paragraph 28), ***U.P.Ragavendra Acharya and others Vs. State of Karnataka and others*** *[2006 (9) SCC 630]* were also relied on by the learned Senior Counsel in support of his contention that action of the Government in denying appropriate enhancement of pension on par with others and by reducing the percentage of enhancement without any reference to the revised pay, in the case of the Members and Chairman appointed from outside, is arbitrary, discriminatory and in violation of Article 14, 16 and 21 of the Constitution of India. It is pointed out that the pension which the petitioners now get comes to only 21% of their salary. It is further pointed out that the Members of constitutional body like PSC cannot be compared with that of statutory bodies.

10. In the counter affidavit filed by the Government, it is stated that in case the claims of the petitioners are considered

that will give rise to several other claims. The contention in the counter affidavit is that as far as Regulations 7 and 7(a) of the regulations stand, petitioners cannot be granted any relief.

11. On a perusal of Exts.P1 to P6 orders issued from time to time, it is clear that the percentage of enhancement of pension in the case of the members as well as Chairman of PSC was in an ascending order, which is the normal phenomena, having regard to the rise in cost of living. It can also be seen that the disparity between those appointed from service and outside service was only negligible. But when it came to the impugned order Ext.P8, the percentage of enhancement is about -50% in the case of persons like petitioners whereas it is +50% in the case of those from outside. Government did not even think of maintaining the proportion between pay and pension at least at the rate at which they had been drawing till Ext.P8 order was issued. It is nothing but discrimination and arbitrariness to deny pension to the Chairman/Members of the PSC who were appointed in accordance with the constitutional provisions contained in Article 316 and appointed in accordance with the

said provisions. There should be proportionate enhancement to pension corresponding to the revision in pay. When persons like petitioners were granted pension initially fixing the same as 25% and thereafter enhancing the same as 41% and to 42%, 43% and 44% of their salary, the respondents cannot be heard to contend that fixing of pension @ 21% and 23% of the salary will not amount to discrimination or it amounts to violation of regulation 7 or 7(a) or any of the provisions under the Regulations. As evident from Exts.P1 to P6, pension was being revised from time to time consequent to the revision of pay, even without any amendment to the regulation. The percentage of enhancement was never going downwards.

12. In the above circumstances, it can be seen that the Government have arbitrarily fixed the pension at reduced rates in effect depriving of the fundamental rights of the petitioners under Article 14, 16 and 21 of the Constitution of India. It is pertinent to note that the Chairman as well as the Members of the PSC are disabled from taking up any employment/office of profit on their retirement from PSC. In the case of those who

were eligible to take up other employment or in other words in the case of those who do not have any such disqualification the pension is fixed as equivalent to 50% of the last pay drawn or 50% of the basic pay of the revised scale. It is in such circumstances, the Government chose to fix the pension in the case of petitioners and others at a reduced rate, without having any regard to the office which they held and in a constitutional body or the day to day rise in the cost of living. In this context it is relevant to note the observations of the Apex Court in para 26 of ***D.S. Nakara Vs Union of India:*** *AIR 1983 SC 130*, regarding the necessity of grant of pension and the purpose for which it is granted.

> *"26. Let us therefore examine what are the goals that pension scheme seeks to subserve? A pension scheme consistent with available resources must provide that the pensioner would be able to live: (i) free from want, with decency, independence and self-respect, and (ii) at a standard equivalent at the pre-retirement level."*

13. As found in paragraph 28 of the judgment in **Nakara's** case supra, pension is closely akin to wages as it consists of payment provided by an employer and is paid in consideration of

past service and serves the purpose of helping the recipient meet the expenses of living.

14. The contention in the counter affidavit that in case any revision is effected in the case of the petitioners, others in other statutory bodies will also claim is baseless because the petitioners were holding posts as Members and Chairman of the constitutional body of PSC and it is not a statutory body as contended in the counter affidavit. In ***P.Ramakrishnam Raju Vs. Union of India and others*** *(2014 (12) SCC 1)* the Apex Court held that when a person holding constitutional office, retired from service making a discrimination in fixing their pension depending upon the source from which they were appointed is in breach of Article 14 and 15 of the Constitution and one rank one pension has been the norm in respect of a constitutional office. In the case of the Members/Chairman who were drafted from service under the Government of India or State Government, pension is fixed with reference to the pay which they were drawing while they were in service and they are getting higher amount of pension. In case the petitioners were

also granted enhancement as was being granted upto Ext.P8 order, they would also have been eligible to draw pension more or less at the same rate as their counter part from service are drawing. In this case, in case the revision was at least at 44% of the pay, there would not have been so much disparity with these two sections of the pensioners.

The relief sought in the writ petition is to quash Ext.P8 Government order to the extent it denies pension at 44% or above of the revised salary drawn by them at the time of retirement and for consequential directions. In view of the circumstances stated above, it can be seen that Ext.P8 order is arbitrary and discriminatory and passed without any application of mind to the facts and circumstances of the case. Hence it is declared that Ext.P8 order, to the extent it fixed the pension in the case of Chairman/Members who are appointed from outside are concerned at reduced rates i.e only 21.9% and 23.9% of their salary, is arbitrary and discriminatory and hence the same is quashed to that extent. The Government should pass fresh orders taking into consideration of the circumstances explained in Ext.P10. While passing orders, the Government should take into consideration of the progressive enhancement that was being effected from time to time since the year 1977, at the time of each revision of pension and also keep in mind that the persons who are holding/held constitutional posts shall not be humiliated by limiting the revision of pension at reduced rates while others are sanction pension at 50% of the revised pay. Therefore the first respondent shall reconsider the matter and issue fresh orders in the light of the above observations, within a period of two months from the date of receipt of a copy of this judgment.

Sd/-

P.V.ASHA,
JUDGE.

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