IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 10.07.2015

PRONOUNCED ON: 29.07.2015

CORAM:

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE T.MATHIVANAN

W.A.NO.185 OF 2013

A.Venkatasubramanian ...Appellant/(Petitioner)

Versus

1. The Chairman,
Tamilnadu Generation and
Distribution Corporation,
144, Anna Salai, Chennai-600 002.

2. The Chief Internal Audit Officer,
Audit Branch,
Tamilnadu Electricity Board,
N.P.K.R.R.Maaligai 1st Floor,
144, Anna Salai, Chennai- 600 002.

3. The Internal Audit Officer,
Audit Branch,
Tamilnadu Electricity Board,
N.P.K.R.R.Maaligai 1st Floor,
144, Anna Salai, Chennai- 600 002. ..Respondents/Respondents

Appeal filed under under Clause 15 of the Letters Patent against the order dated 18.10.2012 of His Lordship Mr.Justice K.Chandru made in W.P.No.4544 of 2012 in so far upholding the impugned order of cancellation of Revision of Pension prospectively from the date of impugned order holding the impugned order as valid and in not granting the relieves of directing the respondents to refund the arrears of revision amount due to the appellant and to refund the amounts deducted by the Suo moto revision of the impugned order.

For Appellant : Ms.A.Arulmozhi

For Respondents: Mrs.R.Varalakshmi

JUDGMENT

V.RAMASUBRAMANIAN, J

This writ appeal arises out of an order passed by the learned Judge partly allowing the writ petition filed by the appellant, setting aside the recovery of payments already made, but not interfering with the refixation of pensionary benefits.

2. Heard Ms.A.Arulmozhi, learned counsel for the appellant and Mrs.R.Varalakshmi, learned counsel for the respondents.

3. The appellant was originally appointed as Assistant Construction Foreman, on temporary basis, way back on 30.8.1957. Subsequently, he was appointed as Supervisor (Electrical Grade-II), on 11.12.1961. Thereafter, he was placed on probation in the post of Supervisor (Electrical Grade-II) and he successfully completed the probation, with effect from 17.12.1964. He was later promoted as Supervisor (Electrical Grade-I) on 11.6.1970.

4. After gaining promotions to the post of Junior Engineer Grade-I and Assistant Divisional Engineer, the appellant retired from service on reaching the age of superannuation on 31.7.1987. By a Pension Pay Order issued on 16.12.1987, his pension was fixed at Rs.1,142/- per month from 1.12.1987. The pension was later refixed as Rs.1,185/- per month and as Rs.1,711/- with effect from 1.6.1988.

5. It appears that after the pension was refixed with effect from 1.6.1988, the appellant was also granted arrears, as per B.P(FB) No.2 dated 1.2.2008.

6. When the pension was subsequently revised under B.P.No.235 dated 1.12.2009, the appellant claimed that there were discrepancies in calculating the amount for the period from 1.1.2007 to 30.11.2009 and that therefore an arrears of Rs.1,47,439/- became payable. Therefore, the appellant made representations on 5.1.2010, 14.5.2010, 15.9.2010 and 18.9.2010.

7. Since those representations did not evoke any response, the appellant made personal visits and gave representations in July and August 2011. But instead of paying the arrears, the respondents slapped an order dated 14.09.2011 upon the appellant cancelling the additional pension authorised under B.P.No.2 dated 1.2.2008. By a further proceedings dated 16.9.2011, the second respondent informed the appellant that his basic pension, was taken wrongly as Rs.1,711/- instead of Rs.1,328/-, for the purpose of granting revisions at every stage and that this had resulted in a over payment of Rs.2,75,584/-. The second respondent demanded the repayment of the alleged excess and threatened to deduct the same from the future pension.

8. Therefore, the appellant filed a writ petition in W.P.No.4544 of 2012, challenging both the refixation of pension and the attempted recovery. The said writ petition was allowed by a learned Judge, by an order dated 18.10.2012, setting aside the attempted recovery, but upholding the refixation of pension. Though the respondents have accepted the order, setting aside the recovery of a huge amount of Rs.2,75,584/-, the appellant has come up with the above appeal challenging that portion of the order of the learned Judge, whereby the pension is refixed.

9. The main ground on which the appellant challenges the refixation of pension is that at all points of time, the respondents themselves revised the pension payable, by taking into account the pension of Rs.1,711/- as on 1.6.1988, as the basis. But by the order impugned in the writ petition, the respondents wanted to take Rs.1,328/-, which was the basic pension as on 31.5.1988.

10. Therefore, the only question that falls for consideration is as to whether all subsequent revisions of pension should take the amount of Rs.1,711/- as the basis or Rs.1,328/- as the basis.

11. It is not in dispute that the un-commuted basic pension fixed for the petitioner as on 31.5.1988 was Rs.1,328/-. It is also not in dispute that this pension was revised to Rs.1,711/- as on 1.6.1988, by adding (i) Dearness Allowance at 608 points, working out to Rs.159/- and (ii) percentage of increase at 15%, working out to Rs.224/-.

12. Admittedly, the respondents revised the pension of the appellant, under three different Board Proceedings, which were issued in tune with three Government Orders. The first revision was ordered under B.P.No.258 dated 20.9.1989 in accordance with G.O.Ms.No.810, Finance dated 9.8.1989. By this revision, un-commuted basic pension of Rs.1,328/- as on 31.5.1988 became Rs.1,711/- as on 1.6.1988.

13. The second revision took place under B.P.No.208, dated 18.8.1998, issued in pursuance of G.O.Ms.No.174, Finance dated 21.4.1998. By this second revision, the pension was revised to Rs.7,553/-.

14. The third revision took place under B.P.No.235, dated 1.12.2009 issued in pursuance of G.O.Ms.No.235, Finance dated 1.6.2009, by which the pension was revised to Rs.17,072/- per month with effect from 1.1.2006.

15. But, in between the second and third revisions namely one revision that took place after B.P.No.208 dated 18.8.1998 but before the revision that took place under B.P.No.235 dated 1.12.2009, there was a small refixation only for those who had retired before 31.5.1988. This took place under B.P.No.2 dated 1.2.2008 issued pursuant to G.O.Ms.No.579, Finance dated 15.9.2006. It is this

revision, according to the respondents, that triggered a confusion leading to over payment.

16. In short, the contention of the respondents is that all subsequent revisions can be granted only by taking the un-commuted pension of Rs.1,328/- as on 31.5.1988 and not the un-commuted pension of Rs.1,711/- as on 1.6.1988.

17. But the case of the appellant is that whenever a revision took place, the respondents sought details from the pensioners in a particular format and that in those formats, the respondents solicited information only with respect to un-commuted pension as on 1.6.1988 and not as on 31.5.1988. Therefore, the case of the appellant is that when the statements called for from the retired pensioners sought details of the un-commuted pension as on 1.6.1988 and when orders refixing the pension were passed only on the said basis, it was not open to the respondents to suddenly take the un-commuted pension as on 31.5.1988 as the basis.

18. We have carefully considered the rival submissions.

19. As stated earlier, the appellant reached the age of superannuation on 31.7.1987. The basic pension was fixed for the appellant only at Rs.1,142/- per month by the proceedings dated 14.12.1987. It was revised to Rs.1,185/- by the proceedings dated 2.3.1989.

20. After the issue of B.P.No.258 dated 20.9.1989, implementing the recommendations of the V Pay Commission for the employees of the Electricity Board, the respondents issued a Pension Fixation Statement on 26.10.1989. Column Nos. 4 to 7 of the said Pension Fixation Statement are reproduced as follows:-

4. Uncommuted pension or Family Pension as on 31.05.88	: Rs.1,328.00
5. D.A. for 608 points	: Rs. 159.00
6. Total Pension as on 31.05.88	: Rs. 1,487.00
7. Revised pension after having allowed the following percentage increase to col.6.	: Rs. 1,711.00

21. The recommendations of the VI Tamil Nadu Pay Commission were implemented for the State Government Servants with effect from 1.1.1996. Thereafter, the Electricity Board also revised the existing pay scales and also ordered revision of pension. By B.P.No.208 dated 18.8.1998, the Electricity Board ordered the revision of pension, for those who did not have the advantage of revision of pay with effect from 1996 and who retired from post on standard pay scales and family pensioners.

22. After the issue of B.P.No.208, dated 18.8.1998, a fresh Pension Fixation Working Sheet was issued. It is in this working sheet that the basic pension of the appellant was taken as Rs.1,711/- for the first time.

23. Thereafter, B.P.No.2 dated 1.2.2008 was issued. These proceedings were specifically for the benefit of persons who retired on or after 1.6.1960 before 31.5.1988 and for those family pensioners the employees in relation to whom died during the said period. Following the B.P.No.2 dated 1.2.2008, a Pension Fixation Statement was issued to the appellant. This statement contained both the existing as well as revised amount of pension, Dearness Allowance etc. This statement is reproduced as follows:-

		Existing	Revised
Uncommuted (Basic) Pension/FP as on 31.5.88.	:	Rs.1,711	1,711
Add DA 608 points	:	Rs. 205	205
Total Pension	:	Rs.1,916	1,916
Add Percentage Increase	:	Rs. 288	958
Revised Pension after adding % increase from 1.6.88 to 31.12.95	:	Rs.2,204	2,874

Revision with respect to B.P.208 dt.18.8.98/Basic Pen: 2,204 + P.P.

Basic Pension as on 1.1..96	:	Rs.2,204	2,874
Add DA as on 1.1.96	:	Rs.2,590	3,191
Add 40% on Basic Pension	:	Rs. 882	1,150
Adhoc - Rs.50/- + 10% Basic	:	Rs. 271	338
Pension as on 1.1.96 to 31.3.99	:	Rs.5,947	7,553

24. As can be seen from the above tabular format, the existing as well as revised un-commuted basic pension as on 31.5.1988 was taken by the respondents as Rs.1,711/-. This was obviously an error. The basic un-commuted pension as on 31.5.1988 was not Rs.1,711/- but only Rs.1,328/-.

25. However, when retired pensioners were issued with a Format in Annexure-I, containing about 11 columns, the respondents asked for details of revised pension as on 1.6.1988 under column No.9. Therefore, the appellant filled up the amount of Rs.1,711/- against column No.9, since that represented the revised pension as on 1.6.1988.

26. Again after the implementation of the recommendations of the next Pay Commission with effect from 1.1.2006 for Government Servants, the Board issued proceedings in B.P.No.235, dated 1.12.2009. As seen from para 2 of the said order, the object of the said proceedings was to grant the benefit to the existing pensioners who did not have advantage of revision of pay with effect from 1.12.2007 and who retired from posts on standard pay scales.

27. When a Pension Fixation Working Sheet was issued pursuant to B.P.No.235 dated 1.12.2009, the respondents took the basic pension as Rs.7,553/- on the basis of what was indicated in the Working Sheet issued pursuant to B.P.No.2 dated 1.2.2008. Consequently, they arrived at the pension as Rs.17,072/-. This got complicated with column No.9 of the next Format of Application issued in Annexure IV after B.P.No.235 dated 1.12.2009. Under column No.9, the pensioners were directed to indicate basic pension as on 1.1.2006.

28. It is only on account of the formats of application where the details of the existing pension were called for with reference to the dates 1.6.1988, 1.1.1996 and 1.1.2006 that the appellant has come up with a plea that the pension as on 1.6.1988 should form the basis for future revisions and that the pension as on 31.5.1988 cannot form the basis.

29. But, in order to establish that the uncommuted basis pension as on 1.6.1988 alone should form the basis for calculation of future revision of pension, the appellant should rely upon some Government Order or some proceeding of the Board. Unfortunately, for the appellant, no Government Order and no Board Proceeding gives any clue in support of the appellant.

30. The starting point for the dispute between the appellant and the respondent is B.P.No.258 dated 20.9.1989. It is on the basis of this Board Proceeding that the revised pension of the appellant as on 1.6.1988 was arrived at as Rs.1,711/- in the Pension Fixation Statement dated 26.10.1989 issued in favour of the appellant pursuant to B.P.No.258 dated 20.9.1989, the uncommuted pension as on 31.5.1988 was indicated only as Rs.1,328/- in column No.4.

31. The next Board Proceeding B.P.No.208 dated 18.8.1998, provide a formula for arriving at revised pension. In para (ii)(a) of B.P.No.208 dated 18.8.1998, nether the date 31.5.1988 nor the date 1.6.1988 was mentioned along with the words Basic Pension. But the respondents took the Basic Pension as Rs.1,711/- in the Pension Fixation Working Sheet issued in pursuance of B.P.No.208, dated 18.8.1998. This was not supported by B.P.No.208.

32. Similarly, B.P.No.2 dated 1.2.2008 also did not indicate that the basic pension should be taken as on 1.6.1988. As a matter of fact, B.P. No.2 dated 1.2.2008 covered only the cases of persons who

retired on or after 1.6.1960 but before 31.5.1988. But unfortunately, in the Pension Fixation Statement, the uncommuted basic pension as on 31.5.1988 was indicated as Rs.1,711/- both before and after revision. This was clearly wrong. The uncommuted basis pension as on 31.5.1988 was only Rs.1,328/- before revision. This error appears to have been carried throughout by the respondents.

33. In the absence of any Board Proceeding or Government Order which mandates the Board to take the uncommuted basis pension as on 1.6.1988 as the basis, we do not think that the appellant can insist on the same being taken as the basis for the purpose of arriving at the future revisions.

34. In the course of arguments, the respondents took a stand that for all other persons who are identically placed as the appellant herein, the uncommuted pension as on 31.5.1988 alone was taken as the basis. In support of this contention, the learned Standing Counsel for the Electricity Board produced a statement containing the details of the revision of pension granted to another Assistant Executive Engineer by name C.S.Aswath Narayanan. Like the appellant herein, the said Aswath Narayanan also retired on 31.7.1987 and his Last Drawn Pay was Rs.2,790/-, a little over the Last Drawn Pay of the appellant herein. The said Aswath Narayanan is getting only a sum of Rs.13,557/- per month as pension.

35. The factual details relating to the appellant and Aswath Narayanan are presented in a tabular column as follows:-

Particulars	Aswath Narayanan	Appellant herein
Date of entry into service	2.11.1955	2.5.1955
Date of retirement	31.7.1987	31.7.1987
Last Pay Drawn	Rs.2,790/-	Rs.2,695/-
Uncommuted Basic Pension as on 31.5.1988	Rs.1,332/-	Rs.1,328/-
Pension fixed as on 1.6.1988 (as per B.P.No.258 dated 20.9.1989).	Rs.1,716/-	Rs.1,711/-
Pension fixed as on 1.6.1988 (as per B.P.No. 2 dated 1.2.2008).	Rs.2,238/-	Rs.2,874/-
Pension fixed as on 1.1.1996 (as per B.P.No. 208 dated 18.8.1998).	Rs.5,998/-	Rs.7,553/-
Pension fixed as on 1.1.2006 (as per B.P.No. 235 dated 1.12.2009).	Rs.13,557/-	Rs.17,072/-

36. From the above table, it is clear that though both of them were identically placed, in terms of (i) Number of years of service

(ii) the post from which they retired and (iii) the Last Pay Drawn, the appellant started receiving a higher pension after the issue of B.P.No.2 dated 1.2.2008. This was obviously a mistake and a non gratuitous benefit conferred upon the appellant. Hence, the respondents were right in rectifying the mistake.

37. However, it is contended by Mrs.A.Arulmozhi, learned counsel for the appellant that a wrong fixation in respect of somebody else cannot be shown as the Benchmark for withdrawing a right benefit given to the appellant. According to the learned counsel, one wrong cannot lead to another wrong.

38. But, as we have pointed out earlier, there is no Board Proceeding or Government Order which mandates that the uncommuted basic pension as on 1.6.1988 should form the basis for arriving at every revision of pension. Therefore, it is not possible to accept the contention that what was fixed for others could be wrong.

39. In view of the above, we find no justification to interfere with the order of the learned Judge. Hence, the writ appeal is dismissed. There will be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

TO
1. The Chairman,
Tamilnadu Generation and
Distribution Corporation,
144, Anna Salai, Chennai-600 002.
2. The Chief Internal Audit Officer,
Audit Branch,
Tamilnadu Electricity Board,
N.P.K.R.R.Maaligai 1st Floor,
144, Anna Salai, Chennai- 600 002.
3. The Internal Audit Officer,
Audit Branch,
Tamilnadu Electricity Board,
N.P.K.R.R.Maaligai 1st Floor,
144, Anna Salai, Chennai- 600 002

+ 1 cc to Mr.A. Arul Mozhi, Advocate SR.39047

PUR(CO)
Eu 02.09.15