IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 16.2.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P.No.34530 of 2013

1 WELFARE ASSOCIATION OF TAMIL NADU IND ABSORBEE PENSIONERS REP. BY ITS GENERAL SECRETARY REGN. NO.504/2007 NO.12 9th STREET, TANSI NAGAR, VELACHERRY CHENNAI-42.

2 S.GANESAN

3 B.SUNDARESAN

4 M.DIRAVIAM

5 A.SUBRAMANIAN

6 R.BAKTHAVATSALU

7 K.V.VENUGOPAL

8 A.W.SHAKIR

9 M.RAJAMANICKAM

10 P.SHANMUGAM

11 L.JOHN JOSEPH

12 R.SESHADRI

13 S.RAJAMONEY

14 S.SELVAGANAPATHY

15 K.H.JAYALAKSHMI

16 N.RAMAMURTHY ... petitioners

versus

1 GOVERNMENT OF TAMIL NADU
REP. BY ITS SECRETARY FINANCE (BPE)
DEPARTMENT FORT ST. GEORGE CHENNAI-9.

2 THE SPECIAL SECRETARY TO
GOVERNMENT FINANCE (BPE) DEPARTMENT
GOVERNMENT OF TAMIL NADU FORT ST. GEORGE
CHENNAI-9. ... respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the concerned records from the 1st and 2nd respondent quash G.O.Ms.No.588 Finance (BPE) Dept. dt.25.09.2006 in so far as extending the Dearness Allowance on full pension only from the date of the G.O. and the order dt. 22.02.13 of the 2nd respondent bearing letter No.15015/Fin(BPE) Department/08 and consequently direct the respondents to extend the dearness allowance on full pension with effect from 04.05.1991 / date of retirement on VRS / Date of superannuation along with arrears and interest on the belated payment at the rate of 12% p.a

For petitioners Mr.Balan Haridas

For respondents Mr.M.S.Ramesh, Additional Government Pleader

O R D E R

This Writ Petition is directed against the order dated 22 February 2013, insofar as it directs granting dearness allowance on full pension payable from the date of the said order, and the consequential proceedings in G.O.Ms.No.588 Finance, (BPE) Department, dated 25 September 2006, rejecting the request for giving benefits retrospectively.

The facts :-

2. The petitioner is an association of pensioners, who were absorbed from the Department of Industries and Commerce in Tamil Nadu Small Industries Corporation Ltd., (TANSI). The employees were all paid DCRG and computed pension amount. The Government Order in G.O.Ms.No.509, Finance (BPE) Department dated 25 May 1997 restored 1/3rd computed portion of pension after 15 years from the date of commutation of the entire pension. The first respondent paid 1/3 pension from 4 May 1991 with proportionate dearness allowance. Since dearness allowance on full pension was not paid, members of the association have filed a Writ Petition in W.P.No.11961 of 2006. During the currency of the said Writ Petition, the first respondent passed an order in G.O.Ms.No.588,

Finance (BPE) Department dated 25 September 2006, extending the payment of dearness allowance with effect from the date of issuance of Government Order. Since retrospective effect was not given to the said Government Order, this Court, by order dated 21 January 2011, directed the respondents to consider the representation on merits. The second respondent thereafter passed an order dated 22 February 2013, rejecting the request to revise the date of implementation of the Government Order in G.O.Ms.No.588 Finance (BPE) Department dated 25 September 2006. Those two orders are challenged in this Writ Petition, primarily on the ground that the Government is bound to pay dearness relief on full pension, retrospectively.

3. The first respondent has filed a counter affidavit contending that the Government have taken a policy decision to allow dearness allowance on full pension with effect from 25 September 2006. According to the first respondent, the Government Order in G.O.Ms.No.588 Finance Department, dated 25 September 2007 is a gesture shown by the Government on humanitarian grounds. The petitioners are therefore not entitled to dearness allowance on full pension retrospectively.

Submissions :-

4. The learned counsel for the petitioners placed reliance on the decision in P.V.Sundararajan and another vs. Union of India and others, 2000 SCC (L&S) 660, in support of his contention that under similar circumstances, the Supreme Court directed the Union Government to grant the benefit of dearness relief on full pension. According to the learned counsel, retired employees are entitled to the dearness relief on full pension with effect from the date of retirement.

5. The learned Additional Government Pleader supported the impugned orders and contended that the Government have taken a policy decision to pay the benefit with effect from 25 September 2006 and as such no relief could be granted to the petitioners.

Discussion :-

6. The factual matrix clearly shows that the Government have issued an order in G.O.Ms.No.509 Finance Department dated 25 May 1997 restoring 1/3 computed portion of pension. The first respondent paid 1/3 pension with effect from 4 May 1991 with proportionate dearness allowance. It is a matter of record that the concerned employees were not paid dearness allowance on full pension. The first respondent ultimately passed an order in G.O.Ms.No.588 Finance (BPE) Department dated 25 September 2006 extending the benefit of dearness allowance on pension with effect from the date of issuance of the said Government Order. The

petitioners are aggrieved on account of the failure on the part of first respondent to pay dearness allowance from the date of restoration of 1/3 of the pension viz., 4 May 1991.

7. The Supreme Court in P.V.Sundararajan and another vs. Union of India and others, 2000 SCC (L&S) 660, considered the earlier judgment in Welfare Association of Absorbed Central Government Employees in Public Enterprises vs. Arvind Verma, 1999 (9) SCC 58, and held that restoration of pension must be with attendant benefits. The Supreme Court in paragraph 13 of the Judgment very clearly stated that dearness allowance is given to compensate the pensioners for erosion in the value of money due to rise in the cost of living and anything which is not a part of pension has to be paid in full.

8. The judgments of the Supreme Court in P.V.Sundararajan and another vs. Union of India and others, 2000 SCC (L&S) 660 and Welfare Association of Absorbed Central Government Employees in Public Enterprises vs. Arvind Verma, 1999 (9) SCC 58, would apply to the case of the petitioners. I am therefore of the view that the petitioners are perfectly justified in their contention that the order granting them dearness allowance on full pension should revert back to the actual date of retirement on VRS/Superannuation.

Disposition :-

9. In the result, the impugned order in G.O.Ms.No.588 Finance (BPE) Department, dated 25 September 2006 is set aside insofar as it directs the grant of benefit with effect from 25 September 2006. The order dated 22 February 2013, on the file of the 2nd respondent is also set aside. The first respondent is directed to pass appropriate orders extending dearness allowance on full pension with effect from the date of retirement on VRS/Superannuation of concerned employees. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

10. The Writ Petition is allowed as indicated above. No costs. Consequently, M.P.No.1/2013 is also closed.

Sd/-
Asst.Registrar (AD I)

/true copy/

Sub Asst. Registrar

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To

1.The Secretary,
Finance (BPE) Department,
Fort St. George CHENNAI-9.

2 THE SPECIAL SECRETARY TO
GOVERNMENT FINANCE (BPE) DEPARTMENT
GOVERNMENT OF TAMIL NADU FORT ST. GEORGE
CHENNAI-9.

1 cc to Mr.Balan Haridas, Advocate, Sr. 8198
1 cc to Government Pleader, Sr. 8609

W.P.No.34530 of 2013

SSI (CO)
kk 24/2