

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Writ Appeal No.1520 of 2015
and
M.P.No.1 of 2015

1) Government of Tamil Nadu,
Secretary to Government,
Finance (BPE) Department,
Fort St. George,
Chennai-600 009.

2) The Special Secretary to Government,
Finance (BPE) Department,
Government of Tamilnadu,
Fort St. George,
Chennai-600 009.

..... Appellants

vs.

1) Welfare Association of Tamil Nadu Ind Absorbee Pensioners
Rep by its General Secretary,
Regn No.504/2007
No:12, 9th Street,
TANSI Nagar,
Velachery,
Chennai-600 042.

- 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

..... Respondents

Appeal filed under Clause 15 of the Letters Patent, against the order made in W.P.No.34530 of 2013 Writ Petition filed under Article 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.25.9.2006 in so far as extending the Dearness Allowance on full pension only from the date of the date of the G.O. and the order dated 22.02.2013 of the 2nd respondent bearing letter No.15015/Fin.(BPE) Department/08 and consequently direct the respondent to extend the dearness allowance on full pension with effect from 04.05.1991 date of retirement on VRS/Date of Superannuation alongwith arrears and interest on the belated payment at the rate of 12% p.a. dated 16.02.2015.

For Appellants : Mr.T.N.Rajagopalan,
Special Government Pleader
For R1 to R10,
R12, R14 to R16 : Mr.Balan Haridas

JUDGMENT

(Judgment of the Court was delivered by Mr.Justice
S.MANIKUMAR)

Challenge in this appeal is to an order made in W.P.No.34530 of 2013 dated 16.02.2015.

2.Facts of the case are that the 1st respondent is an association of pensioners, who were absorbed from the Department of Industries and Commerce to the Tamil Nadu Small Industries Corporation Ltd., (TANSI). They were paid with DCRG and commuted pension amount. In G.O.Ms.No.509, Finance (BPE) Department dated 25.05.1997, the Government have ordered that restoration of 1/3rd portion of the commuted pension after 15 years from the date of commutation, be extended to the State Government employees, who have commuted their pension, while getting absorbed permanently in the State Public Sector Undertakings/Boards, Local Bodies, Universities Cooperative Institutions, Central Public Sector Undertakings, Central Autonomous Bodies etc. According to the 1st respondent, the Secretary to Government, Finance (BPE) Department, Chennai, 1st appellant herein, paid 1/3rd pension from 04.05.1991, with proportionate dearness allowance, instead of dearness allowance on full pension. Hence, the members of the 1st respondent association have filed W.P.No.11961 of 2006, directing the respondents therein, to extend the benefit of payment of dearness allowance on full pension, at the rate prescribed by the Government, with effect from 04.05.1991, along with interest @12% per annum. During the pendency of the writ petition, the Government have passed G.O.Ms.No.588, Finance (BPE) Department, dated 25.09.2006, extending payment

of dearness allowance on full pension, with effect from the date of issuance of the said G.O. Since retrospective effect was not given to the said Government Order, while disposing of the said writ petition, this Court, by order dated 21.01.2011, made in W.P.No.11961 of 2006, directed the respondents therein, to consider the representation of the petitioner therein, on merits. Thereafter, the Special Secretary to Government, Finance (BPE) Department, Government of Tamilnadu, 2nd appellant herein, has passed an order, dated 22.02.2013, rejecting the request of the 1st respondent, to revise the date of implementation of G.O.Ms.No.588 Finance (BPE) Department, dated 25.09.2006. Contending that the Government is bound to pay dearness allowance on full pension, retrospectively, the 1st respondent association has filed W.P.No.34530 of 2013, seeking to quash G.O.Ms.No.588 Finance (BPE) Department dated 25.09.2006, in so far as extending the dearness allowance on full pension only from the date of issuance of G.O. and the order of the 2nd appellant, dated 22.02.2013, with a consequential direction 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.

3.The Secretary to the Government, Finance (BPE) Department, Chennai, 1st appellant herein, has filed a counter affidavit, contending that the Government have taken a policy decision, to allow dearness allowance on full pension, with effect from 25.09.2006. According to him, G.O.Ms.No.588 Finance Department, dated 25.09.2006 is only a gesture shown by the Government, on humanitarian grounds. Hence, the members of the 1st respondent association are not entitled to dearness allowance, on full pension retrospectively.

4.Before the Writ Court, learned counsel for the respondents contended that retired employees are entitled to the dearness relief on full pension, with effect from the date of retirement and placed reliance on a 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 Hon'ble Supreme Court directed the Union Government, to grant the benefit of dearness allowance on full pension.

5.Adverting to the rival submissions, the Writ Court at paragraphs 6 to 11, held as follows:-

'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.''

6. Though Mr.T.N.Rajagopalan, learned Special Government Pleader assailed the correctness of the order impugned, as rightly held by the Writ Court, the issue involved in this case, is squarely covered by a judgment of the Hon'ble Supreme Court in P.V.Sundararajan and another vs. Union of India and others, (2000) 4 SCC 469, wherein, after considering an earlier decision in Welfare Association of Absorbed Central Government Employees in Public Enterprises vs. Arvind Verma, 1999 (9) SCC 58, the Hon'ble Apex Court at paragraphs 11 to 13, held as follows:-

'11.The dearness relief on pension has been granted to pensioners to compensate them for the erosion in the value of money due to rise in the cost of living. It seems clear that the Government has permitted to the applicants dearness relief calculated only on one-third part of the pension restored while in case of other pensioners, the dearness relief is calculated on full pension including the commuted part of pension. As already noticed, the applicants are to be treated on the same footing as other Central Government employees in so far as the question of restoration of one-third of commuted pension is concerned and are entitled to the benefits as given in Common Cause case. In this respect, it would also be useful to notice that the 'pension' as defined in Central Civil Services (Pension) Rules 1972 does not include dearness relief. Rule 3(1)(o) reads as under:-

"3.(1)(o) 'Pension' includes gratuity except when the term pension is used in contradistinction to gratuity, but does not include dearness relief;"

12.We may also reproduce Rule 55-A :-

"55-A.Dearness Relief on Pension/Family Pension (i) Relief against price rise may be granted to the pensioners and family pensioners in the form of dearness relief at such rates and subject to such conditions as the Central Government may specify from time to time.

(ii) If a pensioner is re-employed under the Central or State Government or a Corporation/Company/Body/Bank under them in India or abroad including permanent absorption in such Corporation/Company/Body/Bank, he shall not be

eligible to draw dearness relief on pension/family pension during the period of such re-employment.

(iii) Deleted"

13.The Government instructions also show that the dearness relief is granted to compensate the pensioners for erosion in the value of money due to rise in the cost of living. Anything which is not part of pension has to be paid in full in so far as those who have commuted one-third pension. Nothing of substance could be shown by Mr. Altaf Ahmed, learned Additional Solicitor General, so as to deprive the grant of benefit of dearness relief on full pension to these public sector absorbees at par with Central Government pensioners. Directions in this regard have been issued by this Court from time to time but applicants are still being deprived of this benefit. We give to the respondents a final opportunity to grant to the applicants the benefit of dearness relief on pension as aforesaid within a period of three months. The applicants are, however, not entitled to any other benefit claimed in the applications."

7.In the light of the above decisions, we are not inclined to interfere with the impugned order. At this juncture, learned counsel for the respondents submitted that during the pendency of this appeal, the Government have passed G.O(Ms)No.258, Finance (BPE) Department, dated 14.10.2015, granting benefit of sanction of dearness allowance on full pension, with effect from the date of retirement on VRS/Superannuation of the concerned employees, subject to the outcome of this writ appeal. The said G.O. is extracted hereunder:-

सत्यमेव जयते
"ABSTRACT"

State Public Sector Undertakings - State Government Employees permanently absorbed in State Public Sector Undertakings/Boards, Universities, Co-operative institutions, Central Public Sector Undertakings, Central Autonomous Bodies etc., - D.A. on full pension - Extension of orders of Government of India - Implementation of Hon'ble High Court of Madras order dated 16.2.2015 in W.P.No.34530/2013 - Sanction of D.A on full pension - Orders - issued.

FINANCE (BPE) DEPARTMENT

G.O.(Ms).No.258
2015

Dated : 14-10-

Manmatha Puratasi -27
Thiruvalluvar Aandu

2046

Read:-

1)Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Pension and Pensioners Welfare OM No:4/29/99 P&PW(D) dated 12.7.2000.

2)G.O.Ms.No.588 Finance (BPE) Department dated 25.09.2006.

3)Hon'ble High Court of Madras order dated 16.2.2015 in W.P.No.34530/2013.

4)Contempt petition No.1821/2015

ORDER

Government have sympathetically considered the request of the TANSI employees Association and other State Government employees who were absorbed in State Public Sector Undertakings / Central Public Sector Undertakings / Boards / Autonomous Bodies / Local Bodies etc., and issued orders extending the Government of India orders issued in OM No:4/29/99 P&PW(D) dated 12.7.2000 granting DA on full pension to State Government employees who have commuted full pension at the time of their permanent absorption in State Public Sector Undertakings / Boards / Local Bodies / Universities / Cooperative institutions, Central Public Sector undertakings, Central Autonomous bodies and for whom 1/3rd of the commuted pension was restored after 15 years w.e.f the date of issue of order i.e on 25.9.2006 vide G.O 2nd read above.

2)TANSI absorbee pensioners have filed a Writ Petition in W.P.No:34530 of 2013 with a prayer to sanction D.A arrears w.e.f 4.5.1991/date of retirement on VRS / date of superannuation, alongwith arrears and interest on the belated payment at 12% p.a and Hon'ble High Court in the above W.P issued orders on 16.2.2015 directing that:-

"the impugned order in G.O.Ms.No:588 Finance (BPE) Department, dated 25.9.2006 is set aside in so far as it directs the grant of benefit w.e.f 25.9.2006 and the first respondent (Government of Tamilnadu represented by Secretary to Government, Finance Department) is directed to pass appropriate orders extending Dearness Allowance on full pension w.e.f the date of retirement on VRS / Superannuation of the concerned employees."

Against the above Hon'ble High Court Order the Writ appeal preferred by Government is pending before the Hon'ble High Court. Further TANSI absorbee pensioners have filed a Contempt Petition No: 1821 of 2015 before the Hon'ble High Court of Madras.

3) In the meantime Government have decided to comply with the orders of Hon'ble High Court, Madras and accordingly directed to replace Para 3 of the G.O.Ms.No.588 Finance (BPE) Department, dated 25.9.2006 with the following:

"the benefit of sanction of Dearness Allowance on full pension is granted w.e.f the date of retirement on VRS/Superannuation of the concerned employees subject to the outcome of Writ Appeal pending before the Hon'ble High Court, Madras."

(By Order of the Governor)

K.SHANMUGAM
PRINCIPAL SECRETARY TO GOVERNMENT''

8.In the result, the writ appeal is dismissed. No costs. Consequently, M.P.No.1 of 2015 is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

NBI

To

1)The Secretary to Government,
Government of Tamil Nadu,
Finance (BPE) Department,
Fort St. George, Chennai-600 009.

2)The Special Secretary to Government,
Finance (BPE) Department,
Government of Tamilnadu,
Fort St.George, Chennai-600 009.

1 cc to Mr.Balan Haridass, Advocate, sr.25770

W.A.No.1520 of 2015

ad co

kra-24.05.2016

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