

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2018

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Review Application (Writ) No.686 of 2017

S.Kamala

.. Petitioner/Petitioner

Vs.

1. Union of India,
Rep. By Director of Education,
Romain Rollan Street,
Puducherry.

2. The Principal,
Wiseman English High School,
Mudaliarpeta,
Puducherry.

3. The Regional Provident Fund Commissioner,
O/o. The Regional Provident Fund Commissioner,
No.20, Royapettah High Road
Chennai.

.. Respondents/Respondents

PRAYER: Application under Article 226 of the Constitution of India read with Order 47 Rule 1 and Section 114 of the Civil Procedure Code for reviewing the order in W.P.No.8974 of 1998, dated 6.8.2009 and to allow the writ petition filed under Article 226 of the constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent with No.6990/EDu/GIAS/U11/97 dated 16.01.1998 and to quash the same and consequently direct the first respondent to pay invalid pension to the Petitioner with effect from 29.11.1997 the date on which the petition was allowed to proceed on invalid pension and the direct the first respondent to pay arrears of pension, gratuity and other pensionary benefits with retrospective effect from 30.11.1997.

For Petitioner :Mr.M.Rajasekar

For Respondents:Mr.A.Gandhirajan (for R1)

Government Pleader (Pondy)
Assisted by Mr.B.Nambiselvam
Addl. Government Pleader

Mr.K.Gunasekar (for R3)
SCGSC

ORDER

The petitioner in the writ petition has filed this review petition seeking to review the order dated 6.8.2009 passed in W.P.No.8974 of 1998.

2. The petitioner filed the writ petition to quash the proceedings of the first respondent rejecting the request of the petitioner to grant pension on the ground that she did not possess the required ten years of service.

3. In the said writ petition, this Court, by order dated 6.8.2009, observed as under:

"2. It is now stated by the learned counsel for the third respondent that subsequent to the impugned order and in pursuance of the interim direction issued by this Court in W.M.P.No.13684 of 1998 in W.P.No.8974 of 1998 dated 13.7.1999, the request of the petitioner was re-considered and she was granted invalid pension to the tune of Rs.90,255/- and the same was paid to the petitioner by way of cheque on 9.3.2000. The amount due under the cheque was realised in the account of the petitioner on 18.3.2000. The learned counsel has produced a letter from the Assistant Provident Fund Commissioner (Legal) for Regional Provident Fund Commissioner dated Nil June 2000 which disclosed the said facts.

3. Since already the request of the petitioner has been considered by the respondents and the petitioner has also received the said amount, no further order is required in this writ petition. Hence, the writ petition is dismissed.

4. It is the contention of the learned counsel for the review petitioner that the statement of the respondent authorities to the effect that they have paid invalid pension to the tune of Rs.90,255/-, as recorded in the aforesaid order, is factually incorrect, inasmuch as what was paid to the petitioner was provident fund accumulations and not invalid pension.

5. He further submitted that invalid pension is to be paid every month and it cannot be paid in one lumpsum as stated by the respondents and on account of such misrepresentation made by the respondents, the petitioner is suffering undue hardship.

6. Per contra, the learned Government Pleader (Puducherry) appearing on behalf of the respondents submitted that inasmuch as the plea of the petitioner seeking invalid pension was already rejected by the respondent authorities, the same cannot be granted in the present review proceedings.

7. I heard Mr.M.Rajasekar, learned counsel for the petitioner, Mr.A.Gandhirajan, learned Government Pleader (Pondicherry) Assisted by Mr.B.Nambiselvam, learned Additional Government Pleader for the 1st respondent and Mr.K.Gunasekar, learned SCGSC for the 3rd respondent and perused the documents available on record.

8. The limitations on exercise of the power of review are well settled, viz., that the order, review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to failure of justice. In the absence of any such error, in my considered view, the finality attached to the Judgment/order cannot be disturbed. That apart, review is not an appeal in disguise. Rehearing of the matter is impermissible in the garb of review. It is an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. In Lily Thomas v. Union of India AIR 2000 SC 1650, the Court said that power of review can be exercised for correction of a mistake and not to substitute a new. Such powers can be exercised within limits of the statute dealing with the exercise of power. The aforesaid view is reiterated in Inderchand Jain v. Motilal (2009) 4 SCC 665.

9. In the case on hand, admittedly, the petitioner initially joined service on 10.07.1980 and was granted regular time scale of pay from June, 1988. Thereafter, she rendered unblemished service till 29.11.1997, on which date she was relieved. Even as per the counter affidavit, the petitioner was a member of the Employees Provident Fund Scheme.

10. It is also seen from the counter affidavit that relying on the report of the Medical Board, the Director of Education, Puducherry, the respondent authorities permitted the Headmistress of the School to accept the application of the petitioner for invalid pension and allow her to proceed on invalid pension with immediate effect vide Memorandum No.15/Edn/GIAS/U.I/97, dated 28.11.1997.

11. In the case on hand, the order of which review is sought for records that the petitioner was granted invalid pension to the tune of Rs.90,255/- and the same was paid to the

petitioner by way of cheque on 09.03.2000. The said fact as pleaded by the respondents and recorded in the order is, ex facie, an error apparent on the face of the records. What was paid to the petitioner is provident fund accumulations and not invalid pension.

12. The Hon'ble Division Bench of this Court in Union of India v. M.Arokiadass and others, [Order dated 15.2.2016 made in W.P.No.23638 of 2015, etc.], after referring to a catena of decisions held that in calculating length of qualifying service, a fraction of a year equal to three months and above shall be treated as completed one half year and reckoned as qualifying service.

13. Even in the order passed in the writ petition of which review is sought, it is nowhere stated that the petitioner is not entitled to be considered for grant of invalid pension. In fact, it was recorded, as submitted by the respondents, that invalid pension was paid. It is only based on such recording of the submission made on behalf of the respondents that the Court fell in error in recording that invalid pension has been paid to the petitioner in lumpsum. The said fact is ex facie an error and runs counter to the law laid down by the Division Bench of this Court in the decision referred supra.

14. In the counter affidavit, it is categorically recorded that the respondent authorities permitted the Headmistress of the School to accept the application of the petitioner for invalid pension and allow her to proceed on invalid pension with immediate effect vide Memorandum No.15/Edn/GIAS/U.I/97, dated 28.11.1997. When the respondent authorities in all fairness allowed the petitioner to proceed on invalid pension, it is not known as why the respondents are resiling from paying invalid pension to the petitioner.

15. Moreover, the petitioner was initially appointed on 10.07.1980 and was granted regular time scale of pay June, 1988. Thereafter, she rendered unblemished service till 29.11.1997, on which date she was relieved. It is not in dispute that the petitioner has been in service as stated above. It is also beyond any cavil that the petitioner rendered unblemished service for over 9 years 5 months, excluding the service of over another nine years odd from her initial appointment. The only reason for her not continuing in employment was on the ground of ill-health.

16. Considering the facts and circumstances of the case; the binding precedent set by the Hon'ble Division Bench judgment, referred supra; the ground on which the petitioner opted out of employment, viz., her ill-health, and in order to render substantial justice, this Court passes the following order:

i. The review application is allowed and the order passed in W.P.No.8974 of 1998, dated 06.08.2009, is modified by allowing the writ petition as prayed for;

ii. It is made clear that the amount paid to the petitioner to the tune of Rs.90,255/- is the provident fund accumulations and not invalid pension, as recorded in the order passed in the writ petition;

iii. The respondent authorities are directed to calculate invalid pension and other benefits, if any due and payable to the petitioner, and pay the same with arrears. Such arrears shall be paid within a period of six weeks from the date of receipt of a copy of this order;

iv. No costs.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

vs

To

1. The Director of Education,
Union of India,
Romain Rollan Street,
Puducherry.
2. The Regional Provident Fund Commissioner,
O/o. The Regional Provident Fund Commissioner,
No.20, Royapettah High Road,
Chennai.

+1 CC to Shyam Kumar, Advocate sr 15660.

+1 CC to Govt. Pleader sr 15587.

Review Application (Writ) No.686 of 2017

CNR(CO)
SP(12/03/2018)