

In the High Court of Judicature at Madras

Dated : 01.8.2017

Coram :

The Honourable Mr.Justice NOOTY.RAMAMOHANA RAO

and

The Honourable Mr.Justice M.DHANDAPANI

Writ Petition No.1278 of 2017 & WMP.No.1201 of 2017

Puducherry Retired Judicial Officers
Association, rep.by its Secretary
S.Muruga Boopathy

...Petitioner

Vs

1.The Government of India,
Ministry of Law & Justice,
Department of Justice, rep.
by its Director, Jaai Salmor
House, Mansing Road,
New Delhi.

2.The Union Territory of Puducherry,
rep.by its Secretary (Law),
Law Department, Puducherry.

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the proceedings in F.No.L-19018/03/2009-JUS dated 20.5.2016 on the file of the 1st respondent herein, quash the same and direct the 1st respondent to grant permission to the 2nd respondent herein to disburse all the benefits accrued to the Retired Judicial Officers of the Union Territory of Puducherry by making the payments of Domestic Help Allowance at Rs.2,500/- per

month and Medical Allowance at Rs.1,500/- per month to the Retired Judicial Officer of Union Territory of Puducherry for the period from 01.1.2006 to 31.8.2008 within a time frame as may be fixed by this Court.

For Petitioner : Mrs.Elizabeth Rani for
Mr.P.Raja
For Respondent-1 : Mr.B.Rabu Manohar, SCGPC'
For Respondent-2 : Mr.K.R.Harin, AGP (Pondy)

ORDER

(Order of the Court was made by NOOTY.RAMAMOohana RAO,J)

This writ petition is instituted by Puducherry Retired Judicial Officers Association seeking quashing of the proceedings dated 20.5.2016 issued by the Ministry of Law and Justice, Department of Justice, Government of India. They also sought for a direction to the first respondent to grant necessary permission to the second respondent - the Union Territory of Puducherry to disburse all the benefits accrued to the Retired Judicial Officers of the Union Territory of Puducherry by making payment of domestic help allowance at Rs.2,500/- per month and medical allowance at Rs.1,500/- per month to such of those Retired Judicial Officers of the Union Territory of Puducherry for the period in between 01.1.2006 and 31.8.2008 within a time frame limit to be fixed by this Court.

2. After Honourable Justice Shetty's Commission made an exhaustive study of the conditions of service of the Judicial Officers serving in the

country in Subordinate Courts, the Supreme Court, by its order dated 28.4.2009, constituted Justice Padmanabhan's Commission to determine the scales of pay, allowances and perquisites, etc., payable to the Judicial Officers of Subordinate Courts having regard to and in continuation of the recommendations made by Honourable Justice Shetty's Commission. Accordingly, Justice Padmanabhan's Commission studied the matter fairly comprehensively and submitted its Report on 17.7.2009.

3. Part III of Justice Padmanabhan Commission's Report dealt with determination of revised pay scales while Part IV dealt with determination of dearness allowance, city compensatory allowance, other allowances, perquisites, etc. Section 10 of Part IV dealt with medical allowance. The Commission recommended a sum of Rs.1,000/- to be paid per month to all Judicial Officers towards medical allowance.

4. Part V of the Report dealt with pension structure of those, who have retired prior to 01.1.2006. Part V begins with paragraph 31. In paragraph 31(b), the domestic help allowance, recommended by the First National Judicial Pay Commission, was noted. Justice Padmanabhan's Commission recommended it to be increased to Rs.2,500/- per month to the Retired Judicial Officers. It also made a recommendation for providing domestic help allowance to 'family pensioners' at the rate of Rs.1,000/- per month.

5. In paragraph 31(c), Justice Padmanabhan's Commission made a recommendation for increasing the medical allowance to Rs.1,500/- per month to Retired Judicial Officers and also made a recommendation for

payment of Rs.750/- per month to be paid to the family pensioners towards medical allowance. Paragraph 32 of Part V specifically dealt with the retirement benefits of Judicial Officers, who retired on or after 01.1.2006.

6. Section 7 of Part V dealt with domestic help allowance. In paragraph 40(a), Justice Padmanabhan's Commission recommended domestic help allowance be revised to the pensioners to Rs.2,500/- per month. In paragraph 40(b), domestic help allowance to the family pensioners was recommended to be made at the rate of Rs.1,000/- per month. In paragraph 40(d), it was also further recommended by this Commission for payment of domestic help allowance without insisting for a certificate every month.

7. Similarly, Section 8 of Part V of the Report dealt with medical allowance and in paragraph 41(a), the monthly medical allowance to the pensioners be paid at the rate of Rs.1,500/- and in so far as the family pensioners are concerned, in paragraph 41(b), a monthly allowance of Rs.750/- is recommended to be paid towards medical allowance.

8. The Supreme Court, by its order passed on 26.7.2010, approved the recommendations made by Justice Padmanabhan's Commission to continue with Honourable Justice Shetty Commission's recommendations as mentioned in paragraph 31(a), (d) and 36 of the Report of Justice Padmanabhan's Commission. In paragraph 3 of the order, the Supreme Court specifically approved the recommendations made by Justice Padmanabhan's Committee in paragraph 31(b) with regard to payment of domestic help allowance at the rate of Rs.2,500/- per month to Retired

Judicial Officers and domestic help allowance to family pensioners at the rate of Rs.1,000/-. In paragraph 4, the Supreme Court noted specifically as under :

"It is made clear that the above increase in the domestic help allowance will apply to all Retired Judicial Officers."

9. The Supreme Court also approved the recommendation with regard to payment of domestic help allowance to the family pensioners at the rate of Rs.1,000/- per month. In paragraph 6 of the said order, the Supreme Court also approved the recommendation of Justice Padmanabhan's Committee with regard to increase of medical allowance from Rs.100/- per month to Rs.1,500/- per month for Retired Judicial Officers and in respect of family pensioners, the medical allowance be paid at the rate of Rs.750/- per month. In paragraph 11 of the said order, it has been observed as under :

"We may place on record that as far as the above directions are concerned, no State has raised any objection."

The matter was directed to be placed before the Court on 02.8.2010 for consideration of the other issues.

10. Accordingly, the matter has, once again, been considered by the Supreme Court on 02.8.2010. In the very opening paragraph, i.e. paragraph No.1 of the order passed on 02.8.2010, its earlier order, particularly paragraph 2 of the order dated 26.7.2010, has been clarified. The clarified order (in paragraph 2 of the order dated 02.8.2010) reads as under :

"We accept the Report of Justice Padmanabhan Committee in the matter of encashment of leave (Section 5), family pension (Section 6), domestic help allowance (Section 7) (except paragraphs 40(c) and 40(d) as also with regard to medical allowance in Section 8."

11. Thus, by order dated 02.8.2010, the Supreme Court has made it very clear that they approved and accepted the recommendations made by Justice Padmanabhan's Commission with regard to medical allowance as mentioned in Section 8 of Part V of the Report submitted by the said Commission. However, when it came to domestic help allowance, the recommendations contained in Section 7 was approved except to the extent of the recommendations contained in Paragraphs 40(c) and 40(d). That part of the Report contained in Paragraphs 40(c) and 40(d) had not been approved or accepted by the Supreme Court.

12. As was noticed by us, Part V of Justice Padmanabhan Commission's Report starts with the pension structure of the pensioners, who retired prior to 01.1.2006. Section 7 thereof dealt with domestic help allowance and the said Section i.e. Section 7 contains Paragraph 40. Now, the Supreme Court, by its order dated 02.8.2010, has, in no so many words, approved the recommendations contained in Paragraphs 40(a) and 40(b). But, only in respect of Paragraphs 40(c) and 40(d), the reservation has been expressed by its order dated 02.8.2010. As was already noticed supra by us, in Paragraph 40(a), Justice Padmanabhan's Commission recommended

payment of domestic help allowance to pensioners to be revised upwardly to Rs.2,500/- per month. Similarly, in Section 40(b), the recommendation was to make payment of domestic help allowance to family pensioners at the rate of Rs.1,000/- per month. Payment of domestic help allowance to family pensioners was contemplated and provided for, for the first time.

13. Thus, by order passed on 02.8.2010, the Supreme Court has cleared whatever doubts are persisting in the minds of the Union Government and the State Governments with regard to payment of domestic help allowance to 'both pensioners and family pensioners'. In so far as the pensioners are concerned, the recommendation has been made for payment of domestic help allowance at the rate of Rs.2,500/- per month and in so far as the family pensioners are concerned, the said allowance at the rate of Rs.1,000/- per month has been approved.

14. Since Part V of Justice Padmanabhan Commission's Report dealt with pensioners, who have retired prior to 01.1.2006, it is now beyond any scope to entertain any doubt with regard to the obligation to make the payment of domestic help allowance to pensioners or family pensioners, (whose principals) have retired from service on or prior to 31.12.2005. When it comes to the question of payment of medical allowance found mentioned in Section 8 of Part V containing paragraph 41, the said recommendation of Justice Padmanabhan's Commission stood approved and accepted by the Supreme Court in toto.

15. When it came to the question of pay and allowances to the serving

Judicial Officers, the recommendations of Justice Padmanabhan's Commission are found in Part VII of his Report from Paragraph 43 onwards. So far as medical allowances are concerned, the recommendations are contained in Paragraph 57(a) by suggesting medical allowance at the rate of Rs.1,000/- per month to be paid. Thus, all the Officers, who have retired on or before 31.12.2005, have been extended the payment of domestic help allowance and also medical allowance and those officers, who are in service, are extended the enhanced medical benefit of Rs.1,000/- per month.

16. Subsequently, payment of such allowances has also been approved to the serving Judicial Officers. The Government of India, Ministry of Law and Justice, on 02.7.2014, conveyed the sanction of Competent Authority to grant domestic help allowance at the rate of Rs.1,000/- per month to the family pensioners of Judicial Officers of the Union Territories with effect from 01.1.2006 and the payment of all allowances to the Judicial Officers of the Union Territories with effect from 01.1.2006 as recommended by Justice Padmanabhan's Committee. As a consequence of this clarification, a doubt was entertained by the Government of Union Territory of Puducherry as to whether the recommendation for payment of all allowances to Judicial Officers serving between 01.1.2006 and 31.8.2008 would also apply to those, who have retired as Judicial Officers during that period.

17. In response thereto, the Ministry of Law and Justice clarified by its communication dated 20.5.2016 that the Judicial Officers, who have retired in between 01.1.2006 and 31.8.2008 will be extended the benefit of

allowances on par with the serving Officers for the period from 01.1.2006 till 31.8.2008 or the date of retirement, whichever is earlier. In so far as the allowances for the Judicial Officers, who have retired on or prior to 31.12.2005, they will continue to receive as it is.

18. In this backdrop, the short question that has fallen for consideration is as to whether those Officers, who have retired on 31.1.2006 or after and upto 31.8.2008, are also entitled for payment of domestic help allowance and medical allowance on par with those, who have retired on or before 31.12.2005.

19. Justice Padmanabhan Commission's Report specifically and independently dealt with payment of domestic help allowance and medical allowance to Retired Judicial Officers. Incidentally, it has made a specific recommendation in respect of those Judicial Officers, who retired on or prior to 31.12.2005. That recommendation was accepted by the Supreme Court on 26.7.2010 as clarified later on 02.8.2010. Therefore, it is hardly debatable that those Judicial Officers, who retired on or prior to 31.12.2005 are entitled to be paid the domestic help allowance and medical allowance. Similarly, family pensioners, whose principals have retired on or prior to 31.12.2005, are also entitled to be paid the said allowance. There is also no doubt that those Judicial Officers, who have retired on or after 31.8.2008 are entitled to be paid the domestic help allowance as well as medical allowance.

20. The Judicial Officers, who have retired on 31.1.2006 onwards upto 31.8.2008, cannot be left out. There was absolutely no reason to leave them

out of the coverage of payment of domestic help allowance and medical allowance. When once the recommendations of Justice Padmanabhan's Commission have been accepted in principle for payment of domestic help allowance and medical allowance to Retired Judicial Officers, it is obviously in the mind of the Court that the same will become payable to those Officers, who would retire after 01.1.2006 as well.

21. Neither Justice Padmanabhan's Commission nor the Supreme Court had even remotely intended to extend payment of domestic help allowance and medical allowance only to those, who have retired on or prior to 31.12.2005 and that the same shall be denied to those, who retired after 01.1.2006 at all. On the other hand, for those, who have retired from service after 01.9.2008, the Union of India or for that matter the Government of Union Territory of Puducherry had no doubt about their entitlement for such payment.

22. In this view of the matter, we are clearly of the view that a clarification from the Supreme Court is not required, as is considered necessary by the respondents. By the order dated 02.8.2010 passed by the Supreme Court, it is made extremely clear that the Supreme Court has approved, in principle, the payment of domestic help allowance and medical allowance to all Retired Judicial Officers. By the very sweep of this expression 'Retired Judicial Officers', even those, who have retired after 01.1.2006, also become automatically get covered and entitled for payment of such allowance. The class of pensioners is not sought to be bifurcated into two or

more number of segments based upon their date of retirement.

23. Accordingly, a Writ as prayed for is issued. The respondents are directed to effect payment of domestic help allowance and medical allowance at the rates approved by the Supreme Court by its order dated 26.7.2010 as clarified on 02.8.2010 for such of those Judicial Officers, who have retired on or after 01.1.2006 also. Let the necessary payments be made within a maximum period of six months from the date of receipt of a copy of this order and such payment shall continue to be made month after month unless and until the same is withdrawn with the approval of the Supreme Court. The writ petition stands allowed. No costs. Consequently, the above WMP is closed.

01.8.2017

Speaking Order

Index : Yes

Internet : Yes

To

- 1.The Director, Government of India, Ministry of Law & Justice, Department of Justice, Jaai Salmor House, Mansing Road, New Delhi.
- 2.The Secretary (Law), Union Territory of Puducherry, Law Department, Puducherry.

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AND
M.DHANDAPANI,J

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