

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2017

CORAM

THE HON'BLE MR.JUSTICE T.RAJA

W.P. No.24439 of 2015

Dr.S.Sreedar

Petitioner

Vs.

1. The State of Tamilnadu
Rep. by the Principal
Secretary to the Government,
Finance Department, Fort St.George,
Chennai - 600 009
 2. The Principal Secretary to Government,
Department of Health and Family Welfare,
Fort St. George, Chennai - 600 009
 3. The Director of Medical Education,
DMS Compound, Chennai - 10
- Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus directing the respondents to refix the pension of the petitioner as per G.O.Ms.No.235, Finance (PC) Department, dated 01.06.2009 on the basis of the scale of pay of Rs.37400 - 67000 + Grade Pay of Rs.8700 fixed for the post of Professor in G.O.Ms.No.354 Health & Family Welfare (B2) Department dated 23.10.2009 and based on the common order dated 30.04.2013 passed by Madurai Bench of Madras High Court in W.P.(MD) No.5168 of 2011 and W.P.(MD) No.9215 of 2011 and consequently to pay all the arrears to the petitioner pursuant to the fixation of revised pension from the eligible date.

For Petitioner : Mr. R.Prem Narayan

For Respondents: Mr. R.A.S.Senthilvel
Additional Government Pleader

O R D E R

The petitioner, who was working as Professor in Nephrology, at Madurai Medical College and obtained voluntary retirement from service on 04.08.2005, has come up with this writ petition to refix the scale of pay as per G.O.Ms.No.354 Health and Family Welfare (B2) Department dated 23.10.2009.

2. Learned counsel appearing for the petitioner would submit that the Government of Tamilnadu had issued G.O.Ms.No.235, Finance (PC) Department dated 01.06.2009, wherein at Paragraph No.2(vi), it is specifically stated that in the case of pensioners / family pensioners revision of pension shall be subject to the provision that revised pension in no case shall be lower than 50% of the minimum scale of pay plus grade pay applicable to the post at the present revised scale. Subsequently, another G.O.Ms.No.354 Health and Family Welfare (B2) Department dated 23.10.2009 was issued enhancing the scale of pay at Rs.37,400/- - 67,000/- grade pay Rs.8,700/-. The petitioner made a representation to re-fix his pension by taking into account the revised scale of pay of Rs.37,400/- - Rs.67,000/- + Grade Pay Rs.8,700/- fixed for the post of Professor as per the later said Government order. This was rejected by the Government on the ground that the revised scale of pay granted in G.O.Ms.No.354 Health and Family Welfare (B2) Department dated 23.10.2009 is applicable only to those who hold the post of Professor on or after 23.10.2009. Hence this Petition.

3. Per contra, the learned Additional Government Pleader appearing for the respondents, by filing a detailed counter, submitted that the similarly placed persons, viz., Tamilnadu Govt., Retired Medical Officers Association, Madurai District and one Dr.T.Rajagopal, like that of the petitioner herein, had approached the Madurai Bench of Madras High Court in W.P.(MD) Nos.5168 and 9215 of 2011, respectively, seeking for refixing the pay of the petitioners therein on the basis of G.O.Ms.No.354 Health and Family Welfare (B2) Department dated 23.10.2009 retrospective to the date of retirement and the same were allowed on 30.04.2013. However, aggrieved by the same, the Government had filed Writ Appeals in W.A.(MD) Nos.922 and 923 of 2013. The Madurai Division Bench of Madras High Court, in its Common Judgment, dated 24.03.2015, had reversed the common order passed in W.P.(MD) Nos.5168 and 9215 of 2011 dated 30.04.2013 and observed as follows:-

"117. Keeping in view of the above facts, we are of the considered view that the impugned order passed by the learned Single Judge of this Court is liable to be set aside and the writ petitions, viz., W.P.(MD) No.5168 and W.P.(MD) No.9215 of 2011 filed by the petitioners and his association are liable to be dismissed.

118. Accordingly, both the writ appeals are allowed. The common orders, dated 30.04.2013 is set aside and the writ petitions viz., W.P.(MD) Nos.5168 and W.P.(MD) No.9215 of 2011 are dismissed. No costs. Consequently connected miscellaneous petitions are closed."

4. Relying upon the said decision, the learned Additional Government Pleader appearing for the respondents submitted that, being aggrieved by the common Judgment passed in W.A.(MD) Nos.922 and 923 of 2013, the Tamil Nadu Government Retired Medical Officers Association, the petitioner in W.P.No.5168 of 2011 has filed the Special Leave Petition in S.L.P.(C) Nos.25479-80/15 before the Hon'ble Supreme Court, wherein the Hon'ble Supreme Court had dismissed the S.L.P., holding that no ground for interference is made out; since the petitioner's case falls under the same category, prays for dismissal of the writ petition.

5. Heard the submissions on either side and perused the documents available on record.

6. Considering the facts and circumstances of the case and the submission made on either side, this Court is of the considered view that since the similar issue was decided by the Madurai Division Bench of Madras High Court in its Common Judgment dated 24.03.2015 in W.A.(MD) Nos.922 and 923 of 2013, reversing the view taken by the learned Single Judge and the same was also upheld by the Hon'ble Supreme Court in S.L.P.(C) Nos.25479-80/15 dated 12.10.2015 and this Court, being bound by the said Judgments, is inclined to dismiss the Writ Petition. Accordingly, the same is dismissed. No costs.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The State of Tamilnadu
Rep. by the Principal Secretary to the Government,
Finance Department, Fort St.George,
Chennai - 600 009
2. The Principal Secretary to Government,
Department of Health and Family Welfare,
Fort St. George, Chennai - 600 009
3. The Director of Medical Education,
DMS Compound, Chennai - 10

+ 1 cc to Mr.R. Premnarayan, Advocate SR.72784
+ 1 cc to Government Pleader Sr.72850

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SSI (CO)

EU (16/11/2017)

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