

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.17118 of 2017
and
W.M.P.No.18593 of 2017

C.Ramadoss

... Petitioner

Vs.

1. State represented by its Secretary
Higher Education Department,
Chennai-9

2. Director of legal Studies,
Puraisaivakkam High Road,
Kilpauk, Chennai-10.

3. Secretary,
Department of Law
Secretariat, Chennai-9.

... Respondents

Prayer : Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records relating to the order R.C.No.2137/A4/2010 dated 17.04.2017 on the file of the 2nd respondent and quash the same and consequently direct the respondents to revise the pension of the petitioner at the minimum of the pay band of Rs.37000-67000+AGP Rs.9000 as directed in state Government letter bearing no (2D) No.45 dated 13.04.2010 with effect from 01.01.2006 and monetary benefit from 01.01.2007 with all consequent and attendant benefits.

For Petitioner : Mr.G.Masilamani,
Senior Counsel

For Respondents : Mr.K.Dhananjayan
Special Government Pleader

ORDER

The relief sought for in this writ petition is for a direction to revise the pension of the writ petitioner at the minimum of pay band of Rs.37000-67000 + AGP Rs.9000 based on the letter issued by the state Government bearing No. (2D) 45 dated 13.04.2010 with effect from 01.01.2006 and to quash the order of rejection dated 17.04.2017.

2. Thiru.C.Ramadoss (writ petitioner), Director of Physical Education (Selection Grade) (Retd.) submitted his representation, dated 18.07.2016, to extend the benefit granted in Government letter No.(2D) 45, Higher Education (H1) Department dated 13.04.2010 and to revise his pension at Rs.23,200/- from 01.01.2006 at the minimum of the pay band of Rs.37,400-67,000 + AGP Rs.9000/-. His request was rejected by the Director of Legal Studies in proceedings dated 17.04.2017 by stating that it is not feasible for compliance, since he had not completed three years of service as Director of Physical Education in the Selection Grade scale of pay, as per the clarification issued in Government letter No. (2D) 45, Higher Education (H1) Department, dated 13.04.2010.

3. Now, this Court has to examine the facts in respect of the impugned rejection. The learned Senior Counsel appearing on behalf of the writ petitioner contended that the writ petitioner joined as Physical Director Grade-II in Government Arts College, Kumbakonam on 01.07.1954. He was promoted to the post of Physical Director Grade-I in the year 1959 and the pay scale attached to the post of Physical Director Grade-I is on par with the Assistant Professors in collegiate education. The petitioner was further promoted on 01.01.1974 to the post of Physical Director (Gazetted) in the pay scale of Rs.600-40-1000, which is on par with the post of Professor in collegiate education.

4. The University Grants Commission recommended the State Government to implement the UGC pay scales to college Teachers. Accordingly, the Government issued G.O.Ms.No.2106 dated 21.09.1979 implementing the UGC pay scale to the college Teachers, working in the Government colleges in the state of Tamilnadu. The writ petitioner was granted with the pay scale of Rs.700-40-1100-50-1300 in the post of Physical Director (Gazetted).

5. The Assistant Professors in the Government colleges, who had rendered ten years of service were upgraded as Professors, but such a benefit of upgradation was not extended to the Physical Directors working in the colleges. After putting 32 years of service, the writ petitioner retired from service on 30.04.1986 on attaining the age of superannuation. After his retirement, the Government issued G.O.Ms.No.542 dated 03.04.1987, granting revision of scale of pay to Professors with retrospective effect from the year 1974 with the initial start up of Rs.1100 from 01.01.1974.

6. While implementing the 2nd UGC pay scale from 01.01.1986, the pension of the writ petitioner was also revised in the scale of pay of Rs.3700-125-4450-150-5700. Thus, the writ petitioner was granted 1st UGC pay scale of Rs.700-40-1100-50-1300-EB-50-1600 from the year 1974 and the corresponding revised pay scale of Rs.3700-125-4950-150-5700 with effect from 01.01.1986 till his date of retirement. The

revision pension was also granted to the writ petitioner based on the revised pay scale for the post of Physical Director at the time of implementing the UGC pay scale from 01.01.1996 at Rs.12000-420-18000.

7. The Government issued G.O.No.350 dated 09.09.2009 implementing the UGC revised scale of pay for the post of Physical Education Director with effect from 01.01.2007 (4th UGC pay scale). Incumbent Director of Physical Education with less than 3 years of service, pay scale of Rs.15600-39100+8000 was fixed. Incumbent Director of Physical Education with 3 years of service, pay scale of Rs.37400-67000+9000 was fixed.

8. At this juncture, the learned Senior Counsel contended that the writ petitioner is also entitled for the benefit of the revised pay scale of Rs.37400-67000+9000, as per the Government order issued in letter (2D) No.45 dated 13.04.2010. It is contended that the respondents have erroneously interpreted the very spirit of the said Government letter (2D) No.45 dated 13.04.2010 and the Government Order is very clear that the writ petitioner is also entitled for the revised pay scale.

9. The Government letter in Letter (2D) No.45 dated 13.04.2010, revising the pension pursuant to revised UGC pay scales (4th pay scale) reads as follows:

"that the Pension / Family Pension of Reader / Selection Grade Lecturers, Deputy Librarian / Assistant Librarian (Selection Grade)/ College Librarian (Selection Grade) Deputy Director of Physical Education / Assistant Director of Physical Education (Selection Grade), College Director, Physical Education (Selection Grade) who had retired prior to 01.01.2006 and who had completed 3 years of service in the pre-revised pay scale of Rs.12000-420-18300 (and / or the corresponding pay scales applicable prior to 01.01.1996 shall be placed at the minimum of the pay band of Rs.37000-67000+AGP Rs.9000".

10. A perusal of the said Government letter reveals that there are two clauses available, the first clause stipulates that a person who had completed 3 years of service in the pre-revised pay scale of Rs.12000-420-18300. Thereafter the word "(or)" is used, the corresponding pay scales applicable prior to 01.01.1996 shall be placed at the minimum of the pay band of Rs.37000-67000+AGP Rs.9000. Thus, this Court is of the opinion that the claim of the writ petitioner falls under the second clause. The writ petitioner was also granted the revised pay scale of Rs.12000-420-18000 by virtue of the 3rd UGC pay scale implemented with effect from 01.01.1996. Thus, not only for the persons who have completed three years of service in the pre-revised pay scale of Rs.12000-420-18300 but also the persons who are placed in the corresponding pay

scales applicable prior to 01.01.1996, shall be placed at the minimum of the pay band of Rs.37000-67000+AGP Rs.9000/-.

11. In view of the above fact, the writ petitioner should also be granted the corresponding pay scales applicable prior to 01.01.1996, as he is eligible for the pay band of Rs.37000-67000 + AGP Rs.9000/-.

12. Learned Special Government Pleader opposed the contentions stating that the writ petitioner may not be eligible to get the revised pension, since he has not completed 3 years of service in the pre-revised pay scale of Rs.12000-420-18300 in accordance with the Government letter issued in (2D) No.45 dated 13.04.2010. Thus, the learned Special Government Pleader, at the outset, contended that the writ petitioner is not eligible to get the revised pension as per the benefits extended by the Government in letter, dated 13.04.2010.

13. In Paragraph 15 of the counter affidavit filed by the 2nd respondent, it is stated that the "scale of pay applicable to the post of Director of Physical Education (Selection Grade) with effect from 01.01.1996 is Rs.12000-420-18000. The corresponding pay scale to applicable to the post of Director of Physical Education (Selection Grade) prior to 01.01.1996 is Rs.3700-125-4950-150-5700/-". Further, it is stated that the writ petitioner would become eligible for re-fixing his pension at Rs.23,200/- in the Pay Band of Rs.37400-67000+ AGP Rs.9000/- only if he had completed 3 years of service in the post of Director of Physical Education (Selection Grade) in the pay scale of Rs.3700-125-4950-150-5700/- which is the corresponding pay scale prior to 01.01.1996.

14. However, the fact remains that the pre-revised pay scale of Rs.3700/- was already granted to the writ petitioner, pursuant to G.O.Ms. No.1785, Education Department, dated 05.12.1988. Thus, the writ petitioner falls under the second category in the Government letter issued in (2D) No.45 dated 13.04.2010, corresponding pay scales applicable prior to 01.01.1996 was Rs.37000-67000+AGP Rs.9000/-. Thus, the writ petitioner is also eligible to avail the revised pension granted by the Government in letter dated 13.04.2010. The respondent by applying the first portion of the Government letter dated 13.04.2010, held that, 3 years of service in the post of Director of Physical Education is mandatory for sanctioning the revised pension in accord with the Government letter (2D) No.45 dated 13.04.2010.

15. But , this Court is of the opinion that the word "(or)" is used in the said Government letter, therefore, the petitioner falls under the second category viz., the corresponding pay scales applicable prior to 01.01.1996 shall be placed at the minimum of the pay band of Rs.37000-67000 + AGP Rs.9000/-. Thus the writ petitioner is also to be granted

the revised pension in accordance with Government letter dated (2D) No.45 dated 13.04.2010. The reason for rejection of revised pension is based on the first portion of the Government letter and there is an omission on the part of the respondent in considering the cases, which falls under the second portion of the Government letter, dated 13.04.2010.

16. Such being the factum of this case, the impugned order is not in accord with the spirit of the Government letter dated 13.04.2010. Thus, the impugned order dated 17.04.2017 in proceedings No.RC.No.2137/A4/2010 issued by the 2nd respondent is quashed and the writ petition stands allowed. The respondents are directed to revise the pension of the writ petitioner in accordance with the Government letter No.(2D) 45 dated 13.04.2010 and pay the arrears of pension, within a period of six weeks from the date of receipt of a copy of this order. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

cgi/maya

To

1. The Secretary
Higher Education Department,
Chennai-9
2. The Director of legal Studies,
Puraisaivakkam High Road,
Kilpauk, Chennai-10.
3. The Secretary,
Department of Law
Secretariat, Chennai-9.

+3cc's to Mrs.S.R.Sumathy, Advocate, S.R.No.56904
+1cc to the Government Pleader, S.R.No.56856

W.P.No.17118 of 2017

NM(CO)
CA(21/08/2017)