

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.24653 of 2004

K.Balarama Reddy

.. Petitioner

Vs.

1. The Secretary to Govt. of Tamil Nadu,
Finance (Pay Cell) Department,
Chennai - 9.
2. The Accountant General (A&E) of Tamil Nadu,
Chennai - 18.
3. The Sub Treasury Officer,
Ponneri - 601 204,
Tiruvallur District.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for the issuance of writ of Certiorari, to call for the records in pursuant to impugned order passed by the third respondent in Na.Ka.No.2252/2004/A3, dated 29.07.2004 and quash the same in so far as the petitioner is concerned.

For Petitioner : Mr.Prem Narayan
for Mr.K.Shanmugam

For Respondents: Mrs.R.Govindasamy (for R1 & R3)
Special Government Pleader
Mr.S.Udayakumar (for R2)

ORDER

This writ petition is preferred by the petitioner against the impugned order passed by the 3rd respondent / Sub Treasury Officer, Ponneri, Thiruvallur District in Na.Ka.No.2252 /2004/A3 dated 29.7.2004 in respect of reduction of pension and recovery of excess payment of pension with effect from 1.4.1999.

2. Brief case of the petitioner:

The facts of the case is that the petitioner as a retired Headmaster of Panchayat Union Elementary School, Manali New Nagar, Ponneri Taluk on 1.10.1990. The petitioner was appointed as Higher Grade Teacher during the year 1957 and promoted as Secondary grade teacher in the year 1960 and posted as Headmaster of Elementary School. It is pertinent to state that according to G.O.Ms.No.784 dated 14.5.1979 which was upheld by the Hon'ble Supreme Court of India in Civil Appeal No 994 of 1999 and according to the G.O.Ms.No.1436 dated 5.10.1989 even though the petitioner was reverted to the post of Elementary School Headmaster. The petitioner was continuously granted the middle school H.M. scale of pay and consequential selection grade and special grade scale of pay entitled for middle school H.M. and as such retired on 1.10.1990. Accordingly petitioner pensionary benefits were settled and petitioner getting the regular monthly pension Rs.4550/-.

3. The Sub Treasury Officer, Ponneri, Thiruvallur District issued a letter in Na.Ka.No.2252 /2004/A3 dated 29.7.2004 stating that petitioner pension has reduced to Rs.4000/- from Rs.4550/- retrospectively with effect from 1.4.1999 and arrears of excess pension granted w.e.f 1.4.1999 to the tune of Rs.48395/- will also be recovered from July 2004 at the rate of Rs.2000/- per month in 24 installments. The said impugned order the Sub Treasury Officer, Ponneri, stated that the reduction of pension and recovery of arrears of excess pension granted w.e.f. 1.4.1999 is proposed pursuant to Audit report of the Accountant General (A&E) Tamilnadu for the year 2003-2004 wherein the Accountant General has stated that the petitioner's pension has been wrongly refixed under G.O.Ms.No.200, Finance (Pay Cell) Department dated 18.5.1999 and the pension so revised w.e.f. 1.4.1999 has to be reduced and the excess pension granted w.e.f. 1.4.1999 has to be recovered. Now according to the impugned order the monthly recovery from pension all total comes to Rs.2843/-

4. Objections filed by the Respondent:

In case the pension/family pension already fixed as per the Government order second read above is more than the pension/family pension applicable as per these orders, such quantum of pension/family pension shall be continued. Hence, pensioners/family pensioners of this category need not apply for further revision of pension/family pension.

5. Pensioners and family pensions shall apply to the authority who is competent to process and forward pension proposals to the Accountant General, Tamil Nadu in the prescribed form (Annexed to these orders) In respect of Family Pensioners, even if they are unable to furnish all the particulars in the application form, the pension sanctioning authorities should accept such applications and process with available data. On receipt of application, in triplicate the above competent authority shall verify the net qualifying service already certified and communicated by the Accountant General, Tamil Nadu at the time of initial sanction of pension. He shall fix the revised pension admissible with reference to the post held, minimum of the scale of pay and net qualifying service in the application form itself. He shall communicate a copy of the statement duly approved to the pension pay officer/treasury officer/sub treasury officer concerned with a copy to the pensioner/family pensioner. The pensioner pay officer/treasury officer /sub treasury officer shall verify the correctness of the revised pension as per the ready reckoner annexed to these orders and make necessary entries in records maintained in his office. In respect of pensioners drawing pension under public sector bank scheme, the concerned bank shall pay the revised pension with effect from 1.4.1999 based on the applications received from the departmental authorities.

6. The Accountant General's Audit report, a sum of Rs.2000/- per month has been recovered with effect from July 2004 and the pension has been regulated at Rs.4000/- per month based on the appropriate scale of pay of Rs.8000-13500. Accordingly, the third respondent in his Lr.No.Ka.2252/2004/A dated 29.7.2004 has passed orders to recover the excess payment of Rs.48395/- in 24 installment for Rs.2000/- per month. Only the wrong fixation of pension made has been ordered to be revised. As such the W.P. is devoid of merits and liable to be dismissed with costs. As per the G.O.Ms.No.200 Finance (pay cell) department dated 18.5.1999 it is the prime duty of pension sanctioning authorizing Assistant Elementary Educational Officer, Minjur to verify the records available with him while sanctioning the revised pension to the pensioners who retired prior to 1.1.1996.

7. With regard to the averments made in ground (a) of the affidavit, it is submitted that as per the orders issued in G.O.Ms.No.200, Finance (Pay cell) department dated 18.5.1999 revised pension shall be allowed at 50% of the minimum of revised time scale of pay introduced with effect from 1.1.1996 applicable to the post last held by the employee at the time of his retirement with effect from 1.4.1999. As the pension has been fixed wrongly with reference to the scale of pay of

Rs.9100-14050 instead of Rs.8000-13500 the recovery has also been given effect from July 2004 based on the audit report of Accountant General.

8. With regard to the averments made in ground (b) of the affidavit, it is also submitted that as per the Accountant General's Audit report, a letter has been sent to the petitioner in RC.No.2252/04/A3 dated 29.7.2004 that the pension has been reduced to Rs.4000/- from Rs.4550/- retrospectively with effect from 1.4.1999 and arrears of excess payment of Rs.47,542/- was ordered to be recovered from July 2004 at Rs.2000/- per month in 23 installments. Further as per the orders issued in G.O.Ms.No.702 Finance (Pension) Department dated 7.10.1988, Government dues including overpayment of pension/family pension can be recovered from D.A./A.D.A. on pension/family pension without the consent of the pensioner/family pensioner. As the recovery has been effected based on wrong fixation of pension, due to adoption of higher scale of pay, the Government is at liberty to make recovery of excess payment. Hence there is no need to issue show cause notice to the petitioner which is not in violation of principles of natural justice.

9. The petitioner has retired as headmaster in the Panchayat Union Elementary School on 30.9.1990. At the time of his retirement the scale of pay for the post of Headmaster in the Panchayat Union Elementary School in the fifth pay commission scales of pay is as follows:

Ordinary grade	Rs.1400-2600	Selection grade	
Rs.1640-2900	Special Grade	Rs.2000-3200	The

corresponding revised scale of pay for the post of Headmaster in the Panchayat Union Elementary school with effect from 1.1.1996 are as follows:

Ordinary grade	5300-8300	Selection Grade	
Rs.5900-9900,	Special Grade	Rs.8000-13500.	

10. Accordingly necessary classification have also been issued on Government letter No.72700/PC 11-98-1 Finance dated 21.9.1998 on the applicability of the revised scale of pay for the post of Headmaster of Primary School and Headmaster of Middle School. The Assistant Education Officer Minjur, without taking into account the clarification issued by Government has revised the pension of the petitioner wrongly as Rs.4550/- in the scale of pay applicable to the post of Headmaster of Panchayat Middle school instead of Headmaster of Panchayat Union Elementary School with ref. to G.O.Ms.No.200 Finance (Pay cell) department dated 18.5.1999. As the pension has been wrongly

fixed with reference to the scale of pay Rs.9100-275-14050 instead of Rs.8000-275-13500, the Accountant General Audit party during the inspection of the Sub Treasury Ponneri it has been pointed out that the petitioner retired only as Headmaster of Panchayat Elementary School and the wrong fixation of revised pension has been made with reference to scale of pay applicable to the post Headmaster Panchayat Union Middle School. Hence the recovery has been effect with effect from July 2004. As the government clarification on the applicability of the scale of pays that the petitioner the excess payment of pension was ordered to be recovered in installment and hence there is no violation of principles of natural justice.

11.The learned counsel for the petitioner submits that the impugned order has been passed without any show cause notice to the petitioner. Hence the impugned order is in violative of the principles of natural justice.

12.The learned counsel for the petitioner submits that the 2nd respondent Accountant General neither getting any service particulars and explanation from the Education Department Authorities under whom the petitioner was working from the petitioner has given Audit Report to the Sub Treasury Officer, Ponneri /III Respondent to reduce the pension w.e.f. 1.4.1999 and recovery of arrears of alleged excess payment of pension granted w.e.f. 1.4.1999 to the tune of Rs.48,395/- from the monthly pension is in violative of principles of natural justice.

13.The learned Special Government Pleader appearing for the respondents 1 and 3 opposed the submissions of the petitioners and sought for dismissal of the writ petition.

14.I heard Mr.Prem Narayan, learned counsel for the petitioner, Mr.R.Govindasamy, learned Special Government Pleader for the respondents 1 and 3 and Mr.S.Udayakumar, learned counsel for the 2nd respondent and perused the entire materials available on record.

13.The learned counsel for the petitioner submits that the reduction of pension amounting to Rs.550/- the loss of D.A. to the reduced pension amounting to Rs.293/- and recovery of arrears of alleged excess payment of pension to the tune of Rs.48395/- in 24 installments at the rate of Rs.2000/- p.m. all amounting to recovery of Rs.2843/- every month from the petitioner's pension. Such a huge sum of recovery of Rs.2843/- from the monthly pension is unbearable and cannot be compensated by any means at the aged of 73 years.

15.The learned counsel for the petitioner submits the impugned order has been issued after a lapse of so many years and without even issuing show cause notice to the petitioner. The impugned order of reduction of pension and recovery of alleged excess payment of pension has been passed after 14 years of his retirement and after 5 years of revision of pension as per G.O.Ms.No.200 dated 18.5.1999 is not sustainable.

16.The learned counsel for the petitioner submits the revision of pension has been given to the petitioner in accordance with the terms laid down in G.O.Ms.200 dated 18.5.1999. The G.O.Ms.No.200 permits revision of pension for the pensioners as well as the family pension who retired prior to 1996 clause 4(i) of the said G.O reads as follows:

"In the case of employees who have retired from service prior to 1.1.1996. He revised pension shall be calculated at 50% of the minimum of the revised time scale of pay introduced w.e.f 1.1.1996 applicable to the post last held by the employee at the time of his retirement. The minimum of the time scale denotes the minimum of pay applicable to selection grade / special grade posts in the case of selection grade/special grade holders i.e if the revised pension fixed w.e.f 1.1.1996 is less than the 50% of the minimum of the revised pay scale applicable to the post held at the time of retirement, the pension shall be raised to the level of 50% of the minimum of the time scale. However, such pension shall be reduced proportionately where the pensioner has less than the minimum qualifying service required for full pension as per rules."

17.As per the above provisions only, the revised pension was ordered to the petitioner and therefore no error in the revised pension for the petitioner. These aspects were not considered by the Accountant General, Chennai, and Sub Treasury Officer, Ponneri. Hence the impugned order is passed by the Accountant General, Chenani without any jurisdiction and authority.

18.The case in hand, the impugned order passed by the 3rd respondent is not accordance with rules and cannot be sustained.

19.In the result:

(a) this writ petition is allowed, by setting aside the impugned order passed by the third respondent in Na.Ka.No.2252/2004/A3, dated 29.07.2004 in so far as the petitioner is concerned;

(b) the matter is remanded back to the authority concerned for fresh consideration;

(c) The respondents are directed to issue notice to the petitioner calling for explanation and give personal opportunity and thereafter to pass appropriate orders within a period of twelve weeks thereafter. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Secretary to Govt. of Tamil Nadu,
Finance (Pay Cell) Department,
Chennai - 9.
2. The Accountant General (A&E) of Tamil Nadu,
Chennai - 18.
3. The Sub Treasury Officer,
Ponneri - 601 204,
Tiruvallur District.

+1 cc to Mr.K.Shanmugam, Advocate, S.R.No.55874

+1 cc to Mr.N.S.Udayakumar, Advocate, S.R.No.55841

+1 cc to the Government Pleader, S.R.No.56255

KK(CO)
SSM(19/03/2019).

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