IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.24654 of 2004
and
WP.MP.No.29977 of 2004

V.Anantha Krishnan .. 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 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, Tiruvallur District in Na.Ka.No.2252 /2004/A3 dated 29.7.2004.

2.Brief case of the petitioner:

The facts of the case is that the petitioner was working as middle school Headmaster of Thiruvellaivoyal, Ponneri Taluk on 8.7.84 the school was upgraded as high school. On upgradation of middle school into high school without obtaining petitioner's willingness or opinion was posted as Secondary grade teacher in the same high school. However, in view of Government Lr.No.76967/F1/84 dated 15.6.1988 and granted selection grade and special grade entitled for middle school headmaster. In the same govt. letter stated whenever a panchayat union middle School was upgraded as High school and when the H.M. of the middle school is inducted in the same high school his nomenclature need not be changed and he should be continuously given the same scale of pay after upgradation of school. Until petitioner's retirement his nomenclature was not changed and continuously granted the middle school H.M. scale of pay and consequential selection grade and special grade pay scale of pay entitled for middle school H.M. and retired on 30.11.88 and getting the regular monthly pension of 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.3537/- 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.89082/- will also be recovered from July 2004 at the rate of Rs.2000/- per month in 44 installments. The said impugned order the Sub Treasury Officer, Ponnery, 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 his 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.

4.Objections filed by the Respondent:

The petitioner's was absorbed as secondary grade teacher in the upgraded High school petitioner's was allowed to draw pay in the scale of pay admissible to secondary grade headmaster middle school vide Lr.No.76967/M 1/84 dated 15.6.1988 thus petitioner was functioning as secondary grade teacher but was allowed draw pay in the scale of pay of Headmaster middle school. Revised pensionary benefits were authorized by this office on 20.5.1991 for pension of Rs.1170/- with reference to pay drawn in the scale of special grade headmaster middle school. The corresponding revised pension after implementation of sixth pay commission from 1.1.96 is Rs.3537/- as per G.O. 174 finance (pay commission) department dated 21.4.1998 .

5.The Government Order in G.O.Ms.No.200 finance (pay cell) department dated 18.5.99 revising the pension of pre-1996 pensioners and the salient points relevant to the case are enumerated below:

i. In the case of employees who have retired from service prior to 12.1.996 the revised pension shall be calculated at 50% of the minimum of the 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. The minimum of the time scale also denotes shall be reduced proportionately when the pensioner has rendered less than the maximum qualifying service required for full pension as per rules.

ii. If pension fixed already is more than the revised pension, calculated as per the G.O.200 such quantum of pension shall be continued.

6.The competent authority normally the head of office shall fix the revised pension admissible with reference to the above mentioned criteria and communicate the approved copy of the statement of the treasury officer who will make payment after verifying the correctness of revised pension.

7.On a scrutiny of the pension records of sub treasury, Ponneri by the officials it was noticed that the petitioner was in receipt of monthly pension of Rs.3537/- as of March 1999 and his pension was re-fixed at an enhanced rate of Rs.4550/- per month from 1.4.1999 onwards with reference to G.O.No.200 Fin. (Pay cell) dated 18.5.99 reckoning the pay of Rs.9100/- in the scale of pay of Rs.9100-275-14050 applicable to special grade headmaster middle school.

8.As per G.O.200 only the minimum of the revised time scale of pay relevant to the post last held by the employee has to be reckoned for revision of pension, thus, his pension was worked out to Rs.2950/- i.e. 50% of 5900/- the minimum of the scale of special grade secondary grade teacher by this respondent which is less than the pension already drawn by him i.e. Rs.3537/- as of March 1999. Therefore, it is submitted that revision of pension as per G.O.200 was not at all necessitated in the case of petitioner, since; the pension already drawn was more.

9.The Accountant General had instructed the Sub Treasury officer to restore the pension of Rs.3537/- already drawn by the petitioner and worked out the excess paid pension (i.e. 4550-3537=1013/- p.m.) and dearness relief amount to Rs.87512/- for the period from 1.4.99 to 3/2004 and ordered for the recovery of the same.

10.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.

11.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.89,082/- from the monthly pension is in violative of principles of natural justice.

12.The learned counsel for the petitioner submits that the reduction of pension amounting to Rs.1013/- the loss of D.A. to the reduced pension amounting to Rs.557/- and recovery of arrears of alleged excess payment of pension to the tune of Rs.89082/- in 44 installments at the rate of Rs.2000/- p.m. all amounting to recovery of Rs.3570/- every month from the petitioner's pension. Such a huge sum of recovery of Rs.3570/- from the monthly pension is unbearable and cannot be compensated by any means at the aged of 73 years.

13.I have 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.

14.As seen from the records, the revision of pension has given to the petitioner in accordance with the G.O.Ms.No.200 dated 18.5.1999. This G.O. was not considered by the 2nd and 3rd respondents and the petitioner was not given any opportunity to substantiate his case. Hence, the impugned order issued by the 2nd and 3rd respondents is without any jurisdiction and authority.

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 16 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 of 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, Chennai without any jurisdiction and authority.”

18.The learned Government Advocate appearing for the respondent opposed the submissions of the petitioner and sought for dismissal of the writ petition.

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 his explanation and give personal opportunity and thereafter to pass appropriate orders within a period of twelve weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

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.S.Udayakumar, Advocate, S.R.No.55842

W.P.No.24654 of 2004
and
WP.MP.No.29977 of 2004

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