

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.19500 of 2004
and
W.P.M.P.No.23457 of 2004

N.Balasubramanian

... Petitioner

Vs.

1.The State of Tamil Nadu rep. by
Secretary to Government
Home (Courts VI) Department,
Fort St.George, Chennai-9.

2.The Director of Prosecution
72, Raja Muthiah Salai,
Chennai 600 003.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to redetermine and pay the retirement benefits payable to the petitioner.

For Petitioner : Mr.V.Subramani

For RR1 : Mr.A.Zakkir Hussain
Government Advocate

सत्यमेव जयते
O R D E R

This Writ Petition has been filed to issue a Writ of Mandamus directing the respondent to redetermine and pay the retirement benefits payable to the petitioner.

2. Heard the learned counsel for the petitioner as well as the learned counsel for the respondents.

3. The brief facts of the case is as follows:

The deceased/petitioner was appointed as an Assistant Public Prosecutor Gr-II on 24.04.1972 and he was regularised on 19.04.1973. After rendering unblemished records of 31 years and 7 days of service, the deceased petitioner attained superannuation on 30.04.2003 as Deputy Director of

Prosecution. After completing such a long qualifying service, the Principal Accountant General bearing No.AG/(A & E/ PENPO2/1/B2-88/A3/2003-2004 by its order dated 19.05.2003 has determined the pensionary benefits of retirement at Rs.6,360/- per month as superannuation pension. However, his Junior by name,V.N.Krishnamurthy was awarded higher pension though he is junior to the petitioner. During pendency of the writ petition, petitioner died and the same was recorded before this court on 15.07.2009.

4. Aggrieved by the discrimination and anomalies that arose between the petitioner and his junior as a result of G.O.Nos.71 to 75 dated 19.03.2003 Finance (Pension) Department issued by the Government of Tamil Nadu, the petitioner has filed the present writ petition.

5.Learned counsel for the petitioner has drawn the attention of this court stating that the issue has already been settled by this court and when the above said G.O., was under challenge, in the earlier occasion, this court in its reported decision in (2004) 1 MLJ 223 has held that G.O.Ms.Nos.71 and 74 were upheld and set aside G.O.Ms.Nos.72 and 73 dated 19.03.2003 and the relevant portion of paragraph Nos. 58 and 63 are usefully extracted hereunder which reads as follows:

"58.Therefore, the G.O.No.72, dated 19.03.2003 appears to be highly arbitrary and irrational. We are therefore, convinced that the right of the retirees after 1.4.2003 to aspire for the encashment of the leave benefits that existed prior to that date which was made available to the retirees prior to 1.4.2003 should be made available to them as well and that the deprivation of the same for the reasons mentioned in the G.O., cannot be countenanced. We do not find any acceptable rationale in bringing out such a drastic change in the quantum of leave benefit and the basis of its determination and we therefore, hold that the said G.O., suffers from vices of arbitrariness and also discriminatory hit by Art.14 of the Constitution and accordingly the G.O., along with tution and accordingly the said G.O., along with consequential G.Os, prescribing the amendments to the existing rules, namely, G.O.Nos.26, dated 24.03.2003 and No.30 dated 28.03.2003 along with G.O.No.72, dated 19.03.2003 are liable to be set aside.

63. In the result, we uphold G.O.Nos.71 and 74, dated 19.03.2003 and set aside G.O.No.72 and 73, dated 19.03.2003, G.O.No.26, dated 24.03.2003 and G.O.No.30, dated 28.03.2003. Accordingly, the writ

petitions in W.P.Nos.11228, 18906, 18907 and 11666 of 2003 stands allowed. W.P.Nos.18903, 18905, 11667 and 11668 of 2003 stands dismissed.

In the circumstances of the case, we make no order as to costs. Consequently, all connected W.P.M.Ps are closed."

6. Learned counsel appearing for the respondents has also not disputed the above legal position.

7. On a perusal of the said order, I am convinced and whatever the benefits granted in the said order, I am inclined to extend the same to the petitioner as well. Out of this order, if any benefits accrued, the same shall payable to his wife.

In the result, the writ petition is disposed of in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government
The State of Tamil Nadu
Home (Courts VI) Department,
Fort St.George, Chennai-9.

2.The Director of Prosecution
72, Raja Muthiah Salai,
Chennai 600 003.

+1cc to Government Pleader sr.61721

W.P.No.19500 of 2004 And
W.P.M.P.No.23457 of 2004

nm(co)
ss(5/10/2017)