

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

WP.No.4278/2017

C.Karunakaran

..Petitioner

vs.

1.The Principal Accountant General [A&E]
Tamil Nadu, Teynampet,
Chennai 600 018.

2.The Assistant Accounts Officer
O/o.The Principal Accountant General [A&E]
Tamil Nadu, Teynampet, Chennai 600 018.

3.The Principal District Judge
Vellore District, Vellore.

..Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the concerned records from the 2nd respondent, quash the order of the 2nd respondent dated 23.12.2016 bearing No.PO2/10220082/1PPO No.R0220082/JUD insofar as fixing the pension by taking the basic pay as Rs.14,500/- instead of Rs.16,270/- and Grade Pay as Rs.2800/- in stead of Rs.4200/- as illegal, arbitrary and contrary to law and consequently, direct the respondents to fix the pension by taking the basic pay as Rs.16,270/- and grade pay as Rs.4200/-, pay pension arrears, difference in commuted value of pension, difference in death cum retirement gratuity and continue to pay the correct pension.

For Petitioner .. Mr.Balan Haridas
For RR 1 & 2 .. Mrs.Hema Murali Krishnan
For R3 .. Mr.Haja Mohideen Gisthi

ORDER

(Order of the Court was made by C.T.SELVAM, J.)

This writ petition seeks a direction in the nature of certiorarified mandamus, to quash the order of the 2nd respondent dated 23.12.2016 and to direct the respondents to fix the pension by taking the Basic Pay as Rs.16,270/- and Grade Pay as Rs.4200/- and to pay pension arrears, difference

in commuted value of pension, difference in death cum retirement gratuity and continue to pay the correct pension.

2 The petitioner has voluntarily retired from the services of the 3rd respondent with effect from 19.10.2016. The petitioner informs that his last drawn salary, including Basic Pay stood at Rs.16270/- and Grade Pay at Rs.4200/- in all, Rs.20470/-. It is his further contention that the Pension Papers pertaining to him, were forwarded to the 1st respondent mentioning the Basic Pay as Rs.17300/- and Grade Pay as Rs.2800/- instead of Rs.16270/- [Basic Pay] and Rs.4200/- [Grade Pay]. Hence, it is the contention of the petitioner that in view of wrong mentioning of Basic and Grade Pay, his pensionary and other benefits are being affected and he seeks quash of the order of the 2nd respondent dated 23.12.2016 and to re-fix his basic pay and grade pay correctly and to pay the respective differential pensionary amounts.

3 Heard Mr.Balan Haridas, learned counsel for the petitioner ; Mrs.Hema Murali Krishnan, learned Standing counsel for the respondents 1 and 2 and Mr.Haja Mohideen Gisthi, learned Standing counsel for the 3rd respondent and perused the materials on record.

4 Paragraph No.5 of Counter affidavit of the 3rd respondent, inter alia, states as follows:-

".....

5 Accordingly, the writ petitioner is entitled to move to the pay in the time scale of pay Rs.5200-30200 + GP 2800/- instead of Rs.9300-34800 + GP 4200/- as per the clarification issued by the Government in its letter No.63305/Pay Cell/2010-1 dt.8.11.2010 i.e., the pay restricted to the level of 1st level promotion post only. But the pay of the writ petitioner was re-fixed in the time scale of pay of Rs.9300-34800/- + GP 4200/- as per the proceedings of the Presiding Officer, Principal Labour Court, Vellore in Dis.No.1286/2012 dated 05.12.2012."

5 Learned counsel appearing for the respondents 1 and 2 would submit that on receipt of earlier proposal with regard to pensionary benefits of the petitioner, the error of the 3rd respondent was noted and hence, the matter was remitted back to the 3rd respondent. Based on the above communication of the office of the Accountant General, the 3rd respondent has forwarded the pension proposal of the petitioner. Based on the same, the 2nd respondent has passed the impugned order. Contention of the learned counsel for the petitioner is that re-fixation has been done without hearing the petitioner and prays that order may be set aside and the petitioner may be given an opportunity of hearing to give proper explanation to the 3rd respondent, before sending the proposal. Learned standing counsel for the respondents 1 and 2 as well as

learned standing counsel for the 3rd respondent have no objection for giving an opportunity to the petitioner before fixation of his pay.

6 We are of the view that refixation of the basic pay of the petitioner without an opportunity being given to him, cannot be sustained in law. Hence, the order passed by the 2nd respondent dated 23.12.2016 is hereby set aside and the 3rd respondent is directed to resubmit the pension proposal pertaining to petitioner to the 2nd respondent for passing appropriate orders, after affording an opportunity of hearing to the petitioner. Such exercise in forwarding the pension proposal to the 2nd respondent, shall be carried out by the 3rd respondent within a period of one month from the date of receipt of a copy of this order and after giving a proper opportunity to the petitioner.

7 The writ petition stands disposed of with the above direction. No costs.

-s/d-
Deputy Registrar

True Copy

Sub-Assistant Registrar

AP

To

- 1.The Principal Accountant General [A&E]
Tamil Nadu, Teynampet,
Chennai 600 018.
 - 2.The Assistant Accounts Officer
O/o.The Principal Accountant General [A&E]
Tamil Nadu, Teynampet, Chennai 600 018.
 - 3.The Principal District Judge
Vellore District, Vellore.
- +1 CC to Hema Murali Krishnan, Advocate, SR No.4285
+1 CC to Bala Haridas, Advocate, SR No.5103

WP.No.4278/2017

rsi (03/02/2018)