IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.37548 of 2015
and
M.P.No.1 of 2015

G.Nanchariah ... Petitioner

vs.

1. Union Of India
rep.by its Secretary-Food,
Ministry of Consumer Affairs, Food and Public Distribution,
Department of Food and Public Distribution,
Krishi Bhawan, New Delhi-110001.

2.The Director,
Ministry of Consumer Affairs, Food and Public Distribution,
Department of Food and Public Distribution,
Krishi Bhawan, New Delhi-110 001.

3.The Regional Director (Food),
Ministry of Consumer Affairs, Food and Public Distribution,
Department of Food and Public Distribution,
Office of the Regional Director (Food), Southern Region,
No.3, Haddows Road, Chennai-600 006.

4.The Pay and Accounts Officer,
Ministry of Consumer Affairs, Food and Public Distribution,
Department of Food and Public Distribution,
Shashtri Bhavan, Chennai-600 006.

... Respondents

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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorarified Mandamus, calling for the records of the 2nd respondent bearing F.No.18011/3/2010-FC.3 dated 24.09.2010 in so far as it fixes a period of four weeks' time from the date of publication in newspapers calling for claims/representations for settlement of the terminal benefits payable to retired Food Transferee's like the petitioner and culminating in the impugned proceedings bearing Lr.No.Estt.32(1) 2015-RDF dated 26.10.2015 issued by the 3rd respondent, quash the same and consequently direct the

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respondents to forthwith release the terminal benefits payable to the petitioner calculated on the basis of Central Dearness Allowance (CDA) relief as directed by the Hon'ble Supreme Court of India in its Judgment dated 10.02.2010 passed in Civil Appeals Nos.238-44 of 2004 batch of cases reported in 2010 (12) SCC 405.

For Petitioner : Mr.Arun Anbumani for Mr.K.Manikandan

For Respondents 1- 4 : Mr. J.Madanagopal Rao, SCGSC

O R D E R

The facts in nutshell to be considered in the present writ petition is that the writ petitioner was initially appointed by the Government of India and subsequently, on formation of the Corporation viz., Food Corporation of India, the petitioner had exercised the option and accordingly transferred to Food Corporation of India. The service conditions as applicable to the employees of the Food Corporation of India were made applicable to the writ petitioner.

2. The grievances of the writ petitioner is that the pensionary benefits as applicable to him at the time of exercising option had not been extended. Thus, the writ petitioner is constrained to move the present writ petition.

3. Pertinently, the learned counsel appearing for the writ petitioner relying on the judgment of the Supreme Court of India on the very same subject in the case of Union of India and another Vs. reported in 2010 (12) SCC 405 stated that the respondents before the Supreme Court of India were colleagues of the writ petitioners working in the same Food Corporation of India and they have filed writ petitions with reference to the conditions stipulated at the time of exercising option and the writ petitions were initially allowed by the Kerala High Court, against which, the Union of India preferred an appeal before the Apex Court and the same was decided on 10.02.2010.

4. The Hon'ble Supreme Court of India dealt with the Clauses and the Rules which are all relevant for the purpose of deciding the present writ petitions.

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5. Paragraph No.5 of the judgment reads as follows:

> 5. For the sake of convenient reference, Sections 12-A (1), (2), (4) and (4-C) are reproduced below:
>
> "12-A. Special provisions for transfer of government employees to the Corporation in certain cases.—(1) Where the Central Government has ceased or ceases to perform any functions which under Section 13 are functions of the Corporation, it shall be lawful for the Central

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Government to transfer, by order and with effect from such date or dates (which, may be either retrospective to any date not earlier than 1-1-1965, or prospective) as may be specified in the order, to the Corporation any of the officers or employees serving in the Department of the Central Government dealing with food or any of its subordinate or attached offices and engaged in the performance of those functions:

Provided that no order under this sub-section shall be made in relation to any officer or employee in such Department or office who has, in respect of the proposal of the Central Government to transfer such officer or employee to the Corporation, intimated within such time as may be specified in this behalf by that Government, his intention of not becoming an employee of the Corporation.

(2) In making an order under sub-section (1), the Central Government shall, as far as may be, take into consideration the functions which the Central Government has ceased or ceases to perform and the areas in which such functions have been or are performed.

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(4) Every officer or other employee transferred by an order made under sub-section (1) shall, within six months from the date of transfer, exercise his option in writing to be governed,—

(a) by the scale of pay applicable to the post held by him under the Government immediately before the date of transfer or by the scale of pay applicable to the post under the Corporation to which he is transferred,

(b) by the leave, provident fund, retirement or other terminal benefits admissible to employees of the Central Government in accordance with the rules and orders of the Central Government as amended from time to time or the leave, provident fund or other terminal benefits admissible to the employees of the Corporation under the regulations made by the Corporation under this Act,

and such option once exercised shall be final:

Provided that the option exercised under clause (a) shall be applicable only in respect of the post to which such officer or employee is transferred to the Corporation and on appointment to a higher post under the Corporation, he shall be eligible only for the scale of pay applicable to such higher post:

Provided further that if immediately before the date of his transfer any such officer or employee is officiating in a higher post under the Government either in a leave vacancy or in any other vacancy of a specified duration, his pay, on transfer, shall be protected for the

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unexpired period of such vacancy and thereafter he shall be entitled to the scale of pay applicable to the post under the Government to which he would have reverted or to the scale of pay applicable to the post under the Corporation to which he is transferred, whichever he may opt:

Provided also that when an officer or other employee serving in the Department of the Ministry of the Central Government dealing with food or in any of its attached or subordinate offices is promoted to officiate in a higher post in the Department or office subsequent to the transfer to the Corporation of any other officer or employee senior to him in that Department or office before such transfer, the officer or other employee who is promoted to officiate in such higher post shall, on transfer to the Corporation, be entitled only to the scale of pay applicable to the post he would have held but for such promotion or the scale of pay applicable to the post under the Corporation to which he is transferred, whichever he may opt.

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(4-C) Where an officer or other employee has exercised an option under sub-section (4), or exercises, or is deemed to have exercised, an option under that sub-section, read with sub-section (4-A) or sub-section (4-B), to be governed by the leave, provident fund, retirement or other terminal benefits admissible to the employees of the Central Government, such benefits shall be calculated on the basis of the pay and allowances drawn by him in the Corporation."

6. Paragraph No.5 cited supra clarifies that Sections 12-A (1), (2), (4) and (4-C) stipulates that Every officer or other employee transferred by an order made under sub-section (1) shall, within six months from the date of transfer, exercise his option in writing to be governed, by the leave, provident fund, retirement or other terminal benefits admissible to employees of the Central Government in accordance with the rules and orders of the Central Government as amended from time to time or the leave, provident fund or other terminal benefits admissible to the employees of the Corporation under the regulations made by the Corporation under this Act and such option once exercised shall be final.

7. The learned counsel appearing for the petitioner in this regard made a submission that the writ petitioner had exercised their option adopting the scale of pay as applicable to the employees of the Food Corporation of India for salary and in

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respect of the pension and terminal benefits of the petitioner before this Court, had opted for Central Government benefits as admissible to the Central Government employees. Thus, it is made clear that the writ petitioner before this Court had opted for the terminal and pensionary benefits as applicable to the Central government employees. The two fold options were given considering the factual circumstances that the writ petitioner was initially appointed by the Government of India and subsequently, transferred to the Food Corporation of India. Since, the employees were initially appointed by the Government of India, they have given option to opt for the terminal benefits as applicable to the Central government employees. Thus, a special condition was provided to these employees who were transferred from Government of India Department to the Food Corporation of India. It is an admitted fact that the writ petitioner had exercised his option, opting for Central Government pensionary benefits under the law.

8. Paragraph No.7 of the judgment of the Hon'ble Supreme Court of India is reads as follows:

> ''7. In 1996, an audit objection was raised to the entitlement of the respondents to receive retiral benefits on a par with Central Government employees. By relying upon the audit objection, the Central Government issued direction for refixation of the pension, etc. payable to the private respondents on the premise that they are entitled to pension, gratuity, etc. on the basis of pay and allowances drawn by them in the service of the Corporation but are not entitled to clearness relief. ''

9. In respect of Paragraph No.7, it is contended that Audit objection was raised in respect of the entitlement of the employees to receive retiral benefits on par with Central Government employees. The said objection was raised based on the audit objection.

10. The learned counsel appearing for the petitioner states that the petitioner was provided with the Industrial Dearness Allowance as applicable to the Food Corporation of India employees and the same was objected by the Audit party. Thus, the audit objection raised in respect of payment of Industrial Dearness allowance also addressed by the Hon'ble Supreme Court of India and the same was overruled while granting relief to the employees who were transferred from Government to India to Food Corporation of India.

11. Paragraph No.10 of the judgment reads as follows:

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10.The Division Bench approved the order of the learned Single Judge and dismissed the appeals preferred by the appellants by recording the following observations:

"Admittedly the petitioners thereon opted to Central Government scheme and they had retired without receiving benefits as per Central Government pattern. The appellants herein contend that they will not get dearness relief as applicable to Central Government employees as at the time of retirement they were employees of Food Corporation of India. But as per Section 12-A(4) in view of their option the petitioners are entitled to get their terminal benefits admissible to Central Government employees. These employees were originally Government of India employees at the time of formation of Food Corporation of India. They were given the right for option under Sections 12-A(4)(a) and (b) and they opted for the pattern of Central Government and they are entitled to receive all the benefits of Central Government employees."

12. The Apex Court in the above paragraph has clarified that as per Section 12-A(4) in view of their option the petitioners are entitled to get their terminal benefits as admissible to the Central Government employees. These employees were originally Government of India employees at the time of formation of Food Corporation of India. They were given the right of option under Sections 12-A(4)(a) and (b) and they had opted for the pattern of Central Government and they are entitled to receive all the benefits of Central Government employees.

13. Paragraph No.15 of the Judgment reads as follows:

15. We have considered the respective submissions and carefully scrutinised the records. Although neither the learned Single Judge nor the Division Bench considered the issue of violation of the rules of natural justice, having given serious thought to the entire matter, we are convinced that the retiral benefits payable to the respondents could not be revised to their disadvantage without giving them action-oriented notice and opportunity of hearing. By virtue of the option exercised by them under Section 12-A(4)(b) and consequential action taken by the competent authority to fix their pension, etc., the private respondents acquired a valuable right to accordingly receive the financial benefits and the same could not have been reduced without complying with one of the basic rules of natural justice that no one shall be condemned unheard. The rule of audi alteram partem has been treated as fundamental to the system established by rule of law and

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any action taken or order passed without complying with that rule is liable to be declared void—State of Orissa v. Dr. Binapani Dei [AIR 1967 SC 1269] and Sayeedur Rehman v. State of Bihar [(1973) 3 SCC 333 : 1973 SCC (L&S) 122] .

14. Paragraph No.15 deals with the compliance of principles of natural justice in respect of the employees who had opted for the Central Government Pensionary benefits.

15. Paragraph No.17 of the judgment reads as follows:

> ''17. Dehors the above conclusion, we are convinced that the action taken by the appellants to revise and reduce the retiral benefits payable to the respondents was ex facie arbitrary, unreasonable and unjustified and the learned Single Judge did not commit any error by declaring that the Central Government did not have the jurisdiction to unilaterally alter/change the option exercised by the writ petitioners under Section 12-A(4)(b) read with Section 12-A(4-C). ''

16. In paragraph No.17, the Hon'ble Supreme Court of India in unequivocal terms concluded that the action taken by the Food Corporation of India to revise and reduce the retiral benefits payable to the respondents was ex facie arbitray, unreasonable and unjustified and the learned Single Judge did not commit any error by declaring that the Central Government did not have the jurisdiction to unilaterally alter/change the option exercised by the writ petitioners under Section 12-A(4)(b) read with Section 12-A(4-C). Thus, the Apex Court clarified that the final option exercised by those employees are binding on the Corporation and the Government of India and therefore, such an option provided and the concurrence of the Government of India granted cannot be withdrawn to the disadvantage of the employees, who were initially appointed in the Food department of the Government of India and transferred to the Food Corporation of India. In other words, the option provided to these employees were with the concurrence of the Government of India and accordingly, the Government of India has no reason to alter the benefits already extended to these employees by way of option.

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17. Paragraph No.24 of the judgment is important and the same is extracted hereunder:

> ''24. Since the appeals have been dismissed, the authorities concerned are directed to release the amount payable to the respondents and other similarly situated persons within a period of three months from today, else they shall have to pay interest @ 9% per annum from the date of this order. ''

18. The Hon'ble Supreme Court of India had not restricted the relief only to the respondents before the Supreme Court of India. The Hon'ble Supreme Court of India was of the opinion that each and every employee shall not be driven to the Court for the purpose of grant of such relief, in view of the fact that once, the relief of pensionary benefits are granted based on the Rules, then all similarly placed persons are entitled for the same. It is not necessary that all the employees must be driven to the Court by filing writ petition, which is unnecessary. The Apex Court in number of judgments, held that once the benefit is extended to the employees based on the legal principles and based on the Rules in force, then the State being the welfare State has to implement the same in respect of all the similarly placed persons and the State cannot allow the employees to approach the Court unnecessarily. Thus, the very purport of issuing such direction by the Supreme Court of india is to ensure that all similarly placed employees get the benefit as per the Rules cited supra.

19. The learned counsel appearing for the petitioner further states that pursuant to the orders of the Supreme Court, the respondents and some other employees in other States and other regions have received benefits. However, in respect of the writ petitioner before this Court, the said benefits have not been extended. Thus, the writ petitioner has made representations to the respondents herein and they are unnecessarily delaying the matter by citing certain flimsy reasons. Under these circumstances, the writ petitioner is constrained to move the present writ petitions.

20. Mr.G.Rajagopal, the learned Additional Solicitor General of India appearing on behalf of the respondents made a submission that the Central Government is having two pattern of Dearness Allowances. One is Industrial Dearness Allowance, which is applicable to the Food Corporation of India and other Central Dearness Allowance is applicable to all other Central Government employees working in the Central Government Departments. The Hon'ble Supreme Court of India passed an order in favour of all these employees, who were initially appointed in the Government of India and subsequently, transferred to Food Corporation of India. However, the judgment was pronounced in the year 2010 and pursuant to the judgment, in order to extend the benefit to the similarly placed employees, the Food Corporation of India has issued a notification in the year 2010 itself. The petitioner, though, aware of the judgment and notification had not approached the Department within a reasonable period of time. This apart, the writ petitioner cannot claim interest, in view of the fact that there is long delay on his part even in filing the present writ petition. That is to say that the judgment of the Supreme Court was of the year 2010 and the present writ

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petition is filed only after a lapse of about 5 years, in the year 2015. Thus, the writ petitioner is not entitled to claim any interest and further more, he is not entitled to revised benefit, on account of the fact that he has not approached the authorities within a reasonable period of time and no response to the notification within a time limit. On account of lapse of time, he is not entitled for any interest as per the orders passed by the Supreme Court.

21. This Court is of an opinion that some force in the said contention made by the learned Additional Solicitor General of India, in view of the fact that the Courts are also bound to consider the financial implication of the State while granting arrears to the employees. It is not as if the Court can grant relief without reference to the financial implications. The Apex Court time and again reiterated that, while granting such retrospective relief, the Courts are bound to consider the financial implications, since the payment of huge arrears from the tax payers money is also a concern to the Government of India. However, in respect of the arguments advanced by the learned Additional Solicitor General of India, regarding the entitlement of the writ petitioner to get the same benefit on a par with the respondents before the Supreme Court, this Court has no hesitation to conclude that such an arguments deserves no merit consideration. In short, the entitlement of the writ petitioner is already concluded by the Apex Court of India. The only ground on which the respondents advanced their arguments are that in respect of notification issued by the Food corporation of India, the petitioner herein has not responded for more than five years.

22. For this submission, the learned counsel appearing for the petitioner states that the writ petitioner had submitted representations repeatedly and the 3rd respondent, evaded implementation of the orders of the Supreme Court by citing some flimsy reasons. Thus, there is no delay on the part of the writ petitioner. This Court is of the considered opinion that the delay cannot be held against these writ petitioner, in view of the fact that the claim before this Court is in relation to the pensionary benefits of the retired employees. The payment of Dearness Allowances and the pensionary benefits are continuous cause to these retired employees and on account of the delay, the benefit cannot be denied to these retired employees. In respect of the pensionary benefits, the Courts are bound to adopt a pragmatic approach and consider the continuous cause arising on account of the fact that the pensions are paid on monthly basis and therefore, the petitioner is entitled for the same.

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23. In view of the discussions made in the above mentioned paragraphs, the writ petitioner is entitled to get benefits granted by the Hon'ble Supreme Court of India in the case of Union of India & another, Vs. P.N.Natarajan and others reported in 2010 (12) SCC 405.

24. Accordingly, the following orders are passed:

1. The writ petitioner is entitled to get the benefit extended to the respondents before the Supreme Court in the case of Union of India & another, Vs. P.N.Natarajan and others reported in 2010 (12) SCC 405. dated 10.02.2010.

2. The respondents herein are directed to revise the Central Dearness Allowance as applicable as per the Rules in force to the petitioner.

3. The interest in respect of the arrears of Central Dearness Allowances for the differential amount shall be paid with effect from 1.1.2016 onwards.

4. The respondents are directed to calculate the differences, in respect of the Central Dearness Allowances and the arrears to be paid within a period of twelve (12) weeks from the date of receipt of a copy of this order.

5. Accordingly, the writ petition stands allowed to the extend stated above. However, there shall be no order as to costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

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To

1. The Secretary-Food,
Union Of India
Ministry of Consumer Affairs, Food and Public Distribution,
Department of Food and Public Distribution,
Krishi Bhawan, New Delhi-110001.

2.The Director,
Ministry of Consumer Affairs, Food and Public Distribution,
Department of Food and Public Distribution,
Krishi Bhawan, New Delhi-110 001.

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3.The Regional Director (Food),
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Department of Food and Public Distribution,
Office of the Regional Director (Food), Southern Region,
No.3, Haddows Road, Chennai-600 006.

4.The Pay and Accounts Officer,
Ministry of Consumer Affairs, Food and Public Distribution,
Department of Food and Public Distribution,
Shashtri Bhavan, Chennai-600 006.

+2cc to Mr.K.Manikandan, Advocate, S.R.No.72358(20/11/2018)

W.P.No.37548 of 2015

SPD(CO)
GSP(19/11/2018)

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