IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.07.2018

PRONOUNCED ON : 02.08.2018

CORAM

THE HON'BLE Mr. JUSTICE M.VENUGOPAL
And
THE HON'BLE Mr. JUSTICE M.NIRMAL KUMAR

W.P.No.22625 of 2016 and
W.M.P.No.19302 of 2016

T.M.Madav Yadav .. Petitioner

Vs.

1.The Principal Secretary to the Government,
Government of Tamil Nadu,
Fort St. George, Chennai.

2.The Senior Account Officer,
Office of the Accountant General,
Anna Salai, Teynampet,
Chennai - 600 018. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the entire records to quash G.O.No.56 Home dated 19.01.2011 and to quash paragraph 5(iv) with regard to the date of eligibility of Pension regarding reduction of qualifying service to 20 years, with effect from 01.01.2016 instead of 02.09.2008 as stated in the G.O. and also the order dated 11.01.2016 in letter No. Pension 2/1/PT.11531/2014-15/92040 of the 2nd Respondent to the petitioner direct the respondents to revise the Pension and pay full pension to the petitioner from 31.01.2007, when the petitioner retired from service after completing 23 years, 5 months and 1 day of qualifying service and also other benefit.
[Prayer amended as per order dated 15.12.2016 in WMP.No.35642/2016]

For Petitioner : Mrs.Sudharsana Sundar

For 1st Respondent : Mr.K.Rajendra Prasad
Additional Government Pleader

For 2nd Respondent : Mr.V.Vijay Shankar

O R D E R

M.VENUGOPAL, J.

The Petitioner has filed the present Writ Petition seeking to call for the entire records in G.O.Ms.No.56 Home (Courts-I) Department, dated 19.01.2011 and to quash paragraph 5(iv) in regard to the date of eligibility of Pension relating to reduction of qualifying service to 20 years, with effect from 01.01.2016 instead of 02.09.2008 as stated in the G.O. and also, the order of the 2nd Respondent dated 11.01.2016 in letter No.Pension 2/1/PT.11531/ 2014-15/92040 and to quash the same and to direct the Respondents to revise the Pension and pay Full Pension to the Petitioner from 31.01.2007, when he retired from service after completing 23 years, 5 months and 1 day of qualifying service and also other benefit.

2.Heard the Learned Counsel for the Petitioner, Learned Additional Government Pleader for the 1st Respondent and the Learned Counsel for the 2nd Respondent.

3.Summation of Facts:

3.1.The Petitioner was enrolled as an Advocate on 19.03.1980 and after 4 ½ years of practice experience, he was selected and posted as Assistant Public Prosecutor Grade-II on 29.08.1984. Later he was appointed as Civil Judge Junior Division in Tamil Nadu State Judicial Service and posted as Additional District Munsif at Thirunelveli on 08.05.1992. He was promoted as Sub Judge Senior Division and posted on deputation as Sub Judge, Yanam, Pondicherry on 17.04.2004 and served there.

3.2.The Petitioner had applied for 'Voluntary Retirement' after rendering 23 years of Judicial Service, because of his personal problem. He was permitted to retire on 31.01.2007 from the Tamil Nadu State Judicial Services as per G.O.(D).No.722 Home (Courts IA) Department dated 04.12.2006 and High Court's Official Memorandum in R.O.C.No.8715/2005-B2 dated 31.01.2007. His last drawn salary was Rs.28,755/-.

3.3.According to the Petitioner, he had put in 23 years five months 3 days of qualifying service after taking into account the period of service from 29.08.1984 to 31.01.2007, hence, he is entitled to the weightage of five years, by virtue of Rule 27 of the Tamil Nadu Pension Rules. In terms of the Government Order No.109 dated 20.04.2004, the age of 30 years was reduced to 29 years in respect of directly recruited prosecuting officers concerned and therefore, he is entitled to claim 'Full Pension'.

3.4.The Petitioner made a representation on 26.12.2007 to the 2nd Respondent/Senior Account Officer, Office of the

Accountant General, Anna Salai, Chennai and by order dated 13.02.2008, the 2nd Respondent rejected his claim stating that Rule 27 of the Tamil Nadu Pension Rules applies to any person appointed to a service or post and who retires from service on or after 01.07.1960 may add to his service qualifying for Superannuation Pension (but not for any other class of pension), the actual period not exceeding one fourth of the length of his service or the actual period by which his age is at the time of recruitment exceeds 30 years or for a period of five years, whichever is less, subject to certain conditions etc. and not in respect of Government Servants who retired voluntarily under Rule 42 of the Tamil Nadu Pension Rules.

3.5.In the meanwhile, pursuant to the order of the Hon'ble Supreme Court, the Hon'ble Justice E.Padmanabhan Committee was required to determine the pay scale of all the Judicial Officers working and retired through out India on 28.04.2009. On the basis of the First National Judicial Pay Commission, the said Commission submitted his Report on 17.07.2009. The Hon'ble Supreme Court had directed all the States to implement Justice E.Padmanabhan Committee's Recommendations with effect from 01.01.2006. The Government of Tamil Nadu had issued orders in G.O.Ms.No.647, Home (Courts-I) Department, dated 19.07.2010 in all, in regard to the implementation of Revision of Scale of Pay for the Judicial Officer. The Committee had also recommended that the qualifying years of service for earning Full Pension shall be 20 years instead of 33 years as per the VIth Central Pay Commission.

3.6.In fact, on 19.11.2011 in G.O.Ms.No.56, the Government of Tamil Nadu issued orders as regards the implementation of various allowance and retirement benefits to the Judicial Officers with effect from 01.01.2006. But, in the said G.O.Ms.No.56, it is mentioned that the qualifying years of service for earning Full Pension shall be 20 years instead of 33 years as per VIth Central Pay Commission with effect from 02.09.2008.

3.7.The Government Order had authorised the drawal and disbursement of arrears including the help allowance and medical allowance, enhancement of leave limit to the retired Judicial Officer and family pensioner from 01.01.2006. As a matter of fact, the gratuity ceiling limit was also increased to 3.5 lakhs to 10 lakhs with effect from 01.01.2016 and the benefits were extended to Judicial Officer from 01.01.2016.

3.8.The plea of the Petitioner is that on 16.05.2011 in Ref.No.PAO/HC/BASS-1 Unit 2/2121/2011 the Pay and Accounts Office, High Court, Chennai had issued an order in favour of the Petitioner mentioning that consequent to the Government Order issued in G.O.Ms.No.647, Home (Courts-I) Department, dated

19.07.2010 and G.O.Ms.No.864, Home (Courts-I) Department, dated 05.10.2010 his grade pay was regulated at Rs.43,690/- with effect from 01.01.2006 pursuant to the Revision of Scale on the Recommendations of the Hon'ble Justice E.Padmanabhan Committee's Report dated 17.07.2009. He made numerous representations to the 2nd Respondent and later, he made a representation to the Registrar, High Court, Madras, who had forwarded his representation to the 2nd Respondent.

3.9.The 2nd Respondent, by an order dated 11.01.2016, in Letter No.Pension2/1/PT.11531/2014-15/92040, had rejected the Petitioner's representation and also, the 2nd Respondent, in the said letter dated 11.01.2016, had stated that in the case of the Petitioner, he retired as Senior Sub Judge and that the net Qualifying Service worked out to 23 years, 5 months and 3 days in the time scale of Rs.39,530 - 54,010 and pay last drawn Rs.44,770/-, but pension was inadvertently given as Rs.22,385/- and therefore, excess pension authorised in the form of G.O.Ms.No.56, Home (Courts-I) Department, dated 19.01.2011 was to be revised downward.

4.Petitioner's Submissions:

4.1.At this stage, the Learned Counsel for the Petitioner submits that even as per Government Letter dated 12.02.2012 the date of effect of 20 years of qualifying service for earning full pension had made only from 02.09.2008 and not from 01.01.2006. Further, it is represented on behalf of the Petitioner that since the retirement benefits were implemented to the Judicial Officers, retired Judicial Officers based on the recommendations of the Hon'ble E.Padmanabhan Committee, as per G.O.Ms.No.56, dated 19.01.2011, the date of effect for 20 years of qualifying service for earning Full Pension should be from 01.01.2006 and not from 02.09.2008. Apart from that, it is pointed out on behalf of the Petitioner that the Principal Secretary to Government, Home (Courts I) Department in Letter No.91101/Cts-I/2010-2, dated 21.03.2011 addressed to the Registrar (Administration) of this Court had issued clarification to the effect that in the light of the order issued in G.O.(Ms)No.141, Home (Cts-1) Department, dated 24.02.2011 the net qualifying service rendered need not be taken into consideration for calculation of Pension/Family Pension under G.O.(Ms)No.648, Home (Courts-I) Department, dated 19.07.2010 in respect of Judicial Officers who have retired prior to 01.01.2006.

4.2.The Learned Counsel for the Petitioner contends that the Petitioner's total qualifying service on the date of his submission of application for voluntary retirement was 23 years 5 months and 3 days and as per various Government Orders, the cut off date for considering the net qualifying service was fixed as 01.01.2006. But the 2nd Respondent had passed an order on 11.01.2016 without applying his mind.

4.3.The Learned Counsel for the Petitioner brings it to the notice of this Court that the Petitioner was appointed as Public Prosecutor on 29.08.1984 and thereafter, was recruited as Judicial Officer on 08.05.1992 in Tamil Nadu State Judicial Service and was permitted to retire as Civil Judge.

4.4.Lastly, it is the submission of the Learned Counsel for the Petitioner that the 2nd Respondent had failed to appreciate that the Hon'ble Supreme Court had directed all the States to implement the Hon'ble Justice E.Padmanabhan Committee's Recommendations with effect from 01.01.2006 and that the Government had issued orders in G.O.Ms.No.647, Home (Courts-I) Department, dated 19.07.2010 in all for the implementation of Revision of Scale of pay for Judicial Officer from 01.01.2006. Hence, the Petitioner has filed the present Writ Petition.

4.5.The Learned Counsel for the Petitioner refers to the Order of the Hon'ble Supreme Court in I.A.No.244 in W.P.(Civil) No(s).1022 of 1989 [All India Judges Association and others V. Union of India and others] wherein it is observed and held as follows:

> "All the States are hereby directed to implement Justice Padmanabhan Committee recommendations with effect from 1.1.2006. There should be uniformity and all the States should implement recommendations and shall raise the pay scale allowances from 1.1.2006 and shall pay arrears of salary, if any. However, with an intention to give maximum benefits to the Judicial Officers, following modalities are worked out, with regard to payment of arrears of pay scales. 60% of the arrears be paid in cash spread over in two financial years and 40% be deposited in the Provident Fund account forthwith in the respective account of the Judicial Officers. We reiterate that if in any State the 6th Pay Commission recommendations are more beneficial to the Judicial Officers, they will continue to be benefited to that extent. The State of Andhra Pradesh has already issued a Notification accepting the recommendations of the Padmanabhan Committee report. We make the A.P. Government's Order dated 01.05.2010, as a part of this order (marked as Annexure-A) so that the same could be followed by other States also. The

Secretaries/Law Secretaries/ Registrars/Registrar Generals of all the States/High Courts are present in this Court and their presence is dispensed with. Consequently, the I.A.s in respect of their presence are disposed of. We highly appreciate the cooperation rendered by these officers during the course of hearing. Justice Padmanabhan Committee has made some recommendations regarding allowances. The respective States/High Courts are directed to submit their objections, if any, positively within eight weeks. This is, of course, in case they are not able to sort out the differences themselves. List after eight weeks for directions regarding allowances and pensions."

5.Contentions of the 1st Respondent:

5.1.In response, the Learned Additional Government Pleader for the 1st Respondent submits that the Petitioner was appointed as Additional Public Prosecutor Grade - II on 29.08.1984 and that he voluntarily retired on 31.01.2007 after rendering a service of 22 years five months and one day. Further, in terms of Rule 42 of the Tamil Nadu Pension Rules, 1978 a weightage of one year was allowed to him. Therefore, on the total qualifying service of 23 years five months and one day, the Office of the Accountant General (A & E) Tamil Nadu, Chennai - 600 018 had admitted the Petitioner's pension benefits in PPO No.C 214028JUDL. In fact, the Petitioner claims a weightage of five years citing Rule 27 of the Tamil Nadu Pension Rules, 1978 and G.O.Ms.No.56 dated 19.01.2011 issued based on the recommendations of Hon'ble Justice E.Padmanabhan Committee.

5.2.The Learned Additional Government Pleader for the 1st Respondent contends that in as much as the Petitioner retired 'Voluntarily' and not retired on 'Superannuation', the weightage, as mentioned in Rule 27 of the Tamil Nadu Pension Rules, 1978, cannot be made applicable to the Petitioner.

5.3.The Learned Additional Government Pleader for the 1st Respondent proceeds to point out that in terms of the ingredients of para 5(iv) of G.O.Ms.No.56, Home (Courts-I) Department, dated 19.01.2011, the qualifying service for getting full pension for Judicial Officer shall be 20 years instead of 30 years with effect from 02.09.2008 and further that, the benefits were implemented to the Judicial/Retired Judicial Officers based on the recommendations of the Hon'ble Justice E.Padmanabhan Committee.

5.4.The Learned Additional Government Pleader for the 1st Respondent comes out with a plea that the proposal of the Registrar General, High Court of Madras, Chennai – 600 104 to the effect that the date of effect for 20 years of qualifying service for earning full pension shall be made from 01.01.2006 instead of 02.09.2008 for the Judicial Officers of Tamil Nadu State Judicial Service was not agreeable to the Government of Tamil Nadu was intimated by the Government [as per Letter No.37655/Cts.I/2011-17, dated 19.12.2013. Moreover, it is projected on the side of the 1st Respondent that the Petitioner retired on 31.01.2007, well ahead of cut off date on 02.09.2008 and therefore, his pensionary benefits has to be calculated proportionate to that of the qualifying service for earning 'Full Pension', at that time.

5.5.The Learned Additional Government Pleader for the 1st Respondent submits that the Hon'ble Supreme Court, in their order dated 26.07.2010 and 02.08.2010, had accepted the Report of the Hon'ble Justice E.Padmanabhan Committee [One Man Commission] dated 17.07.2009 relating to the retirement benefits such as Additional Quantum of Pension, Commutation of Pension, Gratuity/ Death-cum-Retirement Gratuity, Encashment of Leave, Family Pension, Domestic Help Allowance, Medical Allowance with effect from 01.01.2006 with two changes and added further, the Hon'ble Supreme Court had approved the recommendations of the Hon'ble Justice E.Padmanabhan Committee to continue with the Hon'ble Justice Shetty Commission Recommendations in regard to paragraphs 31(a)(d) and 36 of the Report.

5.6.The Learned Additional Government Pleader for the 1st Respondent brings it to the notice of this Court that the Hon'ble Justice E.Padmanabhan Committee in its Recommendations as regards 'Qualifying Service' had stated that the VIth Central Pay Commission had slashed the qualifying years of service for earning Full Pension from 33 years to 20 years and this was notified and given effect to by the Central Government. Moreover, it is to be pointed out on the side of the 1st Respondent that the Recommendations of the Hon'ble E.Padmanabhan Committee was adopted by various State Governments in regard to their employees, but benefits to be paid prospectively from 02.09.2008, the date on which the Central Government had issued the Notification.

5.7.The Learned Additional Government Pleader for the 1st Respondent submits that when the Hon'ble Supreme Court in its order dated 26.07.2010 had accepted the Report of the Hon'ble Justice E.Padmanabhan Committee dated 17.07.2009 vide paragraph 33(a), resultantly, the qualifying years of service for earning full pension for Judicial Officers was fixed at 20 years instead of 33 years with effect from the date as per the VIth Central Pay Commission. Besides this, the retirement benefits are implemented based on the Recommendations of the Hon'ble Justice E.Padmanabhan Committee to the Judicial Officers/retired Judicial Officers and the same was intimated by the Government in their letter dated 19.12.2013 addressed to the Registrar General, High Court, Madras.

6.Pleas of the 2nd Respondent:

6.1.On behalf of the 2nd Respondent, the Learned Counsel for the 2nd Respondent contends that the weightage as per Rule 27 of the Tamil Nadu Pension Rules, 1978 cannot be applied to the Petitioner's case, because of the reason that the Petitioner retired 'Voluntarily' and not on 'Superannuation'. Moreover, the Petitioner retired on 31.01.2007 before the cut off date 02.09.2008 and therefore, his pensionary benefits are to be calculated based on 23 years five months one day service, as against 30 years which is the qualifying service for earning full pension.

6.2.The Learned Counsel for the 2nd Respondent points out that the Petitioner's last drawn pay was fixed by the Pay and Account Officer, High Court, Madras in terms of G.O.Ms.No.647, Home (Courts-I) Department, dated 19.07.2010 & G.O.Ms.No.864, Home (Courts-I) Department, dated 05.10.2010 as Rs.44,770/- which has been taken as pay for the purpose of arriving pension by the 2nd Respondent's office as per Tamil Nadu Pension Rules, 1978.

6.3.Continuing further, in terms of the Tamil Nadu Pension Rules, 1978, the qualifying service for earning full pension was 33 years before issuance of G.O.Ms.No.56 dated 19.01.2011 and the same was reduced 20 years with effect from 02.09.2008. However, in respect of the pension of the Petitioner, the same has to be fixed at Rs.17,535/- (44770/2 x 47/60), but the 2nd Respondent office had inadvertently revised the pension to Rs.22,385/- (44770/2) without considering the qualifying service of 23 years 5 months one day. Apart from that, it is the policy decision of the Government to extend the benefit of 20 years of qualifying service for earning full pension with effect from 02.09.2008.

6.4.Lastly, it is the submission of the Learned Counsel for the 2nd Respondent that an error cannot be perpetuated and when an error has been found out, it is the duty of the 2nd Respondent to rectify the same and as such, the recovery of overpayment is warranted as per decision of the Hon'ble Supreme Court in Chandi Prasad Uniyal and others V. State of Uttarakhand and others,

(2012) 8 Supreme Court Cases 417.

An Appraisal:

7.Be it noted that the term 'Superannuation' means the discharge from service on account of age. As a matter of fact, the word 'Retirement' is referred to as 'Superannuation'. It is to be borne in mind that there is no invariable Rule in Service Jurisprudence that an employee can be made to retire from public employment on the basis of age alone, as per decision of the Hon'ble Supreme Court in Nagaland Senior Government Employees Welfare Association V. State of Nagaland reported in (2010) 7 SCC at page 643.

8.In far as 'Voluntary Retirement' is concerned, it can be sought for by the concerned employee after rendering specified period of 'Qualifying Service'. As regards the term 'Superannuation', it refers to the age on the attainment of age, a Government Servant ceases to have a right to continue in Government service. When a person is retired, on attaining the age of superannuation, in Law, it is neither 'Dismissal' nor 'Removal'.

9.At this stage, this Court worth recalls and recollects the decision of the Hon'ble Supreme Court in Reserve Bank of India and another V. Cecil Dennis Solomon and another, (2004) 9 SCC 461 at page 463, wherein it is observed as under:

> "The expressions "superannuation", "voluntary retirement", "compulsory retirement" and "resignation" convey different connotations. Voluntary retirement and resignation involve voluntary acts on the part of the employee to leave service. Though both involve voluntary acts, they operate differently. Resignation can be tendered at any time but voluntary retirement can be sought for only after rendering the requisite period of qualifying service. In case of the former, normally retiral benefits are denied but in case of the latter, the same is not denied. In case of the former, permission or notice is not mandated, while in case of the latter, permission of the employer concerned is a requisite condition. Though resignation is a bilateral concept, and becomes effective on acceptance by the competent authority, yet the general rule can be displaced by express provisions to the contrary."

10.Further, in the decision of the Hon'ble Supreme Court in

R.N.Rajanna (DR) V. State of Karnataka, (2004) 1 SCC 249 at page 251, wherein at paragraph 6, it is, inter alia, observed as under:

> "6.... Though the word "retirement" may take within its fold all or any kind of retirement when the same is used in the context of "superannuation" or retirement by way of superannuation, in service parlance the well-settled meaning it already acquired and even in the normal course to be assigned is that it has relevance and relates to discharge from a post on account of the age fixed for such retirement, uniformly for all or a particular class or category of service-holders."

11.That apart, this Court aptly points out the decision in HEC Voluntary Retired Employees Welfare Society and another V. Heavy Engineering Corporation Limited and others, AIR 2006 SC 1420 (1425) wherein it is held as under:

> "Where the employees have opted for voluntary retirement neither they are discharged employees nor are superannuated employees. The expression "superannuation" connotes a distinct meaning. It ordinarily means, unless otherwise provided for in the statute, that not only he reaches the age of superannuation prescribed therefore, but also becomes entitled to the retiral benefits thereof including pension. "Voluntary retirement" would have fallen within the afore-mentioned expression, provided it was so stated expressly in the scheme."

12.It is to be relevantly pointed out that in the decision Bishwanath Prasad Singh V. State of Bihar (2001) 2 SCC 305 (316, 371), it is observed and held as follows:

> "The object of 'Compulsory Retirement' is not to punish or penalise the Government servant but to weed out the worthless who have lost their utility for the administration by their insensitive, unintelligent or dubious conduct impeding the flow of administration or promoting stagnation. The country needs speed, sensitivity, probity, non-irritative public relation and enthusiastic creativity which can be achieved by eliminating the dead wood, the paper logged and callous."

13.In the decision of the Hon'ble Supreme Court in Shyamlal V. State of Utter Pradesh and another AIR 1954 S.C. 369 (Vol.41, C.N.90) at special pate 370, it is held as follows:

> "There can be no doubt that removal (using the term synonymously with dismissal) generally implies that the officer is regarded as in some manner blameworthy or deficient, that is to say, that he has been guilty of some misconduct or is lacking in ability or capacity or the will to discharge his duties as he should do. The action of removal taken against him in such circumstances is thus founded and justified on some ground personal to the officer. Such grounds, therefore, involve the levelling of some imputation or charge against the officer which may conceivably be controverted or explained by the officer. There is no such element of charge or imputation in the case of compulsory retirement. Further Rule 49 of the Civil Services (Classification, Control and Appeal) Rules clearly indicates that dismissal or removal is a punishment. This is imposed on an officer as a penalty. It involves loss of benefit already earned. But an officer who is compulsorily retired does not loss any part of the benefit that he has earned. On compulsory retirement he will be entitled to the pension etc., that he has actually earned. There is no diminution of the accrued benefit.
>
> A compulsory retirement therefore does not amount to dismissal or removal and, therefore does not attract the provisions of Article 311 of the Constitution or of Rule 55 and Note 1 to Art.465A of the Civil Service Regulations is not repugnant to Art.311.
>
> The order of the President of India compulsorily retiring an officer cannot therefore be challenged on the ground that he had not been afforded full opportunity of showing cause against the action sought to be taken in regard to him."

14.In the decision Jaipal Singh V. Sumitra Mahajan (Smt) and another, (2004) 4 SCC 522 at page 527 & 528, wherein at paragraph 10, it is observed as under:

> "10. ... Under Rule 16 of the 1958

> Rules, an employee who seeks voluntary retirement has to give three months' notice to enable the employer to complete the designated mode of acceptance. (See Halsbury's Laws of England, 4th Edn., Vol. 9, p.133.) Lastly, in a given case, the appointing authority may refuse to waive the said notice period which shows that resignation may be unilateral whereas voluntary retirement is bilateral. A similar question came up before this Court in the case of UCO Bank V. Sanwar Mal [(2004) 4 SCC 412] in which this Court has inter alia held that in the case of "resignation", the relationship of employer and employee terminates on acceptance of resignation whereas in the case of "retirement", voluntary or on superannuation, the relationship continues for the purposes of payment of retiral benefits. In the case of retirement, there is a nexus between such retirement and retiral benefits. For the aforesaid reasons, we do not find any merit in the arguments advanced on behalf of the appellant."

15.In the decision K.Nagraj and others V. State of Andhra Pradesh and another, AIR 1985 Supreme Court 551 at page 552 & 553, it is observed as under:

> "The termination of service of an employee on account of his reaching the age of superannuation does not amount to his removal from service within the meaning of Art.311(2). The reduction of the age of retirement from 58 to 55 in the instant case, is found to be not hit by Art.14 or Art.16, since it is not arbitrary or unreasonable in the circumstances of the case. But, apart from this position, it is difficult to appreciate how the retirement of an employee in accordance with a law or rules regulating his conditions of service can amount to his "removal" from service. It is well-settled that Art.311(2) is attracted only when a civil servant is reduced in rank, dismissed or removed from service by way of penalty, that is to say, when the effect of the order passed against him in this behalf is to visit him with evil consequences.

If a rule of retirement can be deemed to deprive a person of his right to livelihood, it will be impermissible to provide for an age of retirement at all. That will be contrary to public interest because the State cannot afford the luxury of allowing its employees to continue in service after they have passed the point of peak performance. Rules of retirement do not take away the right of a person to his livelihood: they limit his right to hold office to a stated number of years."

16.In the instant case, the claim of the Petitioner revolves only in a narrow compass as regards the qualifying service to be taken into consideration for the purpose of pensionary benefits. It cannot be gainsaid that in terms of the Tamil Nadu Pension Rules, 1978, the qualifying service for getting Full Pension was 33 years before the issuance of G.O.(Ms)No.56, Home (Courts-I) Department, dated 19.01.2011 and the same was reduced to 20 years with effect from 02.09.2008.

17.In this connection, it may not be out of place for this Court to make a significant mention that the proposal of the Registrar General, High Court, Chennai to issue amendment to para 5(iv) of the G.O.(Ms).No.56 dated 19.01.2011 to the effect that the date of effect for 20 years of qualifying service for earning full pension shall be determined from 01.01.2006 instead of 02.09.2008 in respect of the Judicial Officers of the Tamil Nadu State Judicial Service was not accepted by the Government of Tamil Nadu, as intimated in their Letter No.37655/Cts-I/2011-17, dated 19.12.2013.

18.Admittedly, the Petitioner voluntarily retired on 31.01.2007 before the cut off date 02.09.2008. As such, his pensionary benefits has to be calculated based on his total qualifying service of 23 years five months one day [his actual service period of 22 months five months one day + weightage of one year as per Rule 42 of the Tamil Nadu Pension Rules, 1978], which was admitted by the 2nd Respondent/Office of the Accountant General, Chennai. Accordingly, the pension of the Petitioner is to be determined at Rs.17,535/- [44770/2 x 47/60]. However, the 2nd Respondent had inadvertently revised the Petitioner's pension to Rs.22,385/- [44770/2] without considering his qualifying service of 23 years five months one day.

19.It is to be noted that in the Report of the Hon'ble Justice E.Padmanabhan Committee [One Man Commission] dated 17.07.2009, Part-V, Section-1 under the caption 'Pension', wherein at paragraph 33, it is mentioned as under:

"The First National Pay Commission has approved the existing requirement of 10 years of qualifying service for judicial officers to be eligible for minimum pension. The said Pay Commission recommended that the qualifying years of service should be 33 years for earning full pension, except in the States of Tamil Nadu and Kerala. This was based on the prevailing formula, mainly qualifying years of service for earning full pension, while considering the qualifying years of service in various States as well Central service.

33(a) Recently, the VIth Central Pay Commission slashed the qualifying years of service for earning full pension from 33 years to 20 years and this has been notified and given effect by Central Government. This recommendation has been adopted by various State Governments with respect to their employees but benefits to be paid prospectively from 2-9-2008, the date on which the Central Govt. issued the Notification.

33(b)Hence, this Hon'ble Court may consider to slash the qualifying years of service from 33 to 20 years for entitlement to full pension to all the Judicial Officers."

20.Further, in the said Report in Part-V, Section-2 under the Head 'Quantum of Pension', wherein at paragraph 34, it is observed as under:

"34.The First National Judicial Pay Commission fixed 50% of the average emoluments drawn during 10 months preceding the date of superannuation as pension. The Judicial Officers have been persistently representing that the weightage should be given to their legal education and practice at bar. Once the qualifying years of service for full pension is reduced from 33 years to 20 years as is done in the case of Central Govt. employees, the Judicial Officers may not have a justification to agitate this plea.

34(a) Hence it is for this Hon'ble Court to consider and issue directions either to continue the 33 years of qualifying service for earning full pension or to reduce the same to 20 years, as has been done by the Central Government and various State Governments. If there is a slashing of qualifying years of service for full pension, the pensioners will get the benefit of such slashing.

34(b) With respect to quantum of pension and calculation, the recommendations of Hon'ble Justice Shetty Commission will continue subject to a modification with respect to qualifying years of service for earning full pension, in terms of order that may be passed by this Hon'ble Court."

21.At this juncture, it is not out of place for this Court to make a relevant mention that in G.O.(Ms)No.56, Home (Courts-I) Department, dated 19.01.2011 of the Government of Tamil Nadu, at paragraphs 4 and 5, it is observed as follows:

"4.In the reference eighth read above, the Supreme Court of India, in their order dated 26.7.2010 and 2.8.2010 have accepted the Report of the Justice, Thiru E.Padmanabhan Committee with regard to Domestic Help Allowance, Medical Allowance and retirement benefits such as Additional Quantum of Pension, Commutation of Pension, Gratuity/Death cum Retirement Gratuity, Encashment of Leave, Family Pension, with effect from 01.01.2006 with two changes. The Supreme Court of India, New Delhi has approved the recommendation of Justice Thiru.E.Padmanabhan Committee to continue with Justice Shetty Commission recommendations with regard to paragraphs 31 (a),(d) and 36 of the report.

5.The Government, in pursuance of the orders of Hon'ble Supreme Court of India, New Delhi referred to above, hereby accord sanction to implement the recommendations of Justice Thiru.E.Padmanabhan Committee and accordingly order the following allowances and Pensionary benefits with effect from 01.01.2006 to Judicial Officers/Retired Judicial Officers."

22.Also, in the aforestated Government Order, at paragraph 5(v) under the caption 'Quantum of Pension, it is mentioned as under:

"v. QUANTUM OF PENSION:

The recommendation of Justice

Shetty Commission shall continue subject to a modification with respect to qualifying years of service for earning full pension which shall be 20 years instead of 30 years.”

23.It is to be pointed out that the ingredients of Sections 68 to 72 of the Indian Contract Act, 1872 speak of the principles of 'Unjust Enrichment', as per decision Nallaya Gounder V. Ramaswami Gounder reported in (1958) 2 Mad LJ 86. The aspect of 'Unjust Enrichment' is rested on the principle that the concerned individual was enriched by reaping the benefits. Further, he should have been enriched at another's expense. Besides these, it would be unjust/unwise to permit him to retain the benefits.

24.One has to bear in mind the principle 'Nemo debet locupletari ex aliena jactura', i.e., no man should grow rich out of another person's loss. Further, a person who was unjustly enriched at the expense of another is required to make restitution to another [vide American Restatement of the Law of Restitution, Quasi-Contracts and Constructive Trusts, 1937, S I.]

25.In Law, 'Perpetration' of an error is no “Legal Heroism'. If an error comes to light or the same is unearthed or brought to the fore, the same is to be rectified by the concerned authority. Viewed in that perspective, the recovery of 'overpayment' is very much necessitated and the same is in order. If recovery is not effected, it will be an 'Unjust Enrichment' resulting in Loss to the 'Exchequer'. Hence, the impugned proceedings of the 2nd Respondent/Office of the Accountant General, Chennai dated 11.01.2016 is free from any Legal flaw. Consequently, the Writ Petition fails.

Result:

26.In fine, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True copy//

Sub Assistant Registrar

Sgl

To

1.The Principal Secretary to the Government,
Government of Tamil Nadu,
Fort St. George, Chennai.

2.The Senior Account Officer,
Office of the Accountant General,
Anna Salai, Teynampet,
Chennai - 600 018.

3.The Government Advocate,
High Court, Madras.

4. The Registrar General,
High Court, Madras.

+1cc to Mr.Sudharshana Sundar, Advocate SR.No.52799
+1cc to Mr.V.Vijayshankar, Advocate SR.No.53298
+1cc to Government Pleader SR.No.53216

W.P.No.22625 of 2016

SS(CO)
GN(13/08/2018)