IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2018

CORAM :

The Hon'ble Ms.INDIRA BANERJEE, CHIEF JUSTICE

AND

The Hon'ble Ms.JUSTICE P.T.ASHA

W.P. No.1822 of 2018

N.Velu .. Petitioner

-vs-

1.The Registrar General,
High Court of Madras,
Madras - 600 104.

2.The Secretary,
Home Department,
Fort St. George,
Chennai - 600 009.

3.The Secretary,
Public (Special 'A') Department,
Fort St. George,
Chennai - 600 009.

4.The Senior Accounts Officer,
GAD IV,
O/o. The Principal Accountant General (A&E),
No.361, Anna Salai,
Chennai - 600 018.

5.The State of Tamil Nadu,
rep. by the Secretary to Government,
Finance Department,
Fort St. George,
Secretariat, Chennai - 600 009. .. Respondents

(R5 - suo motu impleaded as per order
dt. 2.2.2018)

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Declaration that contributory pension scheme introduced by G.O.Ms.No.259, Finance Pension, dated 6.8.2003 is not applicable to the petitioner/Judicial Officer (District Judge, Tamil Nadu State Judiciary) and entitled to lifetime pension and Family Pension as per the recommendation of the Hon'ble Shetty Commission Report and the same approved by the Hon'ble Apex Court and delivered judgment in All India Judges Association v. Union of India case and issue writ of mandamus directing the respondents to pay subsistence allowance, provisional pension 50% of pay and allowances for the suspension period from 01.08.2013 to 27.01.2017 (42 months) or any other direction as this Hon'ble Court may deem fit and proper in the circumstances of the case and consequently directing the respondents to order to sanction lifetime pension from February 2017, 50% of pay and allowances.

For Petitioner : Mr.R.Malaichamy

For Respondents : Mr.V.Vijay Shankar
for respondents 1 and 4

T.N.Rajagopalan
Government Pleader
for respondents 2, 3 & 5

O R D E R
(Made by Ms.Indira Banerjee, Chief Justice)

In this writ petition, the petitioner, who retired from service as District and Sessions Judge in the State of Tamil Nadu, has challenged the Contributory Pension Scheme introduced by G.O.Ms.No.259, Finance (Pension) Department, dated 06.8.2003 and sought a declaration that the same is not applicable to him. The petitioner has also sought directions on the respondents to sanction lifetime pension to the petitioner from February, 2017 as also outstanding subsistence allowance for the period from 1.8.2013 to 27.1.2017 (42 months) when the petitioner remained under suspension.

2. By an order, being G.O.Ms.No.1786, Public (Special A) Department, dated 24.12.2004, the petitioner was appointed as District Judge under Rule 5(2) of the Tamil Nadu State Judicial Service (Cadre & Recruitment) Rules, 1995.

3. Prior to his appointment as District Judge, the petitioner was appointed as part-time Junior Professor at Government Law College, Trichy by an order dated 02.1.1984. By an order dated 3.9.1984, the petitioner was transferred and posted at Government Law College, Madurai as part-time Lecturer.

4. While the petitioner was a serving as a District Judge, he was placed under suspension by an order dated 18.1.2013 on the allegation that he had attended a political party meeting on 16.12.2012. The petitioner attained the age of superannuation on 31.7.2013, but was retained in service as per Rule 56(1)(c) of the Fundamental Rules of the Tamil Nadu Government, hereinafter referred to as "the Fundamental Rules". Ultimately, the order of suspension was revoked and the petitioner was permitted to retire.

5. It is the case of the petitioner that the petitioner had duly submitted all relevant papers for sanction of pension and other retirement benefits, which, according to him, have wrongly and illegally been withheld.

6. Shortly before the petitioner was appointed as District Judge, the Government of Tamil Nadu issued G.O.Ms.No.259, Finance (Pension) Department, dated 06.8.2003 introducing the Contributory Pension Scheme.

7. A counter-affidavit has been filed by the Registrar General of this High Court, wherefrom, it appears that the petitioner has not completed the qualifying service of ten years for grant of pension.

8. Counsel appearing for the petitioner submitted that the petitioner was entitled to addition of the period of his service as part-time Lecturer in different Government Law Colleges. Even otherwise under Rule 27 of the Tamil Nadu Pension Rules, 1978, he was entitled to have two years added to his service.

9. Counsel appearing for the respondent authorities has, however, drawn the attention of this Court to the proviso to Rule 27 of the Tamil Nadu Pension Rules, which makes it amply clear that addition of two years applies only to those who have completed the qualifying period of service. As per rules, part-time service as Professor cannot be added towards pension of a District Judge. In any event, there was no continuity of service.

10. Since the petitioner did not complete ten years of regular service in the judicial service, he is ineligible for pension. His service as part-time Lecturer cannot be added towards pension. Furthermore, the challenge to the Government Order being G.O.Ms.No.259 Finance (Pension) Department, dated 6.8.2003 cannot be entertained at this stage after a delay of fifteen years.

11. The petitioner accepted appointment as a District Judge after introduction of the Contributory Pension Scheme. In any case, the Scheme was introduced in 2003. The petitioner cannot question the Scheme after almost 15 years and that too when he had, by his conduct, accepted the Contributory Pension Scheme as a condition of his service.

12. Rule 53 of the Fundamental Rules provides:

> "53. (1) A Government servant who is placed or deemed to have been placed or continues to be under suspension shall be entitled to the following payments, namely:-
>
> (a) Subsistence allowance at an amount equal to half of the pay last drawn by the Government servant and in addition dearness allowance, if admissible on the basis of half of the pay last drawn:
>
> Provided that where the period of suspension exceeds six months, the authority which made or is deemed to have made, the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first six months as follows:-
>
> (i) The amount of subsistence allowance may be increased by a suitable amount, not exceeding fifty per cent of the subsistence allowance admissible during the period of the first six months, if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the Government servant;
>
> (ii) the amount of subsistence allowance may be reduced by a suitable amount, not exceeding fifty per cent of the subsistence allowance admissible during the period of the first six months, if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, directly attributable to the Government servant;
>
> (iii) the amount of dearness allowance shall be based on the increase or the decrease in the amount of subsistence allowance, as the case may be, admissible under clause (i) or (ii) above:

Provided further that if a Government servant under suspension continues to be under suspension after the date of retirement, the amount of subsistence allowance shall be reduced to the amount of pension which will be provisionally admissible to him, whether or not the Government servant will be exonerated of the charges for which he was placed under suspension and the provisions of the preceding proviso shall not apply to such cases.

(b) The authority which made or which is deemed to have made the order of suspension may, if it is satisfied that the Government servant continues to incur the expenditure for which the compensatory allowances are granted, direct that the Government servant shall be granted 95 in addition, such compensatory allowances as are admissible from time to time on the basis of pay of which the Government servant was in receipt on the date of suspension as the Government may sanction by general or special order.

(c) Government servants under suspension shall be paid house rent allowance in full at the rates admissible at the place where they are ordered to stay during suspension with reference to the pay last drawn before suspension. Where the headquarters of a Government servant under suspension is changed on his request, he shall be eligible for the house rent allowance at the rates admissible at the earlier headquarters or at the new headquarters whichever is less.

(2) No payment under sub-rule (1) shall be made unless the Government servant furnishes a certificate that he is not engaged in any other employment, business, profession or vocation:

Provided that in the case of a Government servant dismissed, removed or compulsorily retired from service, who is deemed to have been placed, or to continue to be under suspension from the date of such dismissal or removal or compulsory retirement under clauses (3) and (4) of rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, and who fails to furnish such a certificate for any period or periods during which he is deemed to have been placed or to continue to be under suspension, he shall be entitled to subsistence allowance and other allowances equal to the amount by which his earnings during such period or periods, as the case may be falls short of the amount of subsistence allowance and other allowances, that would otherwise be admissible to him but when the subsistence and other allowances admissible to him are equal to or less than the amount earned by him, nothing in this proviso shall apply to him.

(3) No payment under sub-rule (1) shall be made unless the Government servant continues to reside in the place fixed from time to time, by the authority which made or which is deemed to have made the order of suspension.

(4) (i) If a Government servant is suspended while on foreign service for any lapses committed by him or for any criminal misconduct not connected with his office work during the course of his employment in the Government service prior to his appointment to foreign service, the foreign employer shall pay the subsistence allowance initially. The subsistence allowance so paid by the foreign employer shall be reimbursed by the Government later.

(ii) If a Government servant is suspended while on foreign service for any lapse committed by him or for any criminal misconduct not connected with his office work during the course of his employment in the foreign service, the foreign employer shall pay the subsistence allowance till the case is disposed of:

Provided that in the case of criminal misconduct, if foreign employer does not want extension beyond the existing period of deputation of a Government servant, the Government servant shall be deemed to have been reverted to Government service on the expiry of the period of deputation and the subsistence allowance paid by the foreign employer beyond the period of deputation shall be reimbursed by the Government later.

5. If a Government servant under suspension continues to be under suspension after the date of superannuation in view of pending disciplinary proceedings against him, and is fully exonerated from the charges against him later, he shall be paid dearness allowance as admissible on normal superannuation and house rent allowance and city

compensatory allowance as admissible prior to the date of superannuation for the period from the date subsequent to the date of superannuation till the date on which final orders on the disciplinary proceedings are issued.

6. (i) If a Government servant is suspended while on foreign service for any lapse committed by him or for any criminal misconduct not connected with his office during the course of his employment in the Government service prior to his appointment to foreign service and subsequently, if the period of suspension is regularised as duty or leave period according to the merits of the case, the pay or leave salary shall be paid by the Government themselves.

(ii) If a Government servant is suspended while on foreign service for any lapse committed by him during the course of his employment in the foreign service and subsequently if the period of suspension is regularised as duty or leave according to the merits of the case, the pay or leave salary shall be paid by the foreign employer.

(iii) If a Government servant is suspended while on foreign service for any criminal misconduct not connected with the office work during the course of his employment in the foreign service and subsequently if the period of suspension is regularised as duty or leave according to the merits of the case, the pay or leave salary shall be paid by the foreign employer until the expiry of the period of deputation and by the Government beyond the period of deputation."

13. In view of the proviso to Rule 53(1)(a), if a Government servant under suspension continues to be under suspension after the date of retirement, the amount of subsistence allowance is to be reduced to the amount of pension, which would be provisionally admissible to him, whether or not the Government servant would be exonerated of the charges for which he was placed under suspension. Since services of the petitioner are not pensionable, he is apparently not entitled to any subsistence allowance for the period of suspension after the date on which he attained his age of retirement.

14. The writ petition is, therefore, dismissed. No costs. Consequently, W.M.P.No.2243 of 2018 is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Registrar General,
High Court of Madras,
Madras - 600 104.

2.The Secretary,
Home Department,
Fort St. George,
Chennai - 600 009.

3.The Secretary,
Public (Special 'A') Department,
Fort St. George,
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4.The Senior Accounts Officer,
GAD IV,
O/o. The Principal Accountant General (A&E),
No.361, Anna Salai,
Chennai - 600 018.

5.The Secretary to Government,
Finance Department,
Fort St. George,
Secretariat, Chennai - 600 009.

+ 1 cc to Mr. V. Vijay Shankar, Advocate SR.47024
+ 1 cc to Mr.R. Malaichamy, Advocate SR.46692
+ 1 cc to Mr. Government Pleader SR.46712

W.P.No.1822 of 2018

(CCC)
EU(30/07/2018)