

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:10.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.41878 of 2006

1.B.Vijayan
2.M.Mohamed Mathar
3.Allen George
4.Dr.R.Arapadi
5.Dr.K.A.Abdutty
6.Dr.Edward Balraj
7.G.Subhulakshmi
8.B.Gowri Sankaran
9.D.R.Marappan
10.M.Nanjammal
11.A.Jayalakshmi

...Petitioners

Vs.

The State of Tamil Nadu,
rep. by its Secretary to Government,
Finance (Pension) Department,
Fort St. George,
Chennai 600 009.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondent herein to implement the G.O.Ms.No.371, Finance(Pension) Department, dated 30.04.1986 by directing the respondent herein to increase the Dearness Allowance sanctioned on or after 01.10.1987 and the same shall be treated as the Dearness Pay for the purpose of computation of the pension for the petitioners.

For Petitioners : Mr.K.Sathish Kumar

For Respondent : Mr.K.Ravikumar

Additional Government Pleader.

O R D E R

The petitioners have filed this Writ Petition seeking issuance of Mandamus, directing the respondent herein to implement the G.O.Ms.No.371, Finance(Pension) Department, dated 30.04.1986 by directing the respondent herein to increase the Dearness Allowance sanctioned on or after 01.10.1987 and the same shall be treated as the Dearness Pay for the purpose of computation of pension for the petitioners.

2. Short facts behind filing of the present writ petition are as follows:-

Some of the petitioners are retired employees of Tamil Nadu State Government and some of the petitioners are the legal heirs of the employees who had retired during the period from 1989 to 1995. G.O.MsNo.810 Revenue Department dated 9.8.1989 revised the pension in respect of the employees who had retired prior to 1.6.1960 which gave rise to an Original Application to be filed before the Tamil Nadu Administrative Tribunal at the instance of Ambasamudram Taluk Pensioner's Association alleging that some disparity arose among the pensioners who had retired prior to the cut off date and subsequent to that. That application ended in favour of the petitioners therein and the SLP and the review filed by the State came to be dismissed. Thereafter, the Government issued G.O.Ms.No.271 dated 15.06.1998 giving benefit to those who retire after 01.06.1960 till 31.05.1988. Since, the Government failed to implement the said G.O.Ms.No.271, the pensioners filed Writ Petition before this Court and this Court has directed the Government to implement G.O.Ms.No.271 dated 15.06.1998. The date of superannuation in respect of the petitioners herein falls between 1989 and 1995 and they were left out without any benefits. The persons, who were retired after 31.5.1988 made representation to the Government expressing their grievance and thereupon, the Government had passed G.O.Ms.No.371 Finance (Pension) Department dated 30.4.1986 accepting the recommendations of the Commission and directed in the case of the Government Servants who will be retiring on or after 1.10.1987, dearness allowance sanctioned upto 1.10.1987 shall be reckoned as dearness pay for the purpose of pension in case of death of Government Servants occurring on or after 1.10.1987 while in service and the dearness allowance sanctioned upto 1.10.1987 shall be treated as dearness pay for the purpose of commuting family pension. The grievance of the petitioners is that though the said G.O. had been passed granting some benefits to the persons who retired on or after 10.10.1987, it had not been implemented and hence, they had filed W.P.No.30208 of 2005 and obtained an order for consideration of their representation, however, their representation was rejected by the Government on 27.12.2005 and hence, the petitioners have once again filed the present Writ Petition taking a stand that once G.O.Ms.No.271 dated 15.6.1998 had been implemented by the Government, G.O.Ms.No.371 Finance (Pension) dated 30.4.1986 had not been implemented.

3. Heard both sides.

4. On perusal of the materials available on record, this court finds that though, G.O.Ms.271 was passed in the year 1998 and it had been implemented upon the struggle of the beneficiaries of that G.O., and the petitioners had retired much earlier to that viz., between 1989 and 1995, it seems

that the petitioners had slept over the matter for more than ten years and subsequently, they had woke up and filed the present writ petition.

5. Therefore, in my view, the writ petitioners do not deserve any consideration in the light of the principles laid down by the Supreme Court in STATE OF UP v. ARVIND KUMAR SRIVASTAVA ((2015) 1 SCC 347), wherein it has been held as under:-

"Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim."

5. In view of the above, the writ petition has to fail on the ground of delay and laches and accordingly, it stands dismissed. No costs.
ssk/rm

Sd/-
Assistant Registrar(CS-CO)

//True Copy//

Sub Assistant Registrar

To

The Secretary to Government,
State of Tamil Nadu,
Finance (Pension) Department,
Fort St.George,
Chennai 600 009.

+1cc to Mr.K.Sathish Kumar, Advocate S.R.No.45035
+1cc to the Government Pleader, S.R.No.45725

KR/16/10/18

W.P.No.41878 of 2006