

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 17.09.2018

CORAM

THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.34537 of 2013

1. Welfare Association of Tamil Nadu Ind Absorbee Pensioners
Rep. by its General Secretray,
Reg.No.504/2007,
No.12, 9th Street,
Tansinagar,
Velachery,
Chennai 600 042

2. S.Ganesan
3. B.Sundaresan
4.M.Diraviam
5.A.Subramanian
6.R.Bakthavatsalu
7.K.V.Venugopal
8.A.W.Shakir
9.M.Rajamanickam
10.P.Shanmugam
11.L.John Joseph
12.R.Seshadri
13.S.Rajamoney
14.S.Selvaganapathy
15.K.H.Jayalakshmi
16.N.Ramamurthy

....Petitioners

Vs

1. Government of Tamil Nadu,
Rep. By its Secretray,
Finance (BPE) Department,
Fort St.George,
Chennai - 600 009.

2. The Special Secretary to Government,
Finance (BPE) Department,
Government of Tamil Nadu,
Fort St.George,
Chennai - 600 009.

3. The Secretary,
Industries Department,
Government of Tamil Nadu,
Fort St.George,
Chennai - 600 009.

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus after calling for the concerned records from the respondents, to quash G.O.Ms.No.731, Industries (Spl.) Dated 21.05.1974 of the third respondent insofar as Clause i (b) and Clause ii of the heading commutation of pension, the order of the first respondent bearing Letter No.67584/BPE/07 dated 15.11.2007 and the order of the second respondent bearing Letter No.67584/BPE/07 dated 13.02.2008 and consequently direct the respondents to restore the 2/3rd pension after the expiry of its commutation period of 15 years and pay the arrears of 2/3rd pension from 04.09.1991 onwards along with interest at the rate of 12% per annum and continue to pay the full pension to the members of the first petitioner Association, whose names are given in the Annexure to this affidavit including the petitioner No.2 to 16.

For Petitioner : Mr.Balan Haridas

For Respondents : Mr.K.Ravikumar,
Additional Government Pleader

ORDER

As it appears, this writ petition has been filed by the petitioners who are the members of the Welfare Association of Tamil Nadu Ind Absorbee Pensioners and also their such Association. The grievance of the petitioner in this writ petition is the refusal of the respondents to revive the 100% pension commuted by them on expiry of 15 years of receipt of such commuted value vide the impugned order of the first respondent bearing Letter No.67584/BPE/07 dated 15.11.2007 and the order of the second respondent bearing Letter No.67584/BPE/07 dated 13.02.2008 rejecting their representation made in this regard even though they have already been extended the benefit of revival of 1/3 value of such pension commuted on expiry of the period of 15 years.

2. It appears that the individual petitioners were the employees of the Department of Industries and Commerce under the Government of Tamil Nadu. On creation of Government of Tamil Nadu Undertaking namely Tamil Nadu Small Industries Corporation Limited (hereinafter referred to as TASNI in short), they were sent on deputation and subsequently absorbed therein. However, their services rendered with the Government of Tamil Nadu being qualifying for pension, they were allowed to commute the 100% of the value of pension and received the amount thereof. But subsequently in view of the law down in the case of Welfare Association of Absorbed Central Government Employees vs. Union

of India and another reported in (1996) 2 SCC 187, that such employees are entitled to restoration of 1/3 of fully commuted pension as per the decision rendered in the case of Common Cause, Registered Society and Others Vs. Union of India reported in (1987) 1 SC 142, the petitioners were extended the benefit of revival of 1/3 of the pension on the expiry of 15 years of receipt of such commuted value. Petitioners have also been granted dearness allowance on the same by the respondents. However, thereafter this Court in the case of K.Ganesan Vs The Registrar, Central Administrative Tribunal, Madras Bench, Chennai in W.P.No.22207 of 2002 rendered a decision indicating that in such cases, absorbed employees are also entitled to revival of the remaining 2/3 commuted value. The petitioners had made representation to the respondents which was rejected on the ground that the members of the petitioners Association are not entitled to the same, moreso when such benefit has not been extended to absorbed pensioners of Government of India Undertaking / PSU /autonomous body etc who commuted 100% of their pension. The petitioners came to challenge the same on the ground that commutation of such pension being contrary to the mandate of Section 12 of the Pension Act basing on which the 1/3 commuted value were directed to be revived after 15 years in the case of Common cause (supra), rejection of the petitioners' representation in this regard was illegal and arbitrary and as such the same be quashed and the respondents be directed to extend them the benefit of revival of their 2/3 pension from the date of expiry of 15 years with interest in view of the law laid down in W.P.No.22207 of 2002 by this Court.

3. The same has been resisted in the reply affidavit filed by the Government indicating the fact that since the petitioners have received the lumpsum amount of pension under liberalised pension rules and also received the pension soon after their absorption for the service rendered in the Government without awaiting the age of superannuation with the interest for such delayed payment, they had no case for revival of pension. Furthermore, the same is moreso in view of the fact that even if there was no provision of commutation of more than 1/3 pension under the Tamil Nadu Pension Rules, but the petitioners were extended the benefit of such liberalised commuting 100% pension as such they cannot now make grievance for non-revival of remaining 2/3 pension citing the case of K.Ganesan (supra) against which Civil Appeal Nos.6048 of 2010 and also a connected Civil Appeal No.6371 of 2010 are pending. The same is also contrary to the order of the Division Bench passed in W.A.Nos.501, 631 and 765 of 1998, wherein considering the one time settlement made by the petitioners without waiting for superannuation in the Corporation, their prayer for extension of the benefit on par with the Government Servant was refused. The same having reached finality inasmuch as the

petitioners had not challenged such order therefore the petitioners have no case and as such their representation has been rightly rejected. Hence the writ petition filed is devoid of merit and liable to be dismissed.

4. In the rejoinder affidavit filed by the petitioners, it is stated that since the petitioners are concerned with the revival of 2/3 pension in respect of the service rendered by the petitioners in the Government which they have commuted and the writ appeal relates to payment of pension with regard to service rendered in TANSI, the averment made in the reply affidavit indicating the decision in the writ appeal comes in the way of the petitioner for grant of such relief, is without any substance.

5. During the course of hearing, the learned counsel appearing for the petitioners submits that in the case of K.Ganesan(supra), the order of this Court extended benefit of revival of the remaining 2/3 pension on expiry of the 15 years period of the receipt of commuted value of pension to the absorbed pensioners absorbed in Government of India Undertaking / PSU /autonomous body etc. The same has been upheld by the Apex Court in the aforesaid Civil Appeal and in the meanwhile the Government of India have also implemented the said order as revealed from the Office Memorandum of the Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Pension and Pensioners Welfare dated 23.06.2017. The rejection of the representation of the petitioner in this regard by the respondents therefore citing that in the absence of extension of such benefit to the absorbed pensioners in Government of India Undertaking / PSU /autonomous body etc, as such liable to be quashed and the petitioners are entitled to the revival of remaining 2/3 pension on expiry of the 15 years from the date of receipt of the commuted value. Therefore necessary direction may be issued to the respondents to extend such benefit to the members of the petitioners association who were absorbed in TANSI after rendering qualifying service for pension in Government and had also commuted their 100% pension and received lumpsum commuted value of the pension with interest as this Court may deem it just and proper.

6. In response, the learned counsel appearing for the respondents however resisted the same on the ground that the petitioners having been extended liberalised pension scheme for commutation of the 100% pension which was contrary to the pension rules and having taken benefit thereof, they cannot now claim the revival of remaining 2/3 pension as extended to Government of India employees who were absorbed in Government of India Undertaking / PSU /autonomous body etc. The same is

moreso in view of the fact that the order passed by this Court in the aforesaid writ appeal has reached its finality. However, it is not disputed that the petitioners were extended the benefit of revival of 1/3 value of pension in view of the order passed in favour of absorbed employee of Government of India absorbed in Government of India Undertaking / PSU /autonomous body etc, in the case of Welfare Association of Absorbed Central Government Employees cited supra.

7. After hearing the counsel for the parties and going through the materials on record and also the decision cited supra, it appears that when the commutation of 1/3 pension forever in the case of Common Cause (supra) was held to be not proper by the Apex Court, thereafter, the Government Employee who had commuted such value of pension were given the benefit of revival of such commuted pension on expiry of the period of 15 years. Such benefit was also extended to the absorbed employee of Government of India who were absorbed in Government of India Undertaking / PSU /autonomous body etc, and commuted their 100% pension, on expiry of the period of 15 years as appears from decision of the Apex court rendered in the case of Welfare Association of Absorbed Central Government Employees (supra). The said benefit were also extended to the State Government employee of Tamil Nadu who were absorbed in different State Government undertaking etc. including the employees of the TANSI. The same was after the disposal of the aforesaid writ appeal. The order of the writ appeal relates to claim of pension clubbing the service of the petitioners in TANSI which was refused. As it appears in the meanwhile, in respect of absorbed employee of the Government of India, in Government of India Undertaking / PSU /autonomous body etc, in the case of K.Ganesan (supra) prayer of revival of remaining 2/3 pension has been allowed by this Court. The Civil Appeal filed against the said order vide Civil Appeal No.6048 of 2010 was dismissed and the order of this Court was confirmed. A connected Civil Appeal i.e. Civil Appeal No.6031 of 2010 wherein refusal of the prayer made to give direction to revive such 2/3 pension by the Bombay High Court to such absorbed pensioners was challenged, was also allowed considering the dismissal of the Civil Appeal carried against the order passed in the case of K.Ganesan (supra) passed by this Court. Thereafter it appears that the Government of India vide the Office memorandum filed by the petitioners in the additional typed set of papers at page 38 have clarified for implementation of such order passed in the case of K.Ganesan (supra) by this Court which was confirmed in the Civil Appeal No.6048 of 2010 by the Hon'ble Apex Court.

8. In view of the aforesaid, this Court is of the view that the petitioners are also entitled to the benefit law laid down in the case of K.Ganesan (supra) by this Court which has

been confirmed by the Hon'ble Apex Court in the Civil Appeal No.6048 of 2010, with the direction to revive the remaining 2/3 pension on the expiry of the period of 15 years of receipt of such commuted value. In other words they are entitled to 100% pension which they have commuted on expiry of 15 years. However, the facts and situations in which it is held that they are entitled to revival of 2/3 pension commuted by them, it would not be proper to direct interest for delayed payment of such pension as there was no rule to revive such pension in favour of the petitioners on expiry of the 15 years from the date of receipt of such commutation value and the case of K.Ganesan (supra) which was rendered in the case of Central Government Employee absorbed in different Government of India Undertaking / PSU /autonomous body etc and the same has been directed to be implemented in recent past vide the aforesaid memorandum of the Government of India.

9. For the foregoing reasons, this writ petition filed by the petitioners stands allowed, consequently the impugned order of rejection of the representations are quashed and the respondents are directed to take all effective steps to revive the remaining 2/3 pension of the members of the petitioners association including the individual petitioners who were absorbed in the TANSI but had commuted their entire pension payable to them by the Government of Tamil Nadu, from the date they were allowed 1/3 revival of commuted pension. The aforesaid exercise has to be completed, within a period of three months from the date of receipt of a copy of this Order. But it is made clear that they are not entitled to interest on such 2/3 pension revived pension payable to them which is directed to be revived by this order. With the aforesaid order, the writ petition stands allowed in part. However, in the circumstances there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

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To

1. The Secretray,
Government of Tamil Nadu,
Finance (BPE) Department,
Fort St.George,
Chennai - 600 009.

2. The Special Secretary to Government,
Finance (BPE) Department,
Government of Tamil Nadu,
Fort St.George,
Chennai - 600 009.

3. The Secretary,
Industries Department,
Government of Tamil Nadu,
Fort St.George,
Chennai - 600 009

+2cc to M/s.K.Ravikumar, Advocate SR.No.64769

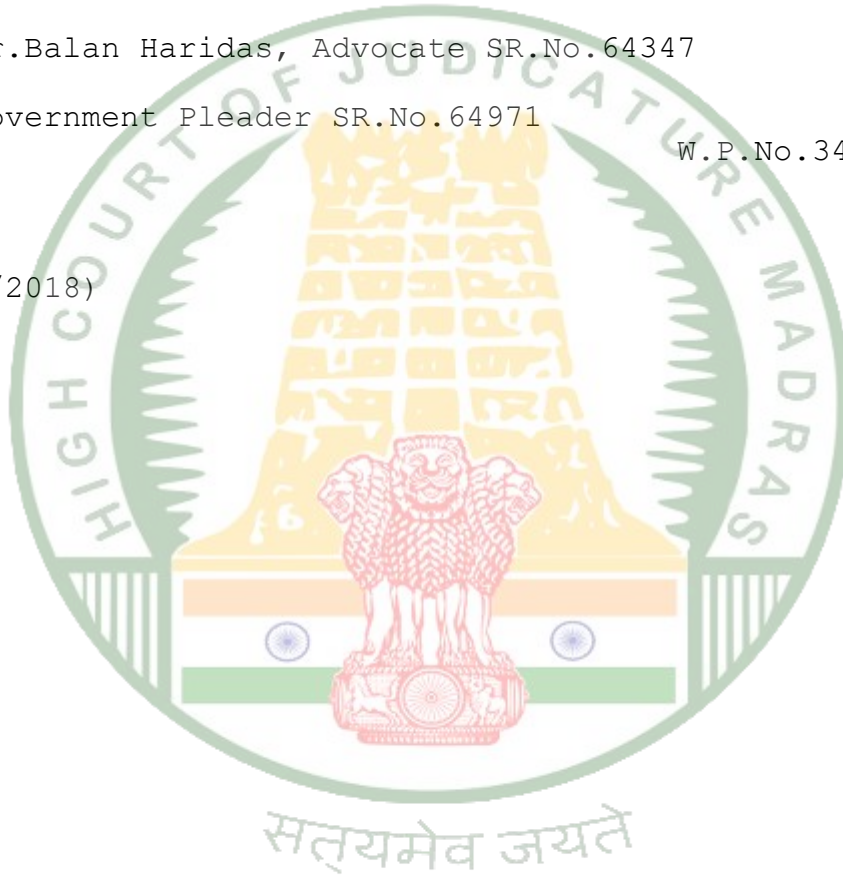
+1cc to Mr.Balan Haridas, Advocate SR.No.64347

+1cc to Government Pleader SR.No.64971

W.P.No.34537 of 2013

VSN II (CO)

GMV (02/11/2018)



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