IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MS.JUSTICE P.T.ASHA

W.A.Nos. 62 and 63 of 2015
and W.A.Nos. 277 & 278 of 2018

W.A.No. 62 of 2015

1.The Chairman
Chennai Port Trust,
Rajaji Salai,
Chennai - 600 001. .... Appellant

Vs.

1.All India Federation of Port & Dock
Pensioner's Association,
Regd.55 of 1986,
Rep. by its Joint Secretary,
No.70/73, Washer Vardappa Street,
Chennai - 600 081.

2. S.S.Venkataraman

3.Union of India,
rep. by its Secretary to Government,
Ministry of Shipping,
Transport Bhavan,
No.1, Parliament Street,
New Delhi - 110 001. .... Respondents

W.A.No. 63 of 2015

1.The Chairman
Chennai Port Trust,
Rajaji Salai,
Chennai - 600 001. .... Appellant

Vs.

1.Chennai Harbour Pensioner's Association,
Regd. (113/86), 14/90,
Rep. by its General Secretary,
No.103/44, Adam Street,
Royapuram, Chennai - 600 013.

2. M.Ramachandran,

3.Union of India,
rep. by its Secretary to Government,
Ministry of Shipping,
Transport Bhavan,
No.1, Parliament Street,
New Delhi - 110 001. .... Respondents

W.A.No. 277 of 2018

Union of India
Rep. by its Secretary to Government
Ministry of Shipping,
Transport Bhavan,
No.1, Parliament Street,
New Delhi 110 001. .... Appellant

-vs-

1.All India Federation of Port & Dock
Pensioner's Association,
Regd.55 of 1986,
Rep. by its Joint Secretary,
No.70/73, Washer Vardappa Street,
Chennai - 600 081.

2. S.S.Venkataraman

3. The Chairman,
Chennai Port Trust,
Rajaji Salai, Chennai - 600 001 .... Respondents

W.A.No. 278 of 2018

Union of India
Rep. by its Secretary to Government
Ministry of Shipping,
Transport Bhavan,
No.1, Parliament Street,
New Delhi 110 001. .... Appellant

-vs-

1.Chennai Harbour Pensioner's Association,
Regd. (113/86), 14/90,
Rep. by its General Secretary,
No.103/44, Adam Street,
Royapuram, Chennai - 600 013.

2. M.Ramachandran,

3.The Chairman,
Chennai Port Trust,
Rajaji Salai, Chennai - 600 001 .... Respondents

Writ Appeal Nos.62 & 63 of 2015 filed under Clause 15 of Letter Patent against the common orders in W.P.Nos.25115 & 35563 of 2005 dated 06.08.2013 on the file of the High Court of Judicature at Madras.

Writ Appeal No.277 of 2018 filed under Clause 15 of Letter Patent against the order in W.P.No.25115 of 2005 dated 06.08.2013 on the file of the High Court of Judicature at Madras.

Writ Appeal No.278 of 2018 filed under Clause 15 of Letter Patent against the order in W.P.No.35563 of 2005 dated 06.08.2013 on the file of the High Court of Judicature at Madras.

Prayer in WP.No.25115/2005 : This Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus to direct the first respondent's to calculate and pay pension and family pension to the first respondents employees, who retired after 01.01.97 in the case of Officers and after 01.01.1998 in the case of workmen, on par with those who retired prior to 01.01.1997 and 01.01.1998 respectively, as per the formula set out in Appendix-IV to the Settlement dated 02.08.2000, between the workmen and the respondent Port Trust and second respondent's order No.A-38011/45/98/98-PE-1, dated 28.06.2001, with arrears and with all attendant benefits.

Prayer in WP.No.35563/2005 : This Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the respondent to calculate and pay pension and family pension to the first respondents employees, who retired after 01.01.1997 in the case of officers and after 01.01.1998 in the case of workmen, on par with those who retired prior to 01.01.1997 and 01.01.1998 respectively, as per the formula set out in Appendix-IV to the Settlement dated 02.08.2000, between the workmen and the respondent Port Trust and second respondent's order No.A-38011/45/98/98-PE-1, dated 28.06.2001, with arrears and with all attendant benefits.

Writ Appeal Nos.62 & 63 of 2015

For Appellant : Mr.G.Rajagopalan
Additional Solicitor General
For Mr.P.M.Subramaniam

For Respondents 1 & 2: Ms.R.Vaigai, Senior Counsel
for M/s.Row and Reddy

For Respondent 3 : Ms.Sunita Kumari

Writ Appeal Nos.277 & 278 of 2018

For Appellant : Ms.Sunita Kumari

For Respondents 1 & 2: Ms.R.Vaigai, Senior Counsel
for M/s.Row and Reddy

For Respondent 3 : Mr.G.Rajagopalan
Additional Solicitor General
For Mr.P.M.Subramaniam

COMMON JUDGMENT
[Judgment of the Court was delivered by P.T.ASHA, J.]

The four Intra-Court appeals are filed at the instance of the Chennai Port Trust and the Union of India challenging the order passed in W.P.No.25115 of 2005 (W.A.No.62 of 2015) and W.P.No.35563 of 2015 (W.A.No.63 of 2015) and Union of India Challenging the order passed in W.P.No.25115 of 2005 (W.A.No.277 of 2018) and W.P.No.35563 of 2015 (W.A.No.278 of 2018). Since the issue involved in the all the 4 Writ appeals emante out of a common issue viz; anamoly in the pension drawn by the retirees from the Appellant Port Trust pre and post 01.01.1997 (in the case of officers) and 01.01.1998 (in the case of workmen).

2. Both the Writ Petitions are filed by registered Pensioners Association espousing the cause of both the class I and II officers as well as Class III and IV workmen.

Facts leading to the filing of the Writ Petitions:

3. On 02.08.2000, a Section 12(3) settlement contemplated under the Industrial Disputes Act, 1947 was entered into before the Regional Labour Commissioner (Central) Mumbai in respect of an industrial dispute raised by 5 Federations operating in the major ports and Dock Labour Boards operating in Mumbai, Calcutta, Chennai, Visakkapatnam, Cochin, Murmugoa, Kandla, Paradip, Tuticorin, New Nangalore and Navi Mumbai.

4. The terms of settlement contemplated the revision of the Wage structure, terms and conditions of employment applicable to class III and IV employees of the Major Ports and Dock labour Boards. The settlement detailed the class of employees/workmen who would be covered by the settlement. Appendix IV of this settlement provided the methodology of consolidation of pension with effect from 01.01.1997 and it was made clear that the pension at the revised rate would be payable with effect from 01.01.1998.

5.This methodology was adopted by the Union of India in respect of officers of Major ports and Dock Labour Board with effect from 01.01.1997 vide their letter dated 28.06.2001. However this formula was not followed by the appellants. Consequently though employees post 01.01.1997 drew higher pay scales, their pension was lower than the pension being paid to the pre 01.01.1997 retirees. It is this anamoly that has given rise to the above Writ Petitions which are the subject matter of these Intra-Court Appeals.

Relief Claimed:

6.For the issue of a Writ in the nature of a Mandamus directing the respondents to grant the length of consolidation of pension to members of the petitioner Association who retired after 01.01.1997/01.01.1998 respectively on par with those who retired earlier during 1996/1997 respectively with arrears and all other attendant benefits due to them.

7. Grounds on which the claim was based:

(a) The anamoly in payment of pension to pre and post 01.01.1997/01.01.1998 retirees was violative of Article 14, 16 and 21 of the Constitution of India and the dictum laid down by the Hon'ble Supreme Court in its Judgement reported in 1983 (1) SCC 305 = AIR 1983 SC 130 - D.S.Nakara and others Vs. Union of India.

(b) By reason of this pay revision pre 01.01.1997/01.01.1998 retirees were drawing more pension than the post 01.01.1997/01.01.1998 retirees.

(c) The formula adopted in the case of the pre 01.01.1997/01.01.1998 retirees of taking basic pay at 607 points notionally irrespective of the basic pay actually received and calculating their pension as if they had got percentage neutralisation with consolidation formula, should be extended to the post 01.01.1997/01.01.1998 retirees.

Counter to this claim by the Port Trust:

8. Though the Port Trust had denied the contentions raised in the Writ Petitions, the appellant herein has admitted that "The application of two different formulae, that is one for the pension and another for the pay with slightly unequaled percentage and disproportionate pension/pay ranges has resulted in anamoly and disparity with regard to the pension fixed between pre-1998 and post 1998 Class III and IV retirees".

9. The respondent had in clear terms admitted the anamoly in the payment of pension and contended that it was the result of the wage settlement that was entered into on 02.08.2000.

10. The learned Single Judge by order dated 06.08.2013 allowed both the Writ Petitions and it is challenging this order that the appellant is before this Court.

Submissions:

11. Mr.G.Rajagopal, learned Assistant Solicitor General of India submitted that the Section 12(3) settlement did not prescribe a cut off date. He would further argue that the Methodology provided in Appendix IV will not be applicable to

employees appointed on or after 01.01.1998 and therefore the directions issued in the order of the learned Single Judge ran contrary to the spirit of the Section 12(3) Settlement. He would in support of his argument rely on the Judgement reported in 2018 SCC OnLine SC 541 - United Bank of India and others Vs. United Bank of India Retirees' Welfare Association and others etc, wherein the Honourable Supreme Court have upheld the difference in the rate of Dearness Allowance granted to employees who retired during the period 01.04.1998 to 31.10.2002 and the employees retiring during the period 01.11.2002 to 30.04.2005 as not being discriminatory. He would therefore pray that the order of the learned single Judge be set aside.

12. Ms.R.Vaigai, Senior counsel appearing on behalf of Ms.Anna Mathew learned counsel for the respondent would contended that following the principles laid down in D.S.Nakkara's case the difference in the pension given to the same class of pensioners who have retired pre and post 10.01.97 / 01.01.98 contrary to the Section 12(3) settlement dated 02.08.2000 is discriminatory and the learned Single Judge was right in allowing the Writ Petitions.

Discussions:

13.The short question involved in the above Writ Appeals is

"Whether the different rates given to the same class of pensioners by the appellants in the matter of payment of pension is justified?."

14.The contention of the respondents 1 and 2 in the respective Writ Appeals is that the pension received by retirees prior to 01.01.1997/01.01.1998 is much higher that of the retirees post 01.01.1997/01.01.1998 and this is discriminatory and is contrary to the various Judgements of the Honourable Supreme Court starting with the Judgement in D.S.Nakara's case.

15. The contention that has been raised by the appellant is that the present claim is inconsistent with the Wage settlement dated 02.08.2000 and having accepted the wage settlement the respondents 1 and 2 cannot be allowed to challenge the wage settlement that is arrived at. The appellants' case is that the revised scale is not applicable to the employees who retired post 01.01.1997/01.01.1998. The right of the pensioners flow from the Section 12(3) Wage Settlement dated 02.08.2000. The respondents 1 and 2 have raised a claim that the methodology of the consolidation pension provided in the Wage Settlement dated 02.08.2000 has not been followed. The counter to this by the appellants is that consolidation of pension is not contemplated for employees who have retired after 01.01.1998.

16.However a reading of Appendix IV of the Wage settlement which deals with the methodology of consolidation of pension clearly indicates that this methodology is with effect from 01.01.1997 which is evident from nomenclature given to the Appendix IV. That apart Clause 7 therein clearly stipulate as follows:

> "Pension at the revised rate will be payable with effect from 01.01.1998"

It is only the fitment formula with reference to the pay scale that is contemplated for employees prior to 01.01.1998. Clause 7.3 of the Settlement would read as follows:

"7.3.The above fitment formula is not applicable to the employees appointed on or after 01.01.1998 and they will start at the minimum of the corresponding revised pay scal. Fresh recruits appointed during the period from 01.01.1997 to 31.12.1997 will be extended the Fitment formula."

17. Therefore the contention of the appellants that this methodology is not applicable to persons who have retired after 01.01.1998 is fallacious. The anamoly that has arisen now can be easily explained with the following illustrations:

The disparity in the pension payable to workmen:

PARTICULARS	Pre 1.1.1997/98 Retiree	Post 1.1.1997/98 Retiree
Illustration I		
Date of Retirement	31.12.1997	31.01.1998
Basic Pay in pre-revised scale on 1.1.1997	Rs.5090	Rs.5090
Pension in the pre-revised Scale	Rs.2515	Rs.2523
Pension at CPI 1708 on 1.1.1998	Rs.5421	Rs.4560
Revised Pension on 1.1.2007 on next pay revision	Rs.11882	Rs.9995
Revised Pension from 1.1.2012	Rs.12559	Rs.10564
Total pension plus Dearness Relief as on 1.6.2018	Rs.28609	Rs.24065

PARTULARS	Pre 1.1.1997/98 Retiree	Post 1.1.1997/98 Retiree
Illustration II		
Date of Retirement	30.6.1997	28.2.2001
Basic Pay in pre-revised scale on 1.1.1997	Rs.4940	Rs.4940
Revised pay after four increment in 2001	Not applicable	Rs.10015
Pension at CPI 1708 on 1.1.1998	Rs.5340	Rs.4910
Revised Pension on 1.1.2007	Rs.11704	Rs.10762
Revised Pension from 1.1.2012	Rs.12370	Rs.11375
Total pension plus Dearness Relief as on 1.6.2018	Rs.28179	Rs.25912

The disparity in the pension payable to Officers:

PARTULARS	Pre 1.1.1997/98 Retiree	Post 1.1.1997/98 Retiree
Illustration I		
Date of Retirement	31.8.1996	31.03.1998
Basic Pay in pre-revised scale on 1.7.1996	Rs.5225	Rs.5225
Subsequent increments in the pre-revised scale	NIL	One Rs.175
Pension in the pre-revised scale	Rs.2543	Rs.2700
Pension at CPI 1708 on 1.1.1998	Rs.5246	Rs.4675
Revised Pension from 1.1.2007	Rs.12153	Rs.10831
Revised Pension from 1.6.2018	Rs.27684	Rs.24673

PARTIULARS	Pre 1.1.1997/98 Retiree	Post 1.1.1997/98 Retiree
Illustration I		
Date of Retirement	31.5.1996	30.9.2000
Basic Pay in pre-revised scale	Rs.5225	Rs.5225
Subsequent increments in the pre-revised scale	Not available	4 increments
Pension in the pre-revised scale	Rs.2490	Not available
Pension at CPI 1708 on 1.1.1997	Rs.5201	Rs.5088
Pension from 1.1.2007	Rs.12049	Rs.11788
Total pension plus Dearness Relief as on 1.6.2018	Rs.27448	Rs.26853

18. The above Table would clearly show the disparity in the pension on account of the appellant not giving effect to the methodology provided in Appendix IV to the Wage settlement dated 02.08.2000.

19. The Honourable Supreme Court in its Judgement reported in 1983 1 SCC 305 - D.S.Nakara and others Vs. Union of India has elaborately dealt with what a pension is in paragraphs 19 to 30 and sums up the discussion by stating that

> (i) pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 rules which are statutory in character because they are enacted in of exercise of powers conferred by the proviso to Article 309 and Clause (5) of Article 148 of the Constitution; (ii) that the pension is not an ex-gratia payment but it is a payment for the past service rendered ; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the WP(C) No.4275/2013 page 4 of 6 hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. It must also be noticed that the quantum of pension is a certain percentage correlated to the average emoluments drawn during last three years of service reduced to ten months under liberalised pension scheme. Its payment is dependent upon an additional condition of impeccable behaviour even subsequent to retirement, that is, since the cessation of the contract of service and that it can be reduced or withdrawn as a disciplinary measure."

Further, considering the classification in a revised pension formula between pensioners on the basis of the date of retirement ultimately the Constitution bench had observed as follows::

> "Only the pension will have to be recomputed in the light of the formula enacted in the liberalised pension scheme and effective from the date the revised scheme comes into force. And beware that it is not a new scheme, it is only a revision of existing scheme. It is not a new retiral benefit. It is an upward revision of an existing benefit. If it was a wholly new concept, a new retiral benefit, one could have appreciated an argument that those who had already retired could not expect it. It could have been urged that it is an incentive to attract the fresh recruits. Pension is a reward for past service".

20. In the Judgement reported in (2013) 2 SCC 772 – Kallakkurichi Taluk Retired Officials Association Tamilnadu and others Vs. State of Tamilnadu, the Honourable Supreme Court was considering the cut off date for calculating Dearness Allowance which was the component for calculating the average emolument for determining the pension. The Government Order in question namely the impugned Government Order dated 09.08.1998 provided for the pensionery benefits of employees retiring on or before 01.06.1988 to be computed by adding Dearness Allowance as Dearness pay at fixed percentage. By virtue of this determination employees retiring on or before 01.06.1988 stood as disadvantage to employees who retired prior to the said date. It was this question that was placed for consideration before the Honourable Supreme Court. The Bench ultimately held as follows:

> "39.Having given our thoughtful consideration to the controversy in hand, it is not possible for us to find a valid justification for the State Government to have classified pensioners similarly situated as the appellants herein (who had retired after 1.6.1988), from those who had retired prior thereto. Inflation, in case of all such pensioners, whether retired prior to 1.6.1988 or thereafter, would have had the same effect on all of them. The purpose of adding the component of 'dearness pay' to wages for calculating pension is to offset the effect of inflation. In our considered view, therefore, the instant classification made by the State Government in the impugned Government order dated 9.8.1989 placing employees who had retired after 1.6.1988 at a disadvantage, vis-à-vis the

> employees who retired prior thereto, by allowing them a lower component of 'dearness pay', is clearly arbitrary and discriminatory, and as such, is liable to be set aside, as violative of Articles 14 and 16 of the Constitution of India".

Consequently the appeals were allowed and the impugned Government Order insofar as it extends to employees who retire on or after 01.06.1988 a lower component of Dearness Pay as against those who have retired prior to 01.06.1988 was declared violative of articles 14 and 16 of the Constitution of India.

21. In the Judgement relied upon by the learned Assistant Solicitor General in 2018 SCC OnLine SC 541 the Honourable Supreme Court dealt with a case where there were two distinct categories of retirees standing on a different footing and as the Biparte settlement classifies the retirees as Pre November 2002 and Post November 2002. However in the case on hand it is the same class of employees and therefore applying the decision in D.S.Nakara's case and Kallakkurichi Taluk Retired Officials Association, Tamilnadu and others' case we are of the opinion that there is no infirmity in the order passed by the learned Single Judge. The Intra Court Appeals filed by the Union of India and the Port Trust therefore stands dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Chairman Chennai Port Trust,
Rajaji Salai, Chennai - 600 001.

2. The Secretary to Government, Union of India,
Ministry of Shipping, Transport Bhavan,
No.1, Parliament Street, New Delhi - 110 001.

+2 cc to M/s.P.M.Subramaniam,Advocate Sr.Nos.69287 & 69288
+2 cc to M/s.Sunita Kumari, Advocate Sr.No.69227
+5 cc to M/s.Anna Mathew, Advocate Sr.No.69620
+1 cc to M/s.Row & Reddy,Advocate Sr.No. 69886

AKM/12.09.19/11P-13C /

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