IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 22.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.19891 of 2009

P.Palanisamy
.. Petitioner

Vs.

The District Treasury Officer,
Salem-1.
.. Respondent

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Certiorarified Mandamus, calling for the record on the file of the respondent in RC.No.20532/2006/F1 dated 07.06.2007 and Roc.No.20532/2006/F1 dated 03.01.2008 and quash the same and direct the respondent to restore the pension of the petitioner as Rs.1152/- as on 01.05.1988 with all consequential monetary benefits and direct the respondent to pay the arrears.

For Petitioner : Mr.P.Manikandan

For Respondent : Mr.Akhil Akbar Ali,
Govt.Advocate

O R D E R

The instant writ petition filed is for a Certiorarified Mandamus, calling for the record on the file of the respondent in RC.No.20532/2006/F1 dated 07.06.2007 and Roc.No.20532/2006/F1 dated 03.01.2008 and to direct the respondent to restore the pension of the petitioner as Rs.1152/- as on 01.05.1988 with all consequential monetary benefits and direct the respondent to pay the arrears.

2. The petitioner retired from the post of Special Tahsildar (ADW), Thiruchengode on the A.N. on 30.04.1988. His pension as on 01.05.1988 was fixed as Rs.1063/- The Collector of Namakkal, in his proceedings No.R.Dis.6632/2000(R) dated 27.04.2000, re-fixed his pension as per G.O.Ms.No.449 Finance Pension Department, dated 12.10.1999 as Rs.1152/-. The petitioner and 32 of the persons filed WP.No.41537 of 2005,

for a Writ of Mandamus directing the Government to extend the benefits of the Government order in G.O.Ms.No.271 Finance Pension Department, dated 15.06.1998 to all the petitioners directing the Government to grant pensionery benefits and arrears of pension with effect from 01.06.1988. In compliance of the said order, the Government passed the G.O.Ms.No.246 Finance Pension Department, dated 02.05.2006. By the said G.O. the Treasury officials were requested to revise the pension / family pension of the 33 petitioners including the petitioner, wherein, the pension was to be re-fixed with effect from 01.06.1988 by allowing 60% increased, if their revised pension plus related dearness allowance at 608 points per month does not exceed Rs.500/-the same shall be re-fixed with effect from 01.06.1988, by increasing the same total of basic pension and related dearness allowance at 608 points with 50%.

3. The relevant portion in which the petitioner's name was excluded reads as under:-

> 4. The Government have decided to implement the orders passed by the Hon'ble High Court of Judicature, Chennai in WP.No.41537 of 2005. Accordingly, they direct that the pension/family pension of Tvl.K.Seshan and 32 others show below, who are the petitioners in WP.No.41537 of 2055 shall be refixed with effect from 01.06.1988 by allowing 60% increase if their revised pension plus related Dearness Allowance at 608 points p.m. does not exceed Rs.500/- and if their pension plus related dearness allowance at 608 points exceeds Rs.600/- the same shall be refixed with effect from 01.06.1988 by increasing the sum total of basic pension and related dearness allowance at 608 points with 50%.
> 1) K.Sheshan 2) P R. Narayanan 3) P.Palanisamy 4) R.Jayaraman 5) T.K.Viswanathan 6) S.Thangarajan 7) T.R.Krishnamoorthy 8) T.A.Krishnamurthy 9) B.Thirumalai Govindan 10) S.Manickam 11) K.Karuppiah Jeganathan 12) S.Ramasamy 13) Veeralakshmi 14) George Nesaiah 15) N.Devakiksham 16) Chellabai 17) J.Damodaran 18) A.Kumaravelu 19) A.Malaichamy 20) S.Ramu 21) Samathanam 22) S.Viswanathan 23) Jayanthi Parker 24) G.Devaraj 25) Seethaiammal 26) G.Sinnagangai 27) M.R.Raju 28) A.Jagadeesan 29) G.Gopal 30) D.Seethalakshmi 31) G.Saraswathi 32) P.Alankaram 33) M.Meenakshi"

4. The petitioner states the benefit of G.O.Ms.No.246 Finance Pension Department, dated 02.05.2006, is not extended to him. He states that despite giving repeated representations, the benefit of the judgment was not given to him. The petitioner gave an application under Right to Information Act. The Collector Namakkal had fixed the pension

of the petitioner at Rs.1152/-. The petitioner came to know that his pension was brought down from Rs.1152/- to Rs.1133/- without adding dearness allowance of 608 points to the pension and the petitioner's arrears was arrived at Rs.2,34,756/- on the basis of the reduced amount. The petitioner paid Rs.1,17,088/- as arrears on 30.11.2006. The petitioner therefore gave a representation to the respondent to rectify the mistake, challenging the reduction of pension from Rs.1152/- to Rs.1133/-

5. The Government gave a letter on 07.06.2007 stating that the petitioner's pension have been calculated as under:-

> "With reference to the application cited, I am to give the following informations:-
> The pension fixed at Rs.1152/- as on 1,5.1988 has been re-fixed at Rs.1133/- as per Govt Lr.No.69656/2000-2001 Fin(pen) Department,Dt.1.3.2001. In the above Government letter, it has been clarified that the percentage of DA sanctioned by the Government has to be taken as 13% instead of 18%.
>
> 3. The amount of arrears of Rs .2,34, 756/- was calculated without taking the DA at 60S points as on 31.5.38, as guided in the classifications sought for by the Special Commissioner and Commissioner of Treasuries and Accounts Chennai, to the Government in letter No.Rc.37331/2005/S2,Dt.9.11 .2006,
>
> 4. Now, the pension has been calculated as per G.0.No.271 /579 as Below
>
> | | |
> |---|---|
> | Pension as on 31.5.33 | Rs.1133 |
> | Revised on 1.6.88 | Rs.1904 |
> | Pension with effect from | |
> | 01.01.2006 | Rs. 5497 |
>
> 5. The difference of arrears payable Rs.117088/- is credited to the pensioner's bank account."

The difference of arrears Rs.1,17,088/- is credited to the pensioner's bank account. The letter also stated that the pension was re-fixed as per the Government letter No.69656 - 200-01, wherein it was clarified the percentage of the dearness allowance sanctioned by the Government is 13%, instead of 18%.

6. The petitioner received another letter dated 03.01.2008 in reply to an query raised by the petitioner before the Tamil Nadu Information Commission, wherein the petitioner had also complained about the delay in disposing of his query. In the said letter, it was stated that the petitioner's case is not considered for the reason that number

of application received after G.O.Ms.No.271 Finance Pension Department, dated 15.06.1998, revising the pension was passed by the Government. It was stated that it took some time and therefore petitioner's case was not considered immediately. The relevant portion of the letter which related to the payment of DCRG reads as under:-

> "Regarding DCRG the Government of Tamilnadu in Lr.78076/Pen/87-1, dated 13.7.1987 has clarified that no DCRG is payable as per G.O.449 to the pensioners who retire in between 1.10.1987 to 31.5.1988. Since both DA and ADA sanctioned upto 30.09.1987 shall be reckoned as Dearness pay for the purpose of pensionary benefits with effect from 1.10.1987. As such the excess paid DCRG of Rs.2442/- as per G.O.449 sanctioned by the Collector Namakkal in proceedings R.Dos.6632/2000/R1, dated 27.4.2000 has been recovered from the G.O.271 Arrears paid to the pensioner Thiru.P.Palanisamy on 30.11.2006. Copy of the sanction order is enlcosed with this letter as a proof for showing the correct recovery of Rs.2442/- The excess paid DCRG instead of DCRG of Rs.776/- recovered from the pensioner as excess is in order and not improper."

7. The letter also stated that the petitioner had been paid excess DCRG of Rs.2442/- as per the order of Collector Namakkal, fixing the pension of the petitioner in his proceedings No.R.Dis.6632/2000(R) dated 27.04.2000. The excess paid to him has been recovered from the petitioner. The letter dated 07.06.2007 and 31.01.2008 are subject matter which is challenged before this Court by filing the instant writ petition.

8. The case of the petitioner is that he is entitled to the same benefits which has been extended to these petitioners who had filed WP.No.41537 of 2005 and where this Court has passed orders in favour of the petitioners. He was stated that G.O.Ms.No.246 Finance Pension Department, dated 02.05.2006, implemented the order of this Court. He therefore stated that he has been discriminated by not being extended the same benefit what given to all others.

9. On notice, the respondent has filed a counter. In the counter, the respondent taken a specific stand that the pension of the petitioner had been wrongly fixed as Rs.1152, because the Collector Namakkal, had taken the dearness allowance as to be 18% as on 01.01.1998 which was in fact to be taken as 13%. It is therefore stated that the excess amount paid should be recovered by fixing the pension as Rs.1133/-. It is specifically stated in the counter affidavit that the Government had issued a letter No.95284/Pension/2000-01, dated 03.05.2008, the portions of the letter as extracted in the

counter affidavit reads as under:-

"6. The relevant portions of the Government Letter No.95284/Pension/2000-01, dated 3.5.2001 are extracted hereunder:

"Amendments:

i) In the Annexure II of Government Letter No. 78921 /Pension/98-18, Finance dated 29.11.1999, Serial No.4 and entries thereon shall be deleted.

ii) In Government Letter No. 92752/Pension/99-1 Finance dated 22.2.2000, the last sentence in para 2 (iii) shall be substituted by the following:

"While arriving all the average emoluments under the old pay / new pay, the Dearness Allowance / Additional Dearness Allowance sanctioned from time to time up to 30.09.1987 shall be taken into account.

2. Consequent on the above amendments, the following instructions are

issued in respect of those retired between 01.01.1988 and 31.5.1988.

i) In respect of cases where Additional Dearness Allowance of 18% or

13% as the case may be, instead of 13% or 9% has already been taken into account during the period from 01.01.1988 to 31.05.1988 -and arrears paid, such excess payment shall be recovered in monthly installments from Dearness Allowance on pension.

ii) ....

iii) In respect of cases where the Departmental Officer have already revised and forwarded pension applications to the Pension Disbursing Officer but not yet given effect by the Pension Disbursing Officers, they are requested to recalculate the original pension taking into account :he Additional Dearness Allowance of 13 or 9 as the case may be, for those retired during the period from 1 1.1988 to 31 5 1988 without returning the pension applications to the departmental officers for further revision."

10. The Annexure-2 of the said Government letter pertaining to the percentage of dearness allowance on 01.05.1988 reds as under:-

Sl.No	G.O.No.and date	Effect of Increase	Percentage of A.D.A.	
			Up to Rs.2500	Above Rs.3500
1	G.O.Ms.No.31, Finance, dated 9.1.1987 and G.O.Ms.No.339, Finance, dated 13.4.1987	01.07.1986	4%	3% subject to minimum of Rs. Per month
2	G.O.Ms.No.339, Finance, dated 13.4.1987	01.01.1987	8%	6% subject to minimum of Rs.280/- Per month
3	G.O.Ms.No. 1044, Finance, dated 22.12.1987	01.07.1987	13%	9% subject to minimum of Rs.455/- Per month
4	G.O.ms.No.388, Finance, dated 30.5.1988	01.01.1988	18%	13% subject to minimum of Rs.630/- Per month.

11. It is therefore the stand of the Government that since the petitioner's pension is only Rs. 1133/- and not Rs.1152. the new pension were calculated as under:-

"Pension (as on 31.05.1988) Rs.1133.00
Add: 1) DA on 608 Pts. Rs. 136.00
Total Rs.1269.00
2) DA 50% on Rs.1269/- Rs. 635.00
New pension from 1.6.1988 Rs.1904.00"

12. It is therefore stated that the calculation is taken at Rs.1133/- then all the benefits which this Court had directed to be given under G.O.Ms.No.246 Finance Pension Department, dated 02.05.2006, have been extended to the petitioner. According to the respondent, the pension and subsequent revision of pension to the petitioner which has been given to the petitioner up to the year 2011, read as under:-

"As on	Amount
Pension from time to time - 1.05.1988	Rs. 1133
-1.06.1988	Rs. 1904
-1.01.1996	Rs. 5497
-1.01.2007	Rs. 12425

-1.01.2011 Rs.14910

Total emoluments as on 01.11.2014

Pension+ (Addl. Pension)	Rs. 14910
DA 107% (1.11.2014)	Rs. 15954
MA	Rs. 100
Total	Rs. 30964"

13. Heard the counsel for the parties.

14. A perusal of the counter would show that the root of the problem is the wrong fixation of the pension at Rs.1152/- by the Collector of Namakkal, by its proceedings No.R.Dis.6632/2000(R) dated 27.04.2000. The amount as stated in the counter was fixed by calculating dearness allowance at 18% and not at 13%. If that figure is rectified, then everything falls in case. No doubt, the petitioner was not given any hearing when the pension was brought down from Rs. 1152/- to Rs.1133/- The Government is therefore corrected the wrong. The Government letter No.95284/Pension/2000-01, dated 03.05.2001, extracted supra, would show that, in such of those case, Additional Dearness Allowance at 18% had been given instead of 13% between 01.01.1998 to 31.05.1998, the excess payment should be recovered by the monthly installments from the dearness allowance and pension. This is what has been done in the case of the petitioner.

15. In view of the above, this Court is of the view that the reduction of pension from Rs.1152/- to Rs.1132/- which passed on Government letter No.95284/Pension/2000-01, dated 03.05.2001, extracted supra, is correct and therefore the consequential benefit has to be proportionally reduced in terms of subsequent Government orders. Writ petition is dismissed. No Costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Pkn.
To

The District Treasury Officer,
Salem-1.
+1cc to Mr.P.Manikandan , Advocate SR.No. 88343
+1 cc to Government Pleader Sr.No. 88706

W.P.No.19891 of 2009

A.SK(25/11/2019)