

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2019

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.Nos.9524 and 9525 of 2008

K.Natarajan .. Petitioner in W.P.No.9524/08
N.P.Ramanunni Nair .. Petitioner in W.P.No.9525/08

Vs

1.The Government of Tamil Nadu,
Rep. By the Secretary to Government,
Personnel & Administrative Reforms (M) Dept.,
Secretariat, Fort St. George,
Chennai - 9.

2.The Government of Tamil Nadu,
Rep. By the Secretary to Government,
Finance Dept., Secretariat,
Fort St. George, Chennai - 9.

3.The Secretary,
Tamil Nadu Public Service Commission,
Government Estate, Chennai - 2.

.. Respondents in both WPs

Prayer: These Writ Petitions filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records of the first respondent culminate in proceedings in G.O.Rt.No.48, dated 23.01.2008, on the file of the first respondent and quash the same and direct the respondents to sanction revised pension to the petitioner from 01.04.1999 at the rate of Rs.7500/- p.m., being 50% of the minimum of the revised time scale of Rs.15000-400-18600, and all attendant benefits within a time stipulated by this Court.

For petitioner : Mr.C.A.Diwakar
for Mr.Sivam Sivanandraj

For R1 & R2 : Mr.K.Ravikumar, AGP
For R3 :Ms.C.N.G.Niraimathi,
standing counsel

ORDER

Challenging the impugned order passed by the first respondent / the Secretary to Government, Personnel and Administrative Reforms Department, Chennai, in G.O.Rt.No.48, P&AR (M) Department, dated 23.01.2008, rejecting their claim for revision of pension with effect from 01.04.1999, the petitioners, who are aged about 85 and 95 years now respectively, have filed this writ petition seeking to quash the same.

2. It is submitted by the learned counsel for the petitioners that only the petitioners, who are octogenarian and living now, are fighting for their pension seeking to revise their pension from Rs.6000/- to Rs.7500/- per month with effect from 01.04.1999 being 50% of minimum revised time scale of pay of Rs.15000-400-18600. By referring to the letter dated 06.07.1999 issued by the Tamil Nadu Public Service Commission (TNPSC), it is submitted that the post of Joint Secretary to the Commission was in existence for more than 21 years i.e. from 27.10.1972 to 23.12.1993 and it was downgraded as Deputy Secretary for administrative reasons. Therefore, with reference to the orders issued in G.O.Ms.No.200, Finance (PC) Department, dated 18.05.1999, some of the pensioners, who held the post of Joint Secretary to the Commission, have now applied for revision of their pension at the rate of 50% of minimum time scale applicable to the post of Joint Secretary in the Government, however, since no such post is in existence now in the Commission, the pension to the said post could not be revised. Citing these reasons, the Secretary to the Tamil Nadu Public Service Commission, vide letter dated 06.07.1999, had requested for revision of pension for the post of Joint Secretary on the principle adopted in G.O.Ms.No.7, P&AR Department, dated 04.01.1996, with effect from 01.04.1999 to the petitioners, who retired as Joint Secretary in the Commission's office. When the Commission itself had made a request to regulate the pension for the post of Joint Secretary, the Finance Department of the State Government also, vide their letter dated 19.07.1999, had accepted the said proposal stating that the scale of pay applicable to the post of Joint Secretary to Government may be adopted to the similar post of Joint Secretary in the Commission. However, without taking note of such recommendation, the first respondent, vide impugned order, had refused to consider their request for revision of pension with effect from 01.04.1999 being 50% of the minimum revised scale of pay applicable to the corresponding posts in the Secretariat with effect from 01.01.1996 on the ground that the pay scales of the

staff/officers of the TNPSC was brought on par with Secretariat only with effect from 04.01.1996.

3. Assailing the said impugned order, it is contended that when only two pensioners (petitioners herein), who had served in the TNPSC as Joint Secretary, are presently living and receiving the pension, there is no justification on the part of the first respondent to refuse their genuine request for revision of pension with effect from 01.04.1999 being 50% of the minimum revised scale of pay as applicable to the corresponding posts in the Secretariat. Therefore, it is further contended that since the request of the petitioners for revision of their pension has been accepted by the TNPSC as well as the Finance Department, the impugned order is liable to be set aside as the revision of scale of pay is not going to cost heavily, for, as stated above, only two persons are alive now.

4. Learned Additional Government Pleader for the respondents, although heavily opposed that there is no error or infirmity in the order impugned herein, submitted that since there are only two persons are left, their request may be considered based on the recommendation given by the TNPSC as well as the Finance Department of the State Government.

5. It is seen that the post of Joint Secretary in the TNPSC was in existence for more than 21 years i.e. from 27.10.1972 to 23.12.1993 and thereafter, for administrative reasons, it was downgraded as Deputy Secretary. Whiles, some of the pensioners, who held the post of Joint Secretary in the Commission and retired, had requested for revision of their pension as applicable to the post of Joint Secretary in the State Government. Since the post of Joint Secretary was downgraded as Deputy Secretary, whenever revision of scale of pay was considered by the State Government, in view of the abolition of the post of Joint Secretary, revision of pension to the persons, who had served as Joint Secretary, could not be considered by the TNPSC. When there was no fault on the part of the petitioners, the first respondent cannot deny the benefit of revision of pension to the petitioners. This apart, as on today, only these two petitioners retired from the post of Joint Secretary are receiving meagre pension, therefore, if the revision of scale of pay is considered on par with the persons working in the cadre of Joint Secretary in the State Government, that would not cause any financial implication to the State Government.

6. Moreover, when the petitioner/K.Natarajan had filed a writ petition No.23010/02, this Court, vide its order dated 28.06.2002, dismissed the said writ petition on the ground of latches. As against that, when the petitioners herein have filed W.A.No.2797/92 and W.P.No.12034/02, the Hon'ble Division Bench of this Court, vide its order dated 13.06.2007, while setting aside the order passed by the learned Single Judge, directed the respondent concerned to reconsider the case of the petitioners afresh. However, without properly adhering to the direction of this Court as well as the recommendations of the TNPSC and the Finance Department of the State Government to revise the pension of the petitioners who had retired from the post of Joint Secretary in the TNPSC on par with the scale of pay of the Joint Secretary working in the State Government, the first respondent has passed the present impugned order refusing to revise the pension of the petitioners, hence, the same is liable to be set aside, for, now the post of Joint Secretary in the TNPSC had been abolished as it is downgraded to the post of Deputy Secretary. Besides, now only two persons (petitioners herein) aged about 85 years and 95 years respectively, who had served as Joint Secretary in the TNPSC, are living, therefore, I do not see any reason why their claim to revise their pension on par with the persons working in the cadre of Joint Secretary of the State Government cannot be entertained.

7. Further, it is an admitted fact that the post of Joint Secretary, which came in existence in October, 1972, was downgraded as Deputy Secretary for administrative reasons on 23.12.1993, hence, it was not included in the amendments to the Regulations issued on 04.01.1996 for the purpose of revision of pension. It is also an admitted fact that the petitioners were appointed as Joint Secretary in the TNPSC with a scale of pay of Rs.1100-50-1500 with effect from 11.12.1989 and 27.10.1972 respectively. The above scale of pay underwent subsequent revision and it was fixed at Rs.2750-150-3650, more particularly, when the post was downgraded as Deputy Secretary on 23.12.1993. However, the post was revived in the year 2007 and the scale of pay was fixed at Rs.15000-400-18600 and the petitioners held the post of Joint Secretary till their retirement on 31.05.1990 and 30.06.1977 respectively. Later on, the Chairman, TNPSC, considering the need to improve the skills of the staff of the TNPSC qualitatively towards the work relating to the recruitment, sent a proposal, inter alia, stating that the nomenclature of posts in the office of TNPSC be changed and modeled on the lines of the posts in

the Secretariat. Subsequently, the Government also, accepting the said proposal of the TNPSC, issued necessary amendments to the Regulations in G.O.Ms.No.7, Personnel & Administrative Reforms (M) Department, dated 04.01.1996, and thereby, some of the posts were modified, as a result, the post of Joint Secretary in TNPSC has been downgraded as Deputy Secretary. But, in the year 2007, the post of Joint Secretary has been revived. Had the post of Joint Secretary was in existence when G.O.Ms.No.7, dated 04.01.1996, was issued bringing the staff working in the TNPSC on par with the staff of the Secretariat Service, the petitioners would have received the revised pension of Rs.7500/- being 50% of the revised scale of Rs.15000-400-18600 on par with the Joint Secretary of the Secretariat Service. But, in view of abolition of the said post on 23.12.1993, the petitioners were denied such benefits.

8. In this context, it is also apposite to refer to paragraph No.13 of G.O.Ms.No.200, Finance (Pay Cell) Department, dated 18.05.1999, which is quoted below:-

"13. In respect of employees whose posts were abolished and not in existence now, the concerned authority shall address Finance (Pay Cell) Department directly and obtain the appropriate revised scale admissible to that post(s) with effect from 01.01.1996."

Since the post of Joint Secretary held by the petitioners after their retirement on 31.05.1990 and 30.06.1977 respectively was abolished on 23.12.1993, the petitioners, in terms of paragraph No.13 of the above said Government Order, sent a representation dated 17.06.1999 to the TNPSC requesting to revise their pension at Rs.7500/- being 50% of the revised scale of Rs.15000-400-18600 applicable to a retired Joint Secretary of Secretariat Service. On receipt of such representation, as stated supra, the TNPSC also, vide letter dated 06.07.1999 addressing to the Finance Department, recommended the claim of the petitioners for revision of pension. Subsequently, the Finance Department also, vide letter dated 19.07.1999, accepted the said recommendation stating that the scale of pay applicable to the post of Joint Secretary to Government may be adopted to the similar post of Joint Secretary in the TNPSC. But, these vital recommendations have not been properly looked into by the first respondent while passing the impugned order.

9. Thus, for the reasons stated above and also the fact that out of four persons served as Joint Secretary in the TNPSC, only two persons (petitioners herein) aged about 85 and 95 years respectively are living now and that there will not be any financial hardship to the Government for revising the pension to these two persons alone, the impugned order is liable to be set aside and accordingly, it is set aside. Consequently, the writ petitions are allowed by directing the respondents to sanction the revised pension to the petitioners with effect from 01.04.1999 at the rate of Rs.7,500/- per month, being 50% of the minimum revised scale of pay of Rs.15000-400-18600/-, with corresponding family pension. Needless to mention that the arrears shall be paid to the petitioners within a period of four weeks from the date of receipt of a copy of this order.

Sd/-

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

rkm
To

- 1.The Secretary to Government,
Personnel & Administrative Reforms (M) Dept.,
Secretariat, Fort St. George,
Chennai - 9.
- 2.The Secretary to Government,
Finance Dept., Secretariat,
Fort St. George, Chennai - 9.
- 3.The Secretary,
Tamil Nadu Public Service Commission,
Government Estate, Chennai - 2.

+1cc to Mr. Sivam Sivanandraj, Advocate SR.No. 22938
+1 CC TO GOVERNMENT PLEADER SR.NO. 23611

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A.SK(15/03/2019)