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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.22447 of 2018
and
W.M.P.No.23608 of 2018

N.Rajalingam .. Petitioner
Vs.

1. The Accountant General,
Office of the Accountant General (A & E),
No.361, Anna Salai,
Chennai-600 018.

2. The Principal Subordinate Judge,
Mayiladuthurai.

3. The Registrar General,
Madras High Court,
Chennai-600 104.

(Third respondent impleaded, vide
Court Order dated 11.01.2019 made in
W.M.P.No.31604 of 2018 in
W.P.No.22447 of 2018)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the first respondent in No.AG(A & E)/PEN PO2/10223183/2/RO223183, dated 20.07.2018 and the consequential order passed by the second respondent in Order No.10/2018, dated 01.08.2018, quash the same and direct the first respondent to disburse the retirement benefits and pension by including the 5% P.P.

For petitioner :Mr.T.S.Baskaran

For respondents:Mrs.Hema Muralikrishnan, SCGSC for R-1
Mr.M.Kempraj for RR-2 & 3



ORDER

(The Order of the Court was made by R.Subbiah,J)

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The petitioner has come forward with the present Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the first respondent in No.AG(A & E)/PEN PO2/10223183/2/RO223183, dated 20.07.2018 and the consequential order passed by the second respondent in Order No.10/2018, dated 01.08.2018, quash the same and direct the first respondent to disburse the retirement benefits and pension by including the 5% Personal Pay.

2. It is the grievance of the petitioner that he joined duty as Office Assistant on 01.08.1992 in the Tamil Nadu Judicial Ministerial Service and subsequently promoted as Process Server/Junior Bailiff in the year 1986 and further promoted as Senior Bailiff/Bailiff on 08.08.1994. He retired as Special Grade Bailiff on 30.06.2018. The Government in G.O.Ms.No.664, Finance (PC) Department, dated 24.08.1992, decided to grant Personal Pay at 5% of the Basic Pay to all categories mentioned in paragraph 4(i) to (iv) of the said G.O. with effect from 01.08.1992. The Senior Bailiffs are entitled to the said Personal Pay as they come under the category (i) and (ii) of paragraph 4 of the said G.O. and all other similarly placed employees having lower scale of pay and higher scale of pay than the persons like the petitioner, were given the benefits. Mistakenly, the benefits were denied to Senior Bailiffs by oversight and misconception of the said G.O. and later, the persons like the petitioner received the benefits from 1998 to 2001. Subsequently, the Government, by its proceedings in Letter No.43076/P.C/99-1, dated 08.08.1999, held that the post of Senior Bailiff is not coming under the said G.O.Ms.No.664 and the pre-revised scale of pay of Senior Bailiff is not fixed as per the said G.O.Ms.No.664. Further, as per G.O.Ms.No.497, Finance (PC) Department, dated 15.09.1998, only those who received 5% Personal Pay prior to 01.01.1998 alone are entitled to get 5% Personal Pay, i.e. those who are recruited/promoted as Bailiff after 01.09.1998 are not entitled (in other words, those who are not in service on 01.09.1998) and based on the same, the Government passed recovery order in No.44118/C.V/99, dated 08.09.1999. Both the said proceedings, dated 08.08.1999 and 08.09.1999 were challenged by the Tamil Nadu Judicial Senior Bailiffs' Association in the Writ Petition in W.P.(MD).No.8818 of 2008. This Court, by order dated 13.10.2009, after considering the contentions, particularly the order passed in W.P.No.20156 and 13143 of 2008, dated 10.03.2006 by a Division Bench of this Court, in which it was held that the omission of



Selection Grade Head Clerks and Translators, etc., from the benefit of G.O.Ms.No.664 could not be sustained and the Personal Pay was ordered to be granted therein, allowed W.P.(MD).No.8818 of 2008, thereby, this Court granted the relief sought for by the members of the Tamil Nadu Judicial Senior Bailiffs' Association in the said W.P., and it was held that the members of the said Association are entitled to the benefits of G.O.Ms.No.664 stated supra with effect from 01.08.1992 with 6% interest, thus, the Senior Bailiffs working on or after the date of implementation of G.O.Ms.No.664, i.e. 01.08.1992, are entitled to the benefits of the said G.O.

3. It is further submitted by the petitioner that the said orders passed by this Court are 'Judgment-in-Rem', as the same is applicable to all the Senior Bailiffs working within the State of Tamil Nadu. The said order of this Court dated 13.10.1999 was implemented by the Government by letter in No.34283/CMPC/2010, dated 10.9.2010. By the said letter dated 10.09.2010, the benefits sought for by the petitioner and similarly placed persons, were denied and only to those Bailiffs who got promotion to the higher post, were granted the benefits, for whom the Personal Pay is available as per the said G.O.Ms.No.664. Based on the said order of this Court and as per the above proceedings of the Government, all Bailiffs have received the benefit of 5% Personal Pay and the petitioner had also received the benefit of Personal Pay from his date of appointment/promotion as Bailiff, i.e. 08.08.1994. Though the benefit is given to all the employees working in the other Departments, the Government denied the benefit of 5% Personal Pay only to Judicial Ministerial Service Staffs on one reason or the other. That is to say that the benefit of Personal Pay was discontinued as and when the employees are promoted to the next higher post for which no Personal Pay is available, as per the existing orders/instructions and the Personal Pay now allowed by the said proceedings dated 10.09.2010, shall be discontinued. If they are already promoted to the next higher post, which are not entitled for Personal Pay, the Personal Pay should be discontinued from the date of their promotion to the next higher post. Thus, the petitioner is being denied the Personal Pay based on the said letter dated 10.9.2010. It is the further submission of the petitioner that this Court, in various orders, had granted the benefits of Personal Pay to all categories of employees working in Judicial Ministerial Service on the ground that they are also covered under the said G.O.Ms.No.664.

4. While so, to the shock and surprise of the petitioner, nearly after the period of eight years and after his retirement, the first respondent, by the impugned proceedings, dated 20.07.2018, stated that the petitioner is not entitled for 5% Personal Pay, as he was promoted as Bailiff on 08.08.1994, i.e.



after the issuance of G.O.Ms.No.664, dated 24.08.1992 and reduced the pension by excluding 5% Personal Pay, which was granted to him even in the year 2011 itself and further directed for re-fixation of his pay accordingly. Consequently, the second respondent, by proceedings dated 01.08.2018, ordered for recovery of excess payment of pay and allowances from 08.08.1994 to the date of retirement being 30.06.2018. Challenging the said order/proceedings, dated 20.07.2018 and 01.08.2018, the present Writ Petition is filed by the petitioner for the relief stated supra.

5. The first respondent has filed counter affidavit inter-alia stating that paragraph 5 of the said G.O.Ms.No.664 stipulates that the Personal Pay is sanctioned under exceptional circumstances as one time transitional measure for all the categories in the specified scales. The said G.O. also categorically stated that, "There shall be no entitlement for this Personal pay from any other categories in any other scale. This scheme of Personal Pay is exclusive to the specified scale of pay keeping in mind the job responsibilities attached to the categories in these scales." As the petitioner is holding the post of Senior Bailiff, he is not covered under the said G.O., as the pair of scales of pay was not contemplated in the said G.O. The petitioner was holding the post of Senior Bailiff only with effect from 08.08.1994 and he was not holding that post on 01.08.1992 and hence, the petitioner is not entitled to 5% Personal Pay with effect from 01.08.1992 and hence, the same was not taken for calculating the pensionary benefits by the first respondent's office, which had been intimated to the petitioner by the first respondent's office, vide letter dated 20.07.2018. However, 5% on 01.09.1998 as per G.O.Ms.No.497, i.e. Rs.173/- had been taken for calculating pensionary benefits of the petitioner and thereby, the grievance of the petitioner for awarding 5% Personal pay, is settled.

6. The second respondent has also filed counter affidavit stating that 5% Personal Pay had been granted only in respect of certain categories of employees who were in the pre-revised pay scale of Rs.475-775 moving over to the revised scale of pay of Rs.775-1050 and all categories of staff in the pre-revised scale of pay of Rs.610-1075 moving to the revised scale of pay of Rs.950-1600, Rs.975-1660 and Rs.705-1230 moving over to the revised scale of pay of Rs.1200-2540 and those in the pre-revised scale of Rs.905-1545 moving to the revised scale of pay of Rs.1600-2660. The post held by the petitioner did not specifically come under any of the above categories. The petitioner was not holding the post of Senior Bailiff as on 01.06.1988 and grant of 5% Personal Pay arises only subsequently on 01.08.1992. The first respondent has to be given a direction from the Government in pursuance of various decisions of this



Court and only after such clarification/direction, the first respondent, who is the pension calculation authority, has to grant the second respondent the relevant calculation based on the pay scale and 5% Personal Pay and only after the said process, the second respondent will be able to act and comply with the same in accordance therein.

7. The third respondent has also filed counter affidavit stating that as per Government Letter in Letter No.106614/PC/92-1, Finance Department, dated 30.09.1992, the employees appointed and promoted from 01.06.1988 to 26.06.1989 alone are eligible to get the benefit of 5% Personal pay. Newly appointed employees who entered into service on or after 27.06.1989, are not eligible for the said Personal Pay. The Government had issued another order in G.O.NO.873, Finance Department, dated 27.12.1993, stating that the employees newly appointed/promoted on or after 27.06.1989, are not eligible to get the Personal Pay. Subsequently, as per the Government Letter in No.106403/CMPC/93-1, Finance Department, dated 24.01.1994, it was clarified that the employees who were promoted on or after 27.06.1989, within the above said four categories, are eligible to get the benefit of Personal Pay. At the time of issuing the said G.O.Ms.No.664, since the category of Senior Bailiff was attached to the scale of pay of Rs.825-15-900-20-1200, they were not covered within the above said four categories. Therefore, they are not entitled to get the benefit of 5% Personal Pay as per the said G.O.Ms.No.664. Subsequently, the scale of pay of Senior Bailiffs had been revised and enhanced equal to the scale of pay of Junior Assistant, i.e. Rs.975-25-1150-30-1160 with effect from 01.06.1988 as per G.O.Ms.No.61, Finance (Pay Cell) Department, dated 24.01.1996. Further, the Government, by letter in No.43076/P.C/99-1, dated 08.08.1999 clarified that the Senior Bailiff is not entitled to get 5% Personal Pay and had passed the recovery order by letter No.44118/C.V/99, dated 08.09.1999. Challenging the said recovery order, the Tamil Nadu Judicial Senior Bailiffs' Association, Virudhunager, filed W.P.(MD). No.8818 of 2008 before the Madurai Bench of this Court, which was allowed by order dated 13.10.2009, based on which, the Government, vide Letter in No.34283/CMPC/2010, Finance Department, dated 10.09.2010, had implemented the order of this Court in respect of the post of Senior Bailiff in Judicial Department with effect from 01.08.1992. However, this benefit of Personal Pay shall be allowed to the above post as long as they continue in the post. As and when they are promoted to the next higher post, for which, no Personal Pay is available as per the existing orders/instructions, the Personal Pay now allowed in this letter, shall be discontinued. If they are already promoted to the next higher posts, which are not entitled for Personal Pay, the Personal Pay should be discontinued from the date of their promotion to the next higher post.



8. When the present Writ Petition is taken up for consideration, the learned counsel for the petitioner submitted that the issue involved in this Writ Petition is no longer res-integra, as the same is covered by the order of this Court, dated 23.01.2017 passed in W.P.(MD).No.18707 of 2016 and also the order of this Court, dated 20.03.2017 passed in W.P.(MD).No.13665 of 2013. Thus, in identical matters, as stated in the above Writ Petitions, this Court had quashed the challenged order therein and allowed the Writ Petitions, granting 5% Personal Pay to the petitioners therein.

9. Following the abovesaid orders of this Court, the present Writ Petition is also allowed as prayed for, quashing the impugned orders and the first respondent is directed to disburse the retirement benefits and pension by including 5% Personal Pay, to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, W.M.P. is closed.

s/d-
Assistant Registrar(CS VI)

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Sub-Assistant Registrar

CS

To

1. The Accountant General,
Office of the Accountant General (A & E),
No.361, Anna Salai,
Chennai-600 018.
2. The Principal Subordinate Judge,
Mayiladuthurai.
3. The Registrar General,
Madras High Court,
Chennai-600 104.

+1 CC to M/s. Hema Muralikrishnan, Advocate sr 51908.

+1 CC to Mr.T.S.Baskaran, Advocate sr 51967.

W.P.No.22447 of 2018

VSNII(CO)
SP(01/08/2019)