

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
01.10.2020	23.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.19319 of 2010
and M.P.No.1 of 2010

G.Arunagiri

... Petitioner

-vs-

- 1.Government of India,
Rep. by its Secretary,
Ministry of Social Justice & Empowerment,
Room No.604, 'A' Wing,
Shastri Bhavan,
New Delhi - 110 001.
- 2.The Joint Secretary and Chairman,
District Rehabilitation Centre Scheme,
Ministry of Social Justice & Empowerment,
Room No.611, 'A' Wing,
Shastri Bhavan,
New Delhi - 110 001.
- 3.The Director,
Ministry of Social Justice & Empowerment,
Shastri Bhavan,
New Delhi - 110 001.
- 4.The Director,
National Institute for the Empowerment of Persons with
Multiple Disabilities,
Muttukadu, Chennai,
Tamilnadu.
- 5.State of Tamil Nadu,
Rep. by its Secretary,
Director of Medical Education,
Chennai.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to pay pension and gratuity to the petitioner as is

being given to the employees of the Institute for Physically Handicapped under the Ministry of Social Justice and Empowerment, Government of India with all arrears and penal interest of 18% with exemplary costs.

For Petitioner : M/s.Meenakshi
For R1 : Mr.K.Seetharaman
For R2 to R5 : Mr.S.Arockiam

O R D E R

The Writ Petition has been filed for a direction to the respondents to pay pension and gratuity to the petitioner as is being given to the employees of the Institute for Physically Handicapped under the Ministry of Social Justice and Empowerment, Government of India with all arrears and penal interest of 18% with exemplary costs.

2. The case of the petitioner was that he is a Diploma Holder in Mechanical Engineering and Diploma Holder in Prosthetics and Orthotics. He joined the services of Government General Hospital, Madras as Prosthetic Cratsman Gr.II on 01.10.1970 under the Department of Health and Family Welfare, Government of Tamil Nadu and he was promoted as Prosthetic Technician Gr.II on 31.03.1982 and continued till 26.02.1990. It was further case of the petitioner that pursuant to the notification published in the newspaper, inviting applications to the post of Assistant Professor in Orthotics and Prosthetics Engineering by the Government of India, he applied for the said post, as the notification stated that the "Posts carry Central Government Pay Scales and allowances". The petitioner was selected as Assistant Professor and was assigned to the Government Rehabilitation Centre, Madras and he was also offered the pay scale of Rs.1100 - 50 - 1600 plus other allowances.

2.1. It was also the case of the petitioner that he was sent by the State Government on deputation to the Regional Rehabilitation Training Centre (RRTC) under the Ministry of Social & Women's Welfare for a period of one year and the State Government extended the deputation till 26.02.1990 and if he did not join his parent Department even after 26.02.1990, his lien in the Department would be deemed to have been cut and his appointment in the Government of India would be treated as "Direct Recruitment" secured on his own. Since he chose to continue in the services of the Government of India, Regional Rehabilitation Training Centre, his lien to the parent Department was cut after 26.02.1990.

2.2. It was stated by the petitioner that he was on probation for a period of two years and in the case of employees

on deputation, an order dated 18.04.1986 was issued stating that their leave salary, pension contribution, etc., were to be remitted to their parent organization on a regular basis, thereby it could be inferred that the service in the Regional Rehabilitation Training Centre was pensionable. While so, an Office Memorandum dated 01.05.1987 was issued by the Ministry of personnel, Public Grievances & Pensions, New Delhi with regard to conversion of CPF to Pension scheme.

2.3. It was further stated that after lien was cut from the State Government Services, he was instructed in 1990 by the Project Director, DRCS to subscribe to CPF without giving any prior intimation regarding the pension scheme introduced and as per the Office Memorandum dated 01.05.1987 and the letter dated 02.02.1989, according to the petitioner, he was governed by the pension scheme and not by the CPF. Though the petitioner, even before his retirement, sent a representation on 12.03.2007 to the Joint Secretary (Disability Division), Ministry of Social Justice and Empowerment, seeking favourable orders regarding grant of pension, he was issued a Demand Draft for a sum of Rs.6,35,190/- towards CPF accumulation, which was received by the petitioner without prejudice to his rights. His further representation dated 12.03.2007 and 04.05.2007 were not attended to and on 31.05.2007, he was relieved from duty on his attaining superannuation.

2.4. It was specifically stated by the petitioner that his colleague by name Ms.Nirmala Venkateswaran / the first employee to retire from the services of the RRTC had filed a Writ Petition in W.P.No.21935 of 2002 before this Court for granting gratuity, pension and other terminal benefits, which was allowed by this Court on 15.11.2006. The Writ Appeal preferred by the Government of India against the said order in W.A.No.1108 of 2007 was dismissed on 21.01.2008 and the Special Leave Petition in S.L.P.(Civil) No.19803 of 2008 filed before the Supreme Court was also dismissed on 22.08.2008, thereby the issue with regard to the grant of pension attained finality. Since the order of the Apex Court is common to the similarly placed persons, he waited for the grant of pension by the Government of India, except sending another representation dated 12.02.2010 in this regard. Since there was no effective steps taken for the grant of pension, the petitioner is before this Court seeking for the aforesaid direction.

3. The respondents 1 to 3 have filed a counter affidavit, inter alia stating as follows:

i) The petitioner had joined and continued to work at RRTC, Madras under DRC scheme and the period spent by him in RRTC under DRC scheme cannot be treated as regular service and he is not entitled to any pensionary benefits except payment of CPF;

ii) It was stated that it was the petitioner, who submitted an application dated 05.01.1989 to the Project Director, DRC Scheme New Delhi stating that he was desirous to continue his service at RRTC, Madras and requested for extension of his deputation period. The petitioner also requested for his absorption on the expiry of his present term of deputation vide his letter dated 18.07.1990 and the plea made by the petitioner that his service in RRTC was pensionable is highly misconceived;

iii) It was also stated that the provisions of OM No.4/1/87-PIC-I dated 01.05.1987 from the Ministry of Personnel, Public Grievances and Pensions are not applicable to the petitioner, as he was governed by the relevant service Rules of the State Government of Tamil Nadu and the orders dated 21.01.2008 passed in W.P.No.1108 of 2007 is not applicable to the case of the petitioner, as the petitioner therein was a direct recruit, whereas the petitioner herein was appointed on deputation basis and therefore, the case of the petitioner can be compared with the case of one S.P.Parasher, who was appointed on deputation basis and whose CPF contribution was deducted from his salary from June, 1992 after termination of his lien period and as per the Rules made applicable to DRC-CACU, only direct recruits were eligible for CPF benefits;

iv) According to the respondents, when Parashar filed O.A.No.1068 of 2007 in the Principal Bench of CAT, New Delhi for quashing the orders issued by PDC, DRC, it was held that as per the Rule, the period the applicant spent in DRC cannot be counted towards the qualifying service for the purpose of the pensionary benefits and rejected the claim of the said Parashar. It was urged in the counter affidavit that the petitioner, being a project employee, cannot compare himself with the regular employees and the period spent at RRTC, Madras cannot be counted for pensionary benefits.

4. The petitioner filed a rejoinder affidavit to the counter affidavit, wherein it was stated that his case is compared only with Ms.Nirmala Venkateswaran, since the Government of Tamil Nadu had already declared his appointment at the Regional Rehabilitation Training Centre as direct recruitment and not on deputation, whereas Mr.S.P.Parasher was appointed by the Project Director, District Rehabilitation Centre Scheme by calling application on deputation basis and the offer of appointment of the petitioner was given by the then Joint Secretary, Ministry of Social Welfare after direct recruitment was made through open advertisement and selected by the expert committee. It was urged in the rejoinder that since he was from regular Medical Subordinate service from Government of Tamil Nadu and covered under GPF scheme, his case cannot be equated to that of

Mr.S.P.Parasher. Finally, it was stated that two staff members from All India Institute of Physical Medicine and Rehabilitation under Ministry of Health Department were on deputation to Regional Rehabilitation Training Centre, Mumbai for more than 18 years and at the time of closure of Regional Rehabilitation Training Centre, Mumbai, their services at Regional Rehabilitation Training Centre were taken into account and regularized, on account of which, they have been receiving their pension now.

5. Heard the learned counsel on either side and perused the material documents available on record.

6. The main plea taken by the petitioner was that an Office Memorandum dated 01.05.1987 was issued by the Ministry of Personnel, Public Grievances & Pensions, New Delhi, wherein it was clearly stipulated that all CPF beneficiaries in service on January, 1, 1986 and who were in service at that time, should be deemed to have come over to the pension scheme on that date, unless they specifically opt out to continue under the CPF. According to him, the employees of RRTCs were not informed of the pension scheme introduced in the Institute of Physically Handicapped (IPH) nor were they asked for any option in that regard.

7. The Hon'ble Division Bench of this Court in the appeal preferred by the Government against the order passed in Writ Petition filed by Ms.Nirmala Venkateswaran in W.A.No.1108 of 2007 took note of the said discrepancy and dismissed the appeal filed by the Government. For better appreciation, the observations made by the Division Bench of this Court in the said Writ Appeal are as follows:

"5. The respondent was subscribing to CPF since 1985. Since the employees of the RRC were not informed of the pension scheme introduced in the IPH, nor asked any option in that regard, on the respondent coming to know about the amendment to the bye-laws of IPH, she opted for pension by her letter dated 01.05.1988. There were series of requests made by her to almost all authorities for grant of pension. Though certain replies were received by her to the effect that her request was being considered in accordance with the Rules, nothing fructified. Hence, she filed the writ petition with the prayer as stated above.

10. We are not able to accept the argument of the learned counsel for the appellants. It is an undisputed case that IPH caused a publication in the

newspaper (Indian Express dated 28.11.1984) in which it invited application for 8 posts. One among them was the post of Assistant Professor in Occupational and Physiotherapy. The number of posts for which the applications were called for was 4. The scale of pay was Rs.1100-50-1600/-. The qualifying age was 'not more than 45 years'. Qualifications and experience have been prescribed as 3 years degree/diploma in occupational/physiotherapy with atleast 10 years of teaching/clinical experience. The publication further stated that the selected applicant would be required to serve in any of the training institute for the disabled under the Government at New Delhi, Bombay, Madras, Lucknow, Cuttack and Calcutta. All posts carry central Government pay scale and allowances. It further stated that the posts are senior level trainee posts. Each trainee team would be required to train physicians, therapists, audiologists, vocational counsellors, orthotic and prosthetic technicians and multi purpose rehabilitation workers, etc., in DRC. In the publication there is no reference to the fact that the posts are either temporary in nature or for a specified period or under any scheme.

11. By the Official memorandum dated 30.01.1985/01.02.1985 after referring to the earlier letter of the Joint Secretary dated 29.01.1985, the terms and conditions of the respondent's appointment had been given. In clauses (ii), (iii) and (iv) it has been clearly stated that dearness allowance/additional dearness allowance/interim relief, house rent allowance, city compensatory allowance would be admissible at the rate at which it was allowed to the employees of the Central Government. The office order dated 18.03.1985 also referred to the order No.15-6/84-HW-III dated 1st February, 1985.

12. From the above it is clear that the respondent has been appointed in the IPH with the terms and conditions of appointment as stated therein and that she was entitled to all the benefits which are available to the Central Government employees. Further, the proceedings dated 04.07.1986 in Reference No.1-1 (8) 85 MSW ORC 542 (1) makes it clear that the rules and regulations contained in the bye-laws applicable to the employees of IPH, New Delhi would apply mutatis mutandis to the employees directly recruited in CACU/RRTCs and the applicability of CCS

(Contributory Provident Fund) Rules was also stated therein. It is an admitted case that since 1985 the respondent has contributed to CPF scheme.

13. The bye-laws for administration and management of IPH framed by virtue of the power conferred by Rule 10.5 of the Rules and Regulations of IPH provides for pension benefits as follows :

6. General Service Conditions of the employees :

(vii) Pension and G.P.F.

"The employees of the Institute shall be eligible to pensionary benefits and GPF and gratuity as per the Central Government Rules. On completion of one year of service, the employee will be eligible for admission to the Institute's GPF scheme.

The present CPF scheme will continue for the employees, existing on the date these bye-laws are made effective, i.e., 2nd May, 1988 in the IPH, who do not opt for GPF scheme and opt to continue under CPF scheme."

14. Thus, it is clear that the respondent is entitled to the pensionary benefit as she opted for the same by her letter dated 01.05.1988. As already stated from 01.05.1988 onwards, the respondent was repeatedly making representations 08.06.1988, 08.09.1988, 14.10.1988, 14.01.1999, 08.02.1999, 22.03.1999, 23.04.1999, 26.04.1999 and 06.05.1999. However, by letter dated 20.12.1999 the Project Director informed the respondent that the action towards approval of her pension and gratuity was being taken up with the Ministry. The said letter was followed by another letter dated 10/15.02.2000 stating that the respondent was entitled to receive final payment of balance lying in her CPF account and if she desires she could draw the final payment. As regards the pensionary benefit, it was reiterated that the Ministry was in the final stage of taking action. From the above it is clear that the respondent is entitled to pension and all through, it is not the case of the appellants that the respondent is not entitled to pension."

8. Learned counsel for the petitioner also brought to the attention of this Court that the order passed in the Writ Appeal has been confirmed by the Hon'ble Supreme Court in S.L.P.(Civil) No.19803 of 2008 on 22.08.2008.

9. The contention of the respondents that the case of the petitioner cannot be compared with Nirmala Venkateswaran, lacks merits acceptance, as a perusal of the judgment of the Division Bench shows that she was also appointed as Assistant Professor in the pay scale of Rs.1100-50-1600 with other allowance, like that of the petitioner by routine mode. When the case of Nirmala Venkateswaran was considered suitably, the petitioner, being a similarly placed person, cannot be discriminated, especially when the order of the Division Bench has been confirmed by the Supreme Court.

10. In fine, finding force in the submission of the learned counsel for the petition and holding that the judgment passed in the Writ Appeal is squarely applicable to the case of the petitioner, this Court is of the view that the petitioner is entitled to the relief sought for in this Writ Petition and the petitioner has to be granted pension, similar to that of Nirmala Venkateswaran.

11. Accordingly, the Writ Petition is allowed and the respondents are directed to pay pension and gratuity to the petitioner like that of Nirmala Venkateswaran and the entire arrears have got to be paid to the petitioner within a period of four (4) months from the date of receipt of a copy of this order. Since the respondents have stated that the petitioner was paid a sum of Rs.6,35,190/- towards CPF accumulation, which has also been accepted by the petitioner in Paragraph No.16 of the affidavit, the said amount can be adjusted, while calculating the arrears amount. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To:

1.The Secretary,
Government of India,
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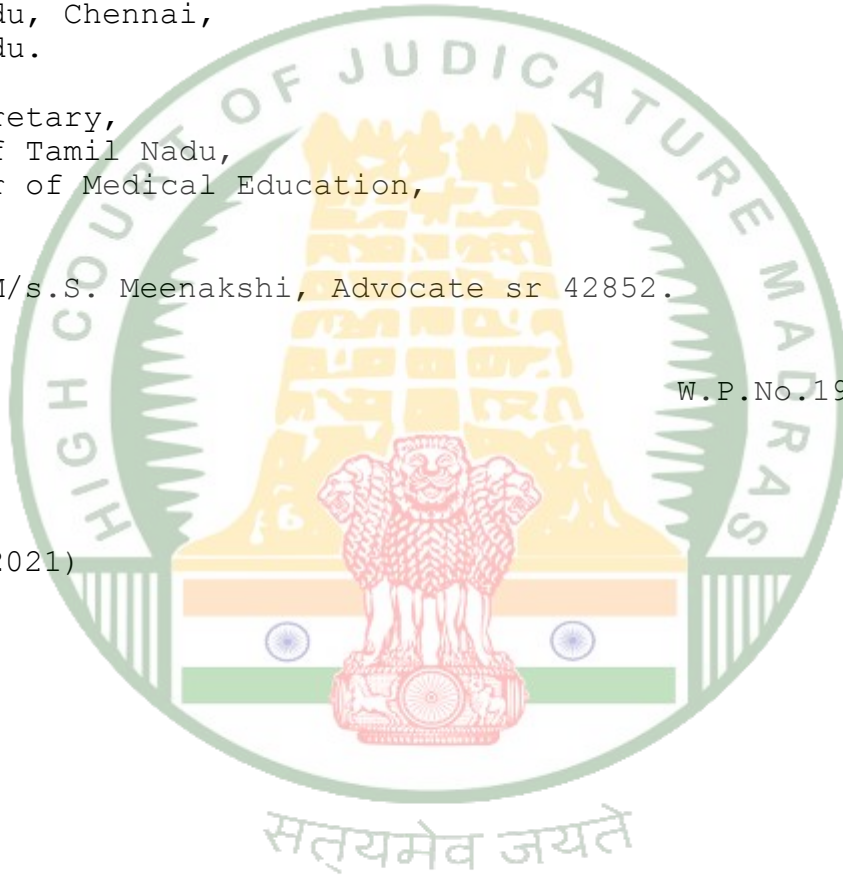
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5.The Secretary,
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+1 CC to M/s.S. Meenakshi, Advocate sr 42852.

W.P.No.19319 of 2010

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