

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.No.24536 of 2010
and
M.P.Nos.1 of 2010 & 1 of 2011

K.Sampathu

.. Petitioner

Vs.

1.State of Tamilnadu, rep.by its,
The Joint Commissioner of Police,
Central Zone, Egmore,
Chennai - 600 008.

2.The Accountant General,
(Accounts and Entitlements)
Pension Section, Tamilnadu,
Chennai - 600 018.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of the India praying to issue a writ of certiorarified mandamus, calling for the records relating to the impugned order in Rc.No.P.F.S(Ma)/949/2010-Ma.Ma.No.798/21010 dated 30.08.2010 issued by the 1st respondent and quash the same and consequently direct the respondents to order for sanction of terminal benefits and pension based on the last drawn basic pay of the petitioner at Rs.8,700/- p.m., as has been done to the similarly placed persons.

For Petitioner : Mr.S.K.Premkumar

For Respondents :Ms.R.Janaki, for R1
Additional Government Pleader
Mr.V.Vijayshankar, for R2

O R D E R

The writ petition has been filed seeking a writ of certiorarified mandamus, to call for the records relating to the impugned order in Rc.No.P.F.S(Ma)/949/2010-Ma.Ma.No.798/21010 dated 30.08.2010 issued by the 1st respondent and quash the same

and consequently direct the respondents to order for sanction of terminal benefits and pension based on the last drawn basic pay of the petitioner at Rs.8,700/- p.m., as has been done to the similarly placed persons.

2. The case of the petitioner is that he was appointed as Grade-I Police Constable on 10.04.1972 and promoted as Head Constable on 19.05.1980 and thereafter the petitioner was included in the 'C' list of Head Constables fit for promotion to the post of Sub-Inspector of Police. The petitioner appeared before the Range Promotion Board for promotion to the post of Sub-Inspector of Police in the year 1985 and secured 55% of marks in the selection. Thereafter, the petitioner was temporarily promoted as Sub-Inspector of Police on 25.09.1987 and he was regularised on 07.08.1992. Likewise, there are other similarly placed Head Constables who were also promoted with effect from 25.09.1987. The pay scale was fixed corresponding to the post of Sub-Inspector of Police. Thereafter, the petitioner was promoted as Inspector of Police on 23.10.2003 and retired on attaining the age of superannuation on 31.05.2009. After his retirement, on the instructions of the second respondent, pay scale of the petitioner was revised by the first respondent and re-fixed at Rs.6,650/- with effect from 07.08.1992 in the cadre of Sub-Inspector of Police and Rs.6,850/- with effect from 09.06.2004, in the cadre of Inspector of Police. Subsequently, the first respondent by impugned proceedings in Rc.No.PF/CZ/17171/2009 - CZO.No.915/2009 dated 25.11.2009, revised the pay scale for the period the petitioner worked as Sub-Inspector of Police on temporary basis and correspondingly re-fixed the same from the date of regular appointment and ordered to recover a sum of Rs.36,312/- in respect of alleged excess pay.

3. Aggrieved over the same, the petitioner is before this Court.

4. According to the petitioner, in the case of similarly placed Head Constables who were given promotion as Sub-Inspector, the pay scale fixed was not revised. Therefore, on par with the similarly placed persons, his pay should be fixed with effect from 25.09.1987 i.e., from the date on which he was promoted as Sub-Inspector of Police. So far as re-fixation from the date of regularization on 07.08.1992, it is erroneous and the recovery made also not proper.

5. In response to that the learned counsel for respondents have filed detailed counter affidavit, the relevant portions are extracted below:-

"3.It is submitted that the above pay fixation is not in order since as per the provision of Sub-Rule

4 of FR 22(B) where temporary appointment/promotion is regularized at a subsequent date, the pay should be refixed in the higher post under FR 22(B) w.e.f., from the date of regularisation of service in the higher post and increments if any granted, to be revised. The excess pay drawn due to initial fixation on temporary promotion/appointment shall not be recovered in such cases.

8. Therefore the erroneous regulation was pointed out for remedial action by first and second respondents and the petitioner's pensionary benefits were finalized with reference to pay of Rs.15910+4900 with instruction to recover the excess paid pay and allowances from 07.08.1992 to 31.05.2009. his entitled pay on 07.08.1992 as regular Sub-Inspector was Rs.1600/- and he was paid actually Rs.1900/- similarly on 31.10.2003 he was entitled to 6900+150 in the post of Inspector of Police instead of Rs.8100/-."

6. The learned counsel appearing for the first respondent would contend that based on the averments made in the above said paragraphs that the re-fixation was done, after giving notice to the petitioner, as directed by this Court in another writ petition, and the petitioner also submitted his explanation. After considering explanation, the re-fixation was rightly done with effect from regular appointment as Sub-Inspector of Police on 07.08.1992. Therefore, the order passed by the respondent is very much right and petitioner is not entitled to excess money more than it was due to him. Therefore, the writ petition is liable to be dismissed.

7. Upon considering the rival submissions, it is noted that admittedly, the petitioner was regularised as Sub-Inspector with effect from 07.08.1992. As contended by the respondent that a scale of pay of any Government employee shall be re-fixed in the higher post from the date of regularization of the service and it cannot be on the basis of initial fixation from the date of temporary promotion. Insofar as that aspect is concerned, the scale of pay of the writ petitioner was fixed at Rs.1,600/- with effect from 07.08.1992, I do not find any infirmity in re-fixation of the scale of pay in the cadre of Sub-Inspector of Police from the date of his regularization. However, the petitioner has drawn salary for the work done by him as a temporary Sub-Inspector of Police and he is entitled to salary for official discharge of his duties. The payment was not made due to misrepresentation made by the petitioner, nor there is allegation of mala fide intention to unduly enrich him. While re-fixing the scale of pay from the date of regularization of service, as admitted by the respondent, the excess pay drawn by him shall not be recovered.

8. Insofar as the contention of the petitioner that there was no re-fixation in case of similarly placed persons but they were permitted to draw salary as fixed from the date of initial appointment is concerned, it is not clear as to when those persons were regularly appointed in the post of Sub-Inspector of Police. But in the instant case, the petitioner was appointed on regular basis with effect from 07.08.1992. The petitioner cannot claim negative inequality. Insofar as re-fixation is concerned, I confirm the order passed by the first respondent. Insofar as recovery consequent to re-fixation is concerned, it is set aside. The first respondent is directed to calculate the terminal benefits due to the petitioner on the basis of re-fixation and also disburse the pension within a period of four weeks from the date of receipt of a copy of this order. It is also made clear that the excess amount if any recovered from terminal benefits of the petitioner shall be reimbursed.

9. Accordingly, the writ petition is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True copy//

Sub Assistant Registrar

AT
To

1.The Joint Commissioner of Police,
State of Tamilnadu,
Central Zone, Egmore,
Chennai - 600 008.

2.The Accountant General,
(Accounts and Entitlements)
Pension Section, Tamilnadu,
Chennai - 600 018.

+1cc to Mr.V.Vijayshankar, Advocate SR.No.920

+1cc to Government Pleader SR.No.959

W.P.No.24536 of 2010
and

M.P.Nos.1 of 2010 & 1 of 2011

SSI (CO)
GMY (28/10/2020)