BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 16.03.2020
CORAM:
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
W.P(MD)No.5130 of 2012
and
M.P(MD)No.1 of 2012

D.Devanayagam ... Petitioner

vs.

1.The State of Tamil Nadu,
Represented by its Secretary,
Co-operation, Food and Consumer
Protection (CC1) Department,
Fort St. George,
Chennai-600 009.

2.The Registrar of Co-operative Societies,
Chennai-600 010.

3.The Kanyakumari District Central Co-operative Bank Limited,
Alexandra Press Road,
Kanyakumari District,
Pin-629 001,
Represented by its Special Officer. ... Respondents

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent, pertaining to its G.O.(St.) No.132, Co-operation, Food and Consumer Protection (CC1) Department, dated 20.09.2010 on its file and the records of the second respondent, pertaining to his consequential order in Circular No.38/2010 (Rc113971/2010CBS1) dated 24.12.2010 on his file, quash the said G.O., insofar as paragraph 5 thereof is concerned, and the said consequential order, insofar as the statement in Regulation 1 of its enclosure, namely, Bank (Employees') Exgratia Pension Regulations, 2010 Preliminary, that, save as otherwise expressly provided in those regulations, those regulations shall be deemed to have come into force on the date of the above said G.O., is concerned, directing the respondents, to sanction and pay to the petitioner the exgratia pension under the above said G.O., and Circular, for the period from the day immediately next to the date of his retirement from service under the third respondent, that is, from 01.12.1990 till 19.09.2010.

For Petitioner : Mr.K.N.Thampi

For R1 & R2 : Mr.J.Gunaseelan Muthiah
Additional Government Pleader

For R3 : Mrs.S.Vinodhini
for Mr.C.Ravikumar

ORDER

This Writ Petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent, pertaining to its G.O.(St.) No.132, Co-operation, Food and Consumer Protection (CC1) Department, dated 20.09.2010 on its file and the records of the second respondent, pertaining to his consequential order in Circular No.38/2010 (Rc113971/2010CBS1) dated 24.12.2010 on his file, quash the said G.O., insofar as paragraph 5 thereof is concerned, and the said consequential order, insofar as the statement in Regulation 1 of its enclosure, namely, Bank (Employees') Exgratia Pension Regulations, 2010 Preliminary, that, save as otherwise expressly provided in those regulations, those regulations shall be deemed to have come into force on the date of the above said G.O., is concerned, directing the respondents, to sanction and pay to the petitioner the ex-gratia pension under the above said G.O., and Circular, for the period from the day immediately next to the date of his retirement from service under the third respondent, that is, from 01.12.1990 till 19.09.2010.

2. The case of petitioner is that he has joined duty in the third respondent Society as Supervisor-Secretary on 22.09.1958 and retired from service on 30.11.1990. From 1990 onwards he did not get any pension and in the year 2010 the Government has issued G.O.(St)No.132, Co-operation, Food and Consumer Protection (CC1) Department, dated 20.09.2010 and inter alia granting in and by clause (i) of paragraph 2 thereof a monthly ex-gratia pension of Rs.2500/- to each of the employees of District Central Co-operative Banks, who have retired from service from 1987-1988 to 1994-1995, not coming under the Employees Pension Scheme, 1995 as the petitioner has retired from service on 30.11.1990 he was granted only Rs.2500/- per month from 2010 onwards. The Government Order says that it is only a compassionate pensionary scheme as it is not a right for the petitioner to issue the same from 1990 when he was retired from service. It is also made clear that the Government has issued orders from the payment of ex-gratia pension to the retired employees of the DCCBs. The Government has issued orders for the payment of ex-gratia pension to those employees who did not opt for the pension under EPS 1995. Now, with a view to adopt uniform procedure for the payment of ex-gratia pension and also ex-gratia family pension by all the DCCBs, draft regulations are

enclosed. The Special officers of the DCCBs are requested to adopt the model regulations with the approval of the respective Circle Deputy Registrars. They are also requested to report the action taken to get the approval by the Circle Deputy Registrars before 27.12.2010. Accordingly, the said conditions and regulations for seeking ex-gratia pension was published by the concerned Registrars for applying the same.

3. Accordingly, on 29.04.2011 Na.Ka.No.216/10-11 A-1 The Deputy Registrar of Central Co-operative Bank, Kanyakumari District has passed an order granting a sum of Rs.2500/- to the petitioners herein to publish second list of pensioners. From the said regulations, it is clear that the Corpus fund has been created for the purpose of sanction of ex-gratia pension and ex-gratia family pension under this regulations and shall include any sum credited as interest. The employee, who was retired from the services of the Bank or the date on which the employee is deemed to have retired. These regulations shall apply to employees who retired from 1987-88 to 1995-96 from the services of the DCCBs (upto 15.11.1995) i.e., date on which EPS 1995 was introduced. Accordingly, all the persons, who are retired from 1995-1996 are entitled to Rs.2500/-. The expenses towards payment of Ex-gratia pension and Ex-gratia Family Pension should be met from a separate corpus fund created for this purpose. Until the creation of the Corpus expenses towards payment of Ex-Gratia Pension Ex-gratia/Family Pension shall be met from the funds of the Bank and the said Bank has to bear the amount which has to be disbursed towards ex-gratia payment. After submitting the application, Ex-gratia pension/ex-gratia family pension shall be paid as detailed below:

Sl.No.	Category of Pensioner including family pensioner	Eligible Ex-gratia pension/Ex-gratia family pension Amount
1.	For those retired from 1987-88 to 1995-96 (upto 15.11.1995) i.e., date on which EPS 1995 was introduced.	Rs.2500
2.	For those retired from 16.11.1995 to 10.09.2010 from the services of the Bank and covered under EPS 1995, but receiving pension under EPS less than Rs.2500/-	(i)The difference between Rs.2500/- and the actual pension received under EPS by them. (ii)In case, the employee commuted his pension under the EPS 1995, the amount of pension shall be the difference between Rs.2500 and the original pension before commutation under EPS.

3.	For those retired from 16.11.1995 to 20.09.2010 from the services of the Bank and have opted to come out of the EPS 1985 and received the amount along with the PF accumulations.	The amount of pension eligible to these persons should be calculated as if they have not received the lump sum and if the amount so calculated is less than Rs.2500, the difference between Rs.2500 and such calculated amount shall be the ex-gratia pension.
4.	Ex-gratia family pension to the legal heirs of the employees who were covered under EPS 1995 and the amount of family pension under EPS 1995 is less than Rs.1250.	The difference between Rs.1250 and the actual family pension received by them under EPF family pension.

4. It is made clear that these persons, who were working from 1987 to 1995 are entitle to get Rs.2500/- as ex-gratia pension. It is only a ex-gratia pension and not as a regular pension. Based on the recommendation of the Registrar the petitioner cannot seek pension from 1990 onwards. There is no material to show that the said pension has to be paid from the date of his retirement as the Government has issued the orders only after considering the case of all the persons, who were retired and those persons were not governed by any pension schemes. Accordingly they were paid pension and the petitioner who is now aged about 90 years still he wants to get arrears of amount, which is definitely not to be awarded as the petitioner had retired from service on 30.11.1990.

5. In support of the case, the learned counsel appearing for the petitioner relied on the following judgments:

(i) ***Haryana State Minor Irrigation Tubewells Corporation v. G.S.Uppal*** reported in ***(2008) 7 Supreme Court Cases 375,*** wherein the Hon'ble Supreme Court of India held as follows:-

> *"33. The plea of the appellants that the Corporation is running under losses and it cannot meet the financial burden on account of revision of scales of pay has been rejected by the High Court and, in our view, rightly so. Whatever may be factual position, there appears to be no basis for the action of the appellants in denying the claim of revision of pay scales to the respondents. If the Government feels that the Corporation is running into losses, measures of economy, avoidance of frequent writing off of dues, reduction of posts or repatriating deputationists may provide the possible solution to the problem. Be that as it may, such a contention may not be available to the appellants in the light of the principle enunciated by this Court in M.M.R.Khan v.Union of India and*

Indian Overseas Bank v. Staff Canteen Workers' Union. However, so long as the posts do exist and are manned, there appears to be no justification for granting the respondents a scale of pay lower than that sanctioned for those employees who are brought on deputation. In fact, the sequence of events discussed above clearly shows that the employees of the Corporation have been treated on a par with those in Government at the time of revision of scales of pay on every occasion."

(ii) ***Joint Action Council of Service Doctors' Organisations and others vs. Union of India and another*** reported in ***(1996) 7 Supreme Court Cases 256***, wherein the Supreme Court of India had held that the matter being under consideration of the Vth Pay Commission, no further observations made. Report of is recommendatory in nature but cannot be rejected by the Government without cogent reasons.

(iii) ***L.L.Kuppusamy vs. The Commissioner for Municipal Administration*** reported in ***2011(1) CWC 18*** ,wherein this Court has held as follows:-

"The pension of gratuity being no longer a bounty, has to be disbursed on the date of retirement of a Government. The Hon'ble Apex Court in O.P.Gupta v. Union of India, 1987 (4) SCC 328 crystallized the payment of interest for the delayed payment as a normal practice in the following words:

"24. Normally, this Court, as a settled practice, has been making direction for payment of interest at 12 per cent on delayed payment of pension. There is no reason for us to depart from that practice in the facts of the present case."

10. In Vijay L.Mehratra v.State of U.P., 2000(2) LLJ 253, the Hon'ble Apex Court has granted 18% interest from the date of retirement till the date of payment of all the retirement dues."

6. It is seen from the counter affidavit filed by the respondent that as per the service conditions of the third respondent Society, the petitioners post was a non-pensionable post and on retiremenet all his retirement benefit were settled. About 10 years after, the G.O.(Ms) No.132, Co-operation, Food and Consumer Protection Department, dated 20.09.2010 was issued for the payment of Ex-gratia pension of Rs.2500/- per month to the retired employees District Central Co-operative Banks by creating Corpus Fund. The date of effect of the Scheme has been fixed with effect from the date of issue of the said G.O., i.e., 20.09.2010. But, the petitioner claims the ex-gratia pension from the date of his retirement i.e., 01.12.1991. The claim of ex-gratia pension with retrospective effect will cause huge monetary loss to the District Central Co-operative Banks concerned.

7. The learned counsel for the petitioner relied on the judgments in ***Haryana State Minor Irrigation Tubewells Corporation***

v. G.S.Uppal reported in ***(2008) 7 Supreme Court Cases 375***. A perusal of the above judgment would reveal that this is a revision of pay scale and it is not a pensionary facts and the facts of the present case is different from the above and hence it is not applicable to facts of the present case and in ***Joint Action Council of Service Doctors' Organisations and others vs. Union of India and another*** reported in ***(1996) 7 Supreme Court Cases 256***, wherein the Supreme Court of India had held that the matter being under consideration of the Vth Pay Commission, no further observations made. Report of is recommendatory in nature but cannot be rejected by the Government without cogent reasons. This is regarding the payment of allowance and it is not relevant to the facts of the present case. In ***L.L.Kuppusamy vs. The Commissioner for Municipal Administration*** reported in ***2011(1) CWC 18***. This is only payment of interest on retirement benefits. Pension and gratuity are not bounty and this is not similar to the facts of the present case.

8. From the above contention of the parties, it is clear that payment of ex-gratia is only a concessional benefits on humanitarian ground and it cannot be claimed as a matter of right. The ex-gratia pension which is not a part of service condition, being a concession granted on humanitarian grounds on certain conditions to the retirees of the District Central Co-operative Banks and the expenditure to be met by the respective District Central Co-operative Banks. The same cannot be retrospectively and giving retrospective effect causes huge monetary loss to the District Central Co-operative Banks, which is not possible and hence the effective date was fixed as from the date of issue of the Government Order and the same is correct and reasonable, condition also passed. Being a concession on compassionate grounds extended to the petitioner, who is already retired and availed all the eligible retirement benefits, the question of violation of natural justice, statutory provisions and judicial pronouncement does not arise. The petitioner who was retired on 30.11.1990 received all the eligible retirement benefits cannot claim the benefit as a matter of right, if such claim is entertained it will be lead to open bandora box and there is a heavy financial crises to the Government. The petitioner claim is illegal and there is no merit in his claim and not entitled to claim the same.

9. In view of the observations made, the writ petition fails and stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

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To

1. The Secretary,
   Co-operation, Food and Consumer
   Protection (CC1) Department,
   Fort St. George,
   Chennai-600 009.

2. The Registrar of Co-operative Societies,
   Chennai-600 010.

+1 CC to Mr.K.N.THAMBI, Advocate (SR-11925[F] dated 16/03/2020)

+1 CC to SPL.GP (SR-12001[F] dated 17/03/2020)

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16.03.2020

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