BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON :03.12.2019

PRONOUNCED ON : 03.11.2020

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHABANU

W.P(MD)No.16947 of 2013

R.Krishnasamy ... Petitioner

Vs

1.The Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat,
Fort.St.George,
Chennai-600 009.

2.The Commissioner of Rural Development
and Panchayat Raj,
Panagal Building,
Saidapet,
Chennai-600 015.

3.The Principal Accountant General (A&E),
Tamilnadu,
Teynampet,
Chennai-600 018. ... Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the respondents to pay the commuted value of pension taking into account petitioner's age as 58 on the date of superannuation on 31.03.2008 AN, instead of 63 years as on 12.04.2012, the date on which the second respondent forwarded pension proposal.

For petitioner : Mr.Veera Kathiravan
Senior Counsel
for M/s.Veera Associates

For respondents 1 & 2 : Mr.S.Dhayalan
Government Advocate

For 3rd respondent : Mr.P.Gunasekaran

ORDER

This Writ Petition has been filed by the petitioner praying for issuance of a Writ of Mandamus directing the respondents to pay the commuted value of pension taking into account the petitioner's age as 58 on the date of superannuation on 31.03.2008 A.N., instead 63 years as on 12.04.2012, the date which the second respondent forwarded the pension proposal.

2.The learned senior counsel appearing for the petitioner submitted that the petitioner joined in the Tamil Nadu Secretariat Service as Junior Assistant in the year 1974 and by dint of hardwork, he rose to the post of the Joint Director in the year 2002 and he retired from service on attaining the age of superannuation on 31.03.2008 without prejudice to the three charge memos pending against him. Out of three charge memos, the petitioner had filed W.P.(MD)Nos.5108 and 5109 of 2008 questioning two charge memos and for a consequential direction to pay the retirement benefits. A learned Single Judge of this Court, by common order dated 12.03.2010, allowed the said writ petitions holding that after allowing the petitioner to retire, the authorities have no power to proceed with the disciplinary proceedings and directed the respondents to settle the retirement benefits. Aggrieved by the said orders, the respondents preferred writ appeals and the same were also dismissed, as against which the respondents preferred Special Leave Petitions before the Hon'ble Supreme Court and the same were also dismissed. Thereafter only, the respondents issued G.O.Ms.Nos.375 and 376, Rural Development & Panchayat Raj (E2) Department, dated 12.07.2012 and G.O.(D).No.615, Rural Development and Panchayat Raj (E1) Department, dated 03.12.2012, dropping further action on the charge memos.

3. The learned senior counsel for the petitioner would further submit that based on the application for pension submitted by the petitioner, on 04.12.2012 the 2nd respondent forwarded pension proposal relating to the petitioner to the third respondent. In the Authorisation for Payment of Pension, dated 10.01.2013, the third respondent though authorised pension from the date of his retirement ie., from 01.04.2008, for computation of Commuted Value of Pension, he took the age of the petitioner as 62 based on the date of pension proposal ie., from 04.12.2012, instead 58 from the date of his retirement and thereby, he took lesser value of factor for calculation.

4. The learned senior counsel for the petitioner would further submit that as per the guideline No.4.8 of the Government of Tamil Nadu in respect of calculation of commutation of pension (see page No.29 of the original typed set of papers) and also the

clarification issued by the Secretary to Government in Letter No.98690/PENSION/93-5, Dated 27.06.1995, "Commutation is not permissible in cases of employee who retires without prejudice to the pending disciplinary proceedings. If the proceedings are finalized with punishment, commutation shall be allowed based on the date on which final orders are issued. Where he is exonerated, commutation shall be allowed on the original application and value will be decided with reference to the age at the time of retirement". The third respondent, without considering the said clarification, had taken the age of the petitioner as 63, instead of 58, taking into account the date on which the pension proposal was forwarded by the 2nd respondent ie., the proposal dated 04.12.2012. Though the petitioner sent several representations pointing out the above clarification, the same was ended in vain. Therefore, the petitioner has come up with this writ petition for the aforesaid prayer. Thus, he prayed to allow this writ petition and to direct the respondents to pay balance commutation amount with interest at the rate of 18% p.a.

5. The learned Government Advocate appearing for the first and second respondents submitted that as per the direction of this Court in the earlier writ petitions, the first and second respondents had already sent proposal to the third respondent for payment of pensionary and other benefits to the petitioner and that the third respondent is the competent authority to authorize and grant orders for payment of pension and Commuted Value of Pension to the petitioner. Therefore, this petition may be dismissed in respect of the first and second respondents.

6. The learned counsel appearing for the third respondent submitted that as per the proviso (ii) and (iii) of Notes 3 to Rule 9 of Commutation Rules, 1944, commutation shall become absolute on the date of application by the retiring Government Servant or the day following the date of retirement whichever is later and the lumpsum amount payable to the retiring Government Servant shall be calculated with reference to the table of values applicable to him on the date on which commutation becomes absolute. He would further submit that in Government Letter dated 24.11.2009, it is clarified that the revised table as per G.O.235, Finance (Pay Cell) shall be adopted for all commutation which become absolute on or after 01.06.2009. As the petitioner submitted Commuted Value of Pension after finalization of the departmental proceedings in December, 2012, when he was 62 years of age, the age of next birthday ie., 63 years was taken into account and the factor of 7.982 applied as per Rule. He would further submit that it was based on the clarification in Letter No.13767/PENSION/92-6, dated 07.10.1992, issued by the Government on the issue of Commuted Value of Pension to the effect that in respect of persons against whom disciplinary case is

finalized after retirement, Commuted Value of Pension shall be calculated from the date of application of the employee. Thus, the third respondent has rightly taken the age of the petitioner as 63 for calculation of the Commuted Value of Pension. Hence, he prayed to dismiss this writ petition.

7. Heard the learned counsel appearing for both sides and perused the records carefully.

8. Admittedly, in this case, the petitioner was retired from service on attaining the age of superannuation on 31.03.2008 subject to the outcome of the three disciplinary proceedings pending against him. It is not in dispute that all the three charge memos were issued only at the verge of his retirement. Out of three charge memos, the petitioner challenged two charge memos in W.P.(MD). Nos.5108 and 5109 of 2008 and the same were allowed by this Court on 12.03.2010 with a direction to the respondents to settle the retirement benefits to the petitioner. The said order was also confirmed in the writ appeal as well as in the SLP. Thereafter, the first respondent issued separate orders dated 12.07.2012, dropping further action on the two charge memos dated 14.03.2008 and 18.03.2008. On 03.12.2012, the first respondent issued another Government Order dropping further action on the third charge memo dated 28.09.2007, which was not challenged by the petitioner. Immediately on the next day of dropping of the disciplinary proceedings against the petitioner ie., on 04.12.2012, the 2nd respondent sent pension proposal relating to the petitioner to the third respondent.

9. It is seen that the third respondent authorised pension from 01.04.2008 to the petitioner. However, for computation of Commuted Value of Pension, he took the age of the petitioner as 62 based on the date of submission of the application for commutation ie., 04.12.2012. Such calculation was made by the third respondent only based on clarificatory letter issued by the Additional Secretary to Government in Letter No.13767/PENSION/92-6, Finance (Pension) Department, dated 07.10.1992. It is seen that the said clarificatory letter was issued based on a point raised by the Registrar of Cooperative Societies on the issue of Commuted Value of Pension and it was clarified that "the application for commutation made in advance by the retiring Government Servant after the commuted value if any reported by the Accountant General with reference to the pension proposals should be treated as not valid and the individuals concerned should apply for commutation of pension, if they so desire, afresh after the issue of orders on the conclusion of the proceedings". Here, in this case, it is not in dispute that the petitioner has submitted his application only after dropping of the disciplinary proceedings on 04.12.2012.

10. The clarificatory letter dated 07.10.1992 was further clarified by the Government by issuing another letter in Letter No.98690/PENSION/93-5, dated 27.06.1995, by which, it is stated that "in the case of retirement after disposal of disciplinary cases with punishment, commutation shall be allowed based on the original application and commuted value paid with reference to next age birth day on the date of issue of final orders in the disciplinary proceedings and in the case of retirement after disposal of disciplinary proceedings without punishment, commutation shall be allowed based on the original application and commuted value paid with reference to age next birthday at the time of retirement".

11. Though the above clarificatory letter dated 27.06.1995 was brought to the notice of the respondents by the petitioner through his representation dated 28.02.2013, the respondents did not even consider the same. In the counter affidavit, the third respondent has mentioned only about the first clarificatory letter issued by the Government dated 07.10.1992, but it does not mention about the further clarificatory letter dated 27.06.1995, which would go to show they did not even aware about the same or they failed to look into the same. More over, once the respondents dropped the charge memos pursuant to the orders of the Court, it is deemed that the petitioner is retired on the date of superannuation like that of the other employees. Therefore, this Court is of the view that the petitioner is entitled to the relief sought for in the writ petition.

12. This Court, by common order dated 12.03.2010, already directed the respondents to pay all the retirement benefits to the petitioner within a period of 12 weeks from the date of receipt of copy of the order. Due to the fault of the respondents in applying the proper factor for computation of Commuted Value of Pension, the correct value has not been received by the petitioner. Hence, now the respondents are bound to pay the balance amount to the petitioner with interest. In the case of **S.K.Dua Vs. State of Haryana** reported in **2008 (3) SCC 44**, the Hon'ble Supreme Court has held that an employee is entitled to claim interest on belated payment of pension and other retireal benefits even in the absence of statutory rules / administrative instructions or guidelines and he can make his claim for interest, under part III of the Constitution of India relying on Articles 14, 19 and 21 of the Constitution of India. Considering facts and circumstances of the case and also the present rate of interest, this Court is inclined to direct the respondents to pay balance amount of the commuted value of pension with 12% interest per annum from the date of pension proposal till the date of payment.

13. In the result, this Writ Petition is allowed with a direction to the respondents to take correct factor for computation of Commuted Value of Pension by taking into account the age of the petitioner as 58 on the date of superannuation, calculate the same in accordance with law and pay the balance amount payable to the petitioner with interest at the rate of 12% per annum from the next day of retirement till the date of payment. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

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Sub Assistant Registrar(CS)

Gcg

To

1.The Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat, Fort.St.George,
Chennai-600 009.

2.The Commissioner of Rural Development and
Panchayat Raj, Panagal Building,
Saidapet, Chennai-600 015.

3.The Principal Accountant General (A&E),
Tamilnadu, Teynampet,
Chennai-600 018.

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-21049[F] dated 04/11/2020)

order made in
W.P(MD)No.16947 of 2013
03.11.2020

SRK(CO)
TR(09.11.2020) 6P 5C