



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.09.2020

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.11604 of 2020

and

W.M.P.(MD)No.10110 of 2020

S.Manamoorthy

...Petitioner

-Vs-

- 1.The Accountant General (A&E),
Account General Office,
Chennai.
- 2.The Additional Director General of Police /
Inspector General of Prison Department,
Chennai.
- 3.The Deputy Inspector General of Prison,
Vellore Range, Vellore.
- 4.The Deputy Inspector General of Prison,
Madurai.
- 5.The Superintendent Central Prison,
Vellore.
- 6.The Treasurer / Assistant Treasurer Officer,
Chengam Sub Treasurer, Vellore.
- 7.The Superintendent,
Central Prison, Madurai.
- 8.The Treasurer / Assistant Treasure Officer,
Melur Sub Jail Treasurer, Melur,
Madurai.

...Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the orders passed in P06/10622904/3/R0622904, dated 28.01.2020 by the first respondent and quash the same and further directly respondent to enter last drawn salary as Rs.44,900/- and refix the petitioner's pension other retirement benefits and repay the recovered Rs.44,930/-.



For Petitioner : Mr.T.S.Mohamed Mohideen
For R1 : Mr.P.Gunasekaran,
Standing Counsel.
For R2 to R8 : Mr.K.Mu.Muthu,
Additional Government Pleader.

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ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus, calling for the records pertaining to the orders passed in P06/10622904/3/R0622904, dated 28.01.2020 by the first respondent and quash the same and further direct the respondents to enter last drawn salary as Rs.44,900/- and refix the petitioner's pension and other retirement benefits and repay the recovered Rs.44,930/-.

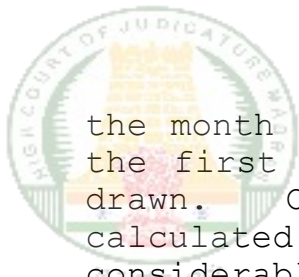
2.Heard Mr.T.S.Mohamed Mohideen, learned counsel appearing for the petitioner, Mr.P.Gunasekaran, learned Standing Counsel, who takes notice on behalf of the first respondent and Mr.K.Mu.Muthu, learned Additional Government Pleader, who takes notice on behalf of the respondents 2 to 8.

3.With the consent of the learned counsel on both sides, this Writ Petition is taken up for final hearing and disposed of at the admission stage itself.

4.The petitioner, who was working as Assistant Jailor / Superintendent in Prison Department, retired from service on 30.04.2019.

5.Thereafter, his pension proposal papers has been forwarded by the employer and the same was considered by the first respondent and accordingly, the first respondent has passed the impugned order dated 28.01.2020, for disbursing his pension by taking into account his basic salary last drawn as only Rs. 43,600/-, whereas it is the claim of the petitioner that his last drawn salary was Rs.44,900/-. Therefore, in this context, it is the case of the petitioner that if the actual last drawn salary of the petitioner i.e., Rs.44,900/- is taken into account, his pensionary benefits as well as other benefits payable to him would have been different one. The first respondent now by taking into account only Rs.43,600/- as a last drawn salary, has reduced the pensionary benefits payable to the petitioner. Therefore, aggrieved by the said order dated 28.01.2020 passed by the first respondent, this Writ Petition has been filed with the aforesaid prayer.

6.Heard Mr.T.S.Mohamed Mohideen, learned counsel appearing for the petitioner, who would submit that, the petitioner was drawing a sum of Rs.44,900/- as last drawn pay and in this regard, he has also annexed pay slip for the month of April, 2019 i.e., on



the month he retired from service. However, in the impugned order, the first respondent has stated Rs.43,600/- as the emoluments last drawn. Only based on which the pensionary benefits has been calculated and being paid. Therefore, the petitioner has lost considerable amount on every month by way of pension, because of wrong amount taken into account by the first respondent as the last drawn. Therefore, the impugned order to that extent is unsustainable. Therefore, he seeks indulgence of this Court.

7. However, Mr.P.Gunasekaran, learned Standing Counsel appearing for the first respondent, who is the contesting respondent in this Writ Petition, would submit that, actual last drawn pay payable to the petitioner was Rs.43,600/- only taking into account the post, he held at the time of retirement with all increment and pension. However, later it comes to know that a sum of Rs.44,900/- was fixed as a last drawn basic pay for the petitioner only on the basis of the claim, he has made that his junior was paid higher pay. Therefore, in order to seek pay parity, he seems to have got higher pay of Rs.44,900/-. However, the said higher pay of Rs.44,900/- was not brought to the notice of the first respondent and in this regard, comparative chart or table should have been sent or filed along with pension papers forwarded by the immediate employer of the petitioner and the same since has not been forwarded or filed before the first respondent, the last drawn pay, which was fixed and for which the petitioner is eligible to get at the time of superannuation, was alone taken into account, which according to the first respondent, is only Rs.43,600/-. Therefore, the learned Standing Counsel appearing for the first respondent would submit that if a comparative chart or table, justifying the higher pay paid to the petitioner at the time of superannuation, is given by the employer, certainly, that would be considered and accordingly, his pension would be reviewed and necessary revised orders to that effect would be passed on merits by the first respondent.

8. I have heard Mr.K.Mu.Muthu, learned Additional Government Pleader appearing for the respondents 2 to 8, who would submit that, if at all the comparative table / chart, as pointed out by the learned Standing Counsel appearing for the first respondent, is to be forwarded or submitted by the employer of the petitioner, i.e., either 5th respondent or 7th respondent, certainly, that endeavour would be taken and the said respondents would forward the comparative chart to the first respondent for the purpose of reviewing the pensionary benefits as claimed by the petitioner.

9. I have considered the said submissions made by both the learned counsel appearing for the parties and perused the materials available on record.

10. As per the pay slip for the month of April, 2019, which has been filed by the petitioner in the typed set of papers, basic



pay drawn by the petitioner was Rs.44,900/- and on that month only the petitioner retired from service on superannuation on 30.04.2019.

11. When that being the position, the said fact should have been brought to the notice of the first respondent at the time of sending pension papers of the petitioner by the employer namely 5th and 7th respondents.

12. Whether such table has been sent or not?

13. According to the learned Standing Counsel appearing for the first respondent, on instructions, the same has not been filed by the respondents or received by the first respondent. Therefore, the first respondent took a stand that calculated last drawn salary of the petitioner is only Rs.43,600/- and since they are ready and willing to review the same, after getting the comparative statement, there would be any controversy on that issue. In that view of the matter, necessary comparative chart can be forwarded by the concerned respondents to the first respondent, who wants to reconsider the issue and revised order can be passed.

14. In view of the above, this Writ Petition is disposed of with the following order:-

"that the 7th respondent shall forward the comparative table, pertaining to the basic pay i.e., last drawn pay paid to the petitioner i.e., Rs.44,900/- and to the 5th respondent, within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the 5th respondent, in turn, shall forward the same for further action to the first respondent, within a period of two weeks thereafter and on receipt of such comparative table from the 7th respondent through the 5th respondent, the first respondent shall review the order passed in this regard dated 28.01.2020 and accordingly, fix the revised pension by taking into account the last drawn pay of the petitioner, as per his pay slip, which has also been enclosed and necessary orders to that effect, on merits and in accordance with law, should be passed by the first respondent, within a period of six weeks thereafter."

No costs. Consequently, connected miscellaneous petition is closed.

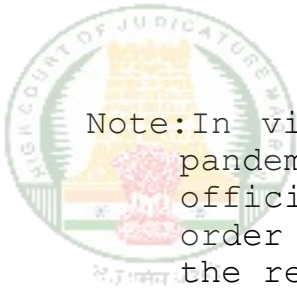
Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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To

- 1.The Additional Director General of Police /
Inspector General of Prison Department,
Chennai.
- 2.The Deputy Inspector General of Prison,
Vellore Range, Vellore.
- 3.The Deputy Inspector General of Prison,
Madurai.
- 4.The Superintendent Central Prison,
Vellore.
- 5.The Treasurer / Assistant Treasurer Officer,
Chengam Sub Treasurer, Vellore.
- 6.The Superintendent,
Central Prison, Madurai.
- 7.The Treasurer / Assistant Treasure Officer,
Melur Sub Jail Treasurer, Melur,
Madurai.

+1 CC to M/s.T.S. MOHAMED MOHIDHEEN, Advocate (SR-16991[F] dated
15/09/2020)

Order made in
W.P. (MD) No.11604 of 2020
14.09.2020

(SSS)CO

AP(29/12/2020) 5P 9C