IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.10.2020

PRONOUNCED ON : 27.10.2021

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.10419 of 2007

Mrs.K.Indrani @ Esther Rani ..Petitioner

Vs

1.The Chief Manager,
Personnel Administration Department,
Indian Overseas Bank,
Central Office : P.B.No.3765,
763, Anna Salai, Chennai – 600 002.

2.The Chief Manager,
Indian Overseas Bank,
Sivakasi – 626 123.

3.The Principal Controller of Defence (Pension),
AT/TRY Cell, Droupathi Ghat,
Allahabad – 211 014.

4.The Air Officer Commanding,
Air Force Record Office,
Subrato Park,
New Delhi – 110 010. .. Respondents
[R3 & R4 impleaded as per order dated 3.3.2014
in M.P.No.1 of 2013 in W.P.No.10419 of 2007]

Prayer : Writ Petition filed under Article 226 of the Constitution of India, seeking issuance of a writ of certiorarified mandamus to call for the records in PAD/178/EX-S/181 dated 16.2.2007 on the file of the 1st respondent and quash the same and issue an order of direction directing the 1st respondent to issue a certificate as required in para 4 & 5 of the Government A/cs. Circular No.11/99-2000 dated 30.09.1999 and consequently issue an order of direction directing the II respondent the pension disbursing authority to release the Dearness Relief of Mr.A.M.Manoharan, Roll No.34874 payable from July 18, 1997 and pay it to the petitioner.

For Petitioner	:	Mr.Amardeep
For Respondents	:	Mr.K.Srinivasa Murthy for Mr.N.G.R.Prasad for R1 & R2 Dr.D.Simon for R3 & R4

ORDER

This writ petition has been filed seeking for issuance of writ of certiorarified mandamus to call for the records in PAD/178/EX-S/181 dated 16.2.2007 on the file of the first respondent and quash the same with a consequential direction, directing the first respondent to issue a certificate as required in para 4 & 5 of the Government A/cs. Circular No.11/99-2000 dated 30.09.1999 and also direct the second respondent/the Pension Disbursing Authority to release the Dearness Relief of Mr.A.M.Manoharan, Roll No.34874 payable from July 18, 1997 to the petitioner.

2.According to the petitioner, she is the wife of Late Mr.A.M.Manoharan, Ex.SGT Service No.199815 in the Indian Air Force from 19.11.1969 to 30.11.1984 and after his retirement he received pension from 01.12.1984 onwards. After his retirement, he joined as a Clerk in the second respondent Bank on 22.08.1985 and received minimum pay scale of the post as a Clerk. It is further stated that the petitioner's husband initially drawing his Defence Pension in Sub-Treasury, Sivakasi, thereafter, from 1991 onwards, the same was transferred to Indian Overseas Bank, Sivakasi Branch. Further, the petitioner's husband received the Dearness Relief on Defence Pension, in the light of the stay granted by this Court in W.M.P.No.16373 of 1989 in W.P.No.11526 of 1989, but, the same was recovered from him on the basis of the judgment of the Hon'ble Supreme Court of India.

3. It is further stated that the Government of India by its Official Memorandum dated 02.07.1999 had taken a decision to implement the recommendations of the 5th Central Pay Commission regarding payment of Dearness Relief to the re-employed pensioners, based on that Government A/cs. Circular No.11/99-2000 dated 30.09.1999 was issued. It is further stated that similarly placed employees, who were worked with the petitioner's husband received the said relief and hence, the petitioner's husband made repeated representations to the respondents 1 and 2 to issue a certificate as per the guidelines of the said Circular in paragraph 5 (iii) i.e. the pay of re-employed/absorbee was/is fixed at the minimum of the pay scale of the post in which he/she had/has been initially re-employed after his retirement from Central Government. However, the Deputy Chief Officer, Personnel Administration Department by its letter dated 28.01.2000 stating that petitioner's husband Mr.A.M.Manoharan has joined in the service of the second respondent Bank on 22.08.1985 as Clerk and he availed pay fixation vide memorandum dated 03.10.1987 and hence, they have unable to issue the certificate as required by him. It is further stated that the petitioner's husband made several

representations seeking for the said relief, till his death. Thereafter, the petitioner, being a family pensioner of late A.M.Manoharan, made a representation dated 12.02.2007 to the first respondent for issuance of the said certificate, however, the first respondent by letter dated 16.02.2007 informed that the pay refixation has been done to Mr.A.M.Manoharan, Roll No.34874 with effect from the date of joining in the second respondent Bank and rejected the request of the petitioner. Hence, the petitioner has come forward with the present writ petition.

4. Respondents 1 and 2 filed counter affidavit submitting that the petitioner's husband at the time of joining the Bank opted for reckoning his Armed Force service for the purpose of promotion as per circular dated 21.12.1981. However, thereafter, in view of subsequent settlement dated 28.07.1986 between the Bank and the Employees Union, the Circular dated 03.02.1987 gave another option to the Ex-servicemen for protection of their last drawn salary drawn in the Armed Force. Subsequent to the aforesaid Circular, petitioner's husband by his letter dated 27.02.1987 revoked his earlier option and opted for pay protection. Based on his revised option, his pay was re-fixed protecting

the pay he was receiving in the Air Force at the time of his retirement. The petitioner's husband was also paid the difference in pay with arrears from the date he joined the services of the Bank i.e., 22.08.1985.

5. It is also submitted by the respondents 1 and 2 that the petitioner's husband through Ex-Servicemen Cell requested the Bank to issue a certificate to the effect that at the time of his joining, the Basic Pay was fixed at Rs.520/- p.m., only, without any pay protection, in order to enable him to get DA on the defence pension. But the Bank, by letter dated 28.01.2000 expressed its difficulty to issue such a certificate because the employee subsequently opted for pay protection and got his pay refixed together with arrears with effect from 22.08.1985 (Date of appointment in the Bank). On 06.05.2005 the employee expired. On 12.02.2007, the petitioner/wife of employee sent a representation requesting the Bank to issue a certificate to enable her to receive the Dearness Relief. On 16.02.2007, the Bank sent a reply expressing its difficulty and stated that her husband revoked his earlier option and submitted a revised option and got his pay revised protecting his last drawn pay in the Air Force (Armed Force).

6. The respondents 1 and 2 also submitted that as per the Government guidelines with regard to pay fixation of Ex-Servicemen in Public Sector Banks, the banks have been advised that consequent to the re-employment of Ex-Servicemen in the Bank they will not draw dearness relief on pension as sanctioned by the Government from time to time. Further Dearness Relief on pension is not payable in case the pay on re-employment is fixed equivalent to or higher than his last drawn pay. As the petitioner's husband pay was fixed protecting his pay drawn in the Air Force, the request of the petitioner to issue a certificate, as if her husband was employed in the respondent Bank without any pay protection could not be complied with. It is also pointed out that the petitioner cannot compare her husband's case with that of others. The respondents 1 and 2 filed typed set of papers to substantiate the fact that the petitioner's husband has given the option for pay fixation before the Bank, the Circular issued by the Bank and refixation of petitioner's husband pay and the letter explaining the pay fixation and the inability to issue certificate for Dearness relief to petitioner.

7. Respondents 3 and 4 filed counter affidavit submitting that if

the pay is fixed at a higher stage because of advance increments and no protection of the last pay drawn is being given, the pay should be treated as fixed at a minimum only for the purpose of ignoring the entire pension and allow Dearness Relief on pension as per Department of Pension and Pensioner's Welfare UO NO.41/42/2007/P&PW(G) dated 03 April 2008 and and PCDA (P), Allahabad Circular NO.386 dated 19 June 08. In the typed set of papers filed by respondents 3 and 4, a copy of the circular issued by the Director, Department of Pension & Pensioner's Welfare, is annexed wherein it is stated as under:-

> " The case of re-employed pensioner and employed family pensioner has been examined in this Department in consultation with DOPT. The DOPT has clarified that if the pay fixed at a higher stage because of advance increments and no protection of the last pay drawn is being given, the pay should be teated as fixed at a minimum only for the purposes of ignoring the entire pension and allowing Dearness Relief on pension."

So, respondents 3 and 4 submitted that they have no jurisdiction on the subject issue to release Dearness relief to Defence Pension to the petitioner and release of Dearness Relief on Defence Pension lies with Bank being Pension Disbursing Agency. Further it is pointed out that the entire amount of pension sanctioned by the Central Government was ignored in fixation of the pay on re-employment.

8. Heard both sides and perused the records carefully.

9. It is the case of the petitioner that after petitioner's husband got retired on 30.11.1984 and he received pension from 01.12.1984. Thereafter, he joined as a Clerk in the second respondent Bank on 22.08.1985. The petitioner's husband was initially drawing his Defence Pension in Sub-Treasury, Sivakasi. Thereafter, from 1991 onwards, the same was transferred to Indian Overseas Bank, Sivakasi Branch. Further, the petitioner's husband received the Dearness Relief on Defence Pension, but it was not granted thereafter. So the petitioner's husband sent representation to the respondent Bank requesting the Bank to issue a certificate to receive the Dearness Relief. However, the first respondent by letter dated 28.10.2000 expressed its difficulty to issue such a certificate because the employee subsequently opted for pay protection and got his pay refixed together with arrears with effect from 22.08.1985. On 06.05.2005, the employee died. The petitioner sent a representation

again requesting the Bank to issue a certificate. The 1st respondent by letter dated 16.02.2007 replied to the petitioner that her husband got pay refixation with effect from the date of joining in the Bank and therefore, the request cannot be acceded.

10. The respondents 1 and 2 in their counter affidavit clearly pointed out that as per the Government guidelines with regard to pay fixation of Ex-Servicemen in Public Sector Banks, the banks have been advised that consequent to the re-employment, they will not draw dearness relief on pension, in case the pay on re-employment is fixed equivalent to or higher than his last drawn pay.

11. On a perusal of the Government guidelines and the Circulars issued by the respondents on the one hand and the option letter submitted by the petitioner's husband, it is very clear that the petitioner's husband has given option for pay protection and his pay was re-fixed taking into account his services in the Air Force and the pay drawn by him in the Armed Force was protected and he was also paid arrears on that basis. Therefore, the issuance of certificate seeking payment of

Dearness allowance on the Defence Pension is rightly rejected by the 1st respondent.

12. For the reasons stated above, the petitioner is not entitled to the relief sought for in the writ petition. Accordingly, the writ petition is dismissed. No costs.

27.10.2021

Internet:Yes/No
ms/nvsri
To

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P.VELMURUGAN, J.,

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Pre-Delivery Order in

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