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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 21.10.2021
DELIVERED ON: 02.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.A.NO.2401 OF 2021
AND C.M.P.NO.15333 OF 2021

Kongunadu Arts and Science College (Autonomous),
Represented by its Secretary,
G.N.Mills Post, Coimbatore - 641 029.

...Appellant/
Petitioner

Vs.

1. Senior Accounts Officer,
Pension 24, O/o. The Principal Accountant General,
(Accounts & Entitlements),
361, Annasalai, Teynampet, Chennai - 600 018.
2. State of Tamil Nadu,
Represented by Secretary to Government,
Higher Education Department,
Fort St. George, Chennai - 600 009.
3. The Director of Collegiate Education,
College Road, Chennai - 600 006.
4. The Joint Director of Collegiate Education,
Coimbatore Region, Coimbatore - 641 018.
5. Tmt.K.Thilagavathi

...Respondents/
Respondents

Prayer:

Writ Appeal filed under Clause 15 of the Letters Patent, to
set aside the order of the learned Single Judge of this Court
dated 15.04.2021 in W.P.No.8629 of 2021.



Prayer in W.P.No.8629 of 2021:

Petition filed under Article 226 of the Constitution of India prayed that this Hon'ble Court may be pleased to issue an order, direction or writ in the nature of the Writ of Certiorarified Mandamus calling for the records culminating in the Proceedings Rc. NO. 4808 / A4 / 2020 dated 13.05.2020 of the fourth respondent in sanctioning re-fixation of pay of the fifth respondent and Proceedings Rc. NO. 4808 / A1 / 2019 dated 11.01.2021 sanctioning of revised provisional pension and revised provisional DCRG to the fifth respondent by the fourth respondent and quash the same and direct the fourth respondent abide by instruction of the petitioner and the first respondent respectively in respect of re-fixing of pay of the fifth respondent and sanctioning revised provisional pension and revised provisional DCRG to the fifth respondent respectively and pass such further or other orders as this Hon'ble Court may deem fit and proper under the circumstances of the case and thus render justice.

For Appellant : Mr.K.Shakespeare

For Respondents : Mr.R.Subramanian for R5
R1 to R4 - names printed - No appearance

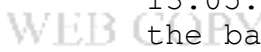
JUDGMENT

(Judgment of the Court was delivered by R.Vijayakumar, J.)

The writ petitioner is the appellant herein. The fifth respondent in the writ appeal was working as an Associate Professor in the petitioner's college and she was suspended from the service on allegations of certain misconduct and she attained superannuation on 30.06.2016. Since a criminal complaint was pending as against the fifth respondent, the first respondent had only sanctioned provisional pension and gratuity vide order dated 17.08.2017.

2.On 10.11.2012, the fourth respondent herein had passed a consequential order providing provisional pension and DCRG to the fifth respondent herein.

3.On 03.10.2018, the writ petitioner college had forwarded the consent letter of 15 Associate Professors including that of the fifth respondent herein for fixing the revised pay scales on the basis of 7th Pay Commission Report. On 04.10.2018, the petitioner college sought a further clarification from the fourth respondent whether the provisional pension of the fifth



4. The fourth respondent herein passed an order dated 13.05.2020 accepting the proposal for the revised pay scale on the basis of 7th Pay Commission Report for fixing the revised pay scales notionally from 01.01.2016 onwards and the monetary benefits from 01.10.2017 onwards.

6. On 11.01.2021, the fourth respondent herein issued proceedings revising the provisional pension and the provisional DCRG in view of the implementation of 7th Pay Commission Report. This order was challenged before the learned Single Judge on the ground that the order passed by the fourth respondent is in violation of Rules 60, 66 and 69 of the Tamil Nadu Pension Rules, 1978.

8. The learned Single Judge after hearing both the parties had passed an order pointing out that the revision of pay scale of the employees was done by the Pay Commission and the said revision has been implemented in respect of all the persons who are placed similarly to the fifth respondent.

10. Heard, learned counsel appearing for the appellant as well as the counsel for the contesting respondents.

11. At the outset, we would like to point out that the salary, revised pay scale, pension and the gratuity benefits are being paid by the Government and the writ petitioner college



management does not have any locus standi to question the same since the college is an aided institution.

12. The writ petitioner college had themselves forwarded the consent letter of the fifth respondent as well as other Associate Professors for fixing of revised pay scale on the basis of 7th Pay Commission Report vide their proceedings dated 03.10.2018. Only pursuant to the said proposal, the fourth respondent herein had refixed the salary on 13.05.2020 based on 7th Pay Commission Report.

13. On 03.11.2017, the fourth respondent has passed an order sanctioning provisional pension and the provisional DCRG in favour of the fifth respondent. The said order has not been challenged by the writ petitioner management. When the payment of provisional pension and the provisional DCRG have not been challenged by the college management, they cannot challenge the refixation of the provisional pension and the provisional DCRG based upon the implementation of 7th Pay Commission Report. The enhancement of the provisional pension and the provisional DCRG under the impugned order dated 11.01.2021 are only consequential to the order of the fourth respondent dated 03.11.2017 and 13.05.2020.

14. Moreover, there is no violation of Rules 60 of Tamil Nadu Pension Rules because the provisional pension has been sanctioned by the first respondent herein vide his proceedings dated 25.07.2016 and 17.08.2017. Though the writ petitioner/appellant had referred to violation of Rule 66, no specific ground has been raised how Rule 66 of the Tamil Nadu Pension Rules has been violated. As per Rule 69 of the Tamil Nadu Pension Rules, 1978, the gratuity cannot be withheld when the Government servant has been permitted to retire without prejudice to the departmental or judicial proceedings and where such proceedings are only for administrative lapses not involving any pecuniary loss to the Government. For the sake of convenience, Rules 60, 66 and 69 are extracted hereunder:

60. Provisional pension where departmental or judicial proceedings may be pending - (1) (a) In respect of Government servant, referred to in sub-rule (4) of Rule 9, the Audit Officer shall authorise the payment of provisional pension not exceeding the maximum pension which would have been admissible on the basis of the qualifying service upto the date of retirement of the Government servant.

(b) The provisional pension shall be authorised by the Audit Officer during the period commencing from the date of retirement to the date on which, upon



conclusion of the departmental or judicial proceedings, final orders are passed by the competent authority.

(c) No gratuity shall be authorised to the Government servant until the conclusion of such proceedings and issue of final orders thereon:

[Provided that no such gratuity, shall be withheld in respect of a Government servant, who has been permitted to retire without prejudice to the departmental or judicial proceedings pending against him, where such departmental or judicial proceedings are only for administrative lapses not involving any pecuniary loss to the Government.]

Provided further that where a Governing servant against whom a departmental or judicial proceedings involving pecuniary loss to Government is pending, is permitted to retire without prejudice to such departmental or judicial proceedings, a portion of gratuity may be authorized, after deducting the maximum computed financial loss to the Government which the Government servant is held liable along with unrecovered Government dues if any, of such Government servant with interest.]

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently for a specified period.

(3) Nothing contained in this rule shall prejudice the operation of Rule 6 when final pension is sanctioned upon the conclusion of the departmental or judicial proceedings.

66. Sanction, drawal and disbursement of provisional pension and of gratuity- (1) After the pension papers of a Government servant have been sent to the Audit Officer concerned, the Head of office shall draw full gratuity admissible, along with the provisional pension not exceeding the maximum even in the first instance as indicated in Part I of Form 7 and for this purpose adopt the following procedure, namely:-



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(a) He shall issue a sanction letter to the Government servant endorsing a copy thereof to the audit Officer indicating amount of provisional pension along with full gratuity not exceeding the maximum payable to such Government servant on retirement from service.

(b) he shall indicate in the sanction letter the amount recoverable out of the gratuity under sub-rule (3) of Rule 65;

(c) after the issue of the sanction letter he shall draw-(i) the amount of provisional pension; and

(ii) the amount of full gratuity not exceeding the maximum admissible after deducting therefrom the dues mentioned in clause (b) in M.T.C.47-A appended to the Treasury Rules of the Government from the Treasury at which the pay and allowances of the establishment are drawn by him; and

(d) he shall obtain from such Government servant on retirement from service a certificate of non-employment as mentioned in sub-rule (6) and append the same to the said form M.T.C. 47-A.

(2) The Head of office shall take steps to draw and disburse the provisional pension and gratuity to the retired Government servant on the first day of the month following the month in which the Government servant retired from service.

(3) the payment of provisional pension shall continue for a period of 12 months from the date of retirement of the Government service unless the period is extended by the Audit Officer under the proviso to sub-rule (1) of Rule 68.

(4) The Head of Office shall inform the Audit Officer-

(a) as soon as the gratuity has been paid to the retired Government servant; and

(b) as soon as the provisional pension has been paid to the retired Government servant for a period of 12 months or for the period extended under the proviso to sub-rule (1) of Rule 68, as the case may be.



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(5) If the petitioner desires the payment of provisional pension or of gratuity or of both through money under or bank draft, the same shall be remitted in time through money order or bank draft as the case may be at his cost.

(6) (a) A pensioner drawing pension in India is required to append to his bill a certificate as follows-

"I declare that I have not received any remuneration for serving in any capacity either under Government or under a local fund, during the period for which the amount of pension claimed in this bill is due."

(b) in the case of a pensioner permitted to draw pension after-re-employment this certificate should be modified according to the facts.

(c) In the case of a pensioner drawing his pension through an agent, who has executed a bond of indemnity, as required by subsidiary Rule 69 under Treasury Rule 16 of the Tamil Nadu Treasury Code, the certificate modified accordingly may be signed by the agent, provided that the pensioner shall himself furnish once a year, a certificate covering the period for which pension has been drawn on the basis of the agent's certificate.

69. Provisional pension where department or judicial proceeding may be pending.-(1) (a) in respect of a Government servant referred to sub-rule (4) or Rule 9, the Head of office shall pay the provisional pension not exceeding the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant.

(b) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon:-

[Provided that no such gratuity, shall be withheld in respect of a Government servant who has been permitted to retire without prejudice to the departmental or judicial proceedings pending against him, where such departmental or judicial proceedings



are only for administrative lapses not involving any pecuniary loss to the Government:]

[Provided further that where a Government servant, against whom a departmental or judicial proceedings involving pecuniary loss to Government is pending, is permitted to retire without prejudice to such departmental or judicial proceedings, a portion of gratuity may be authorized after deducting the maximum computed financial loss to the Government for which the Government servant is held liable, along with un-recovered Government dues if any, of such Government servants, with interest.]

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against full retirement benefits sanctioned to such Government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specific period.

(3) Nothing contained in this rule shall prejudice the operation of Rule 6 when final pension is sanctioned upon the conclusion of the departmental or judicial proceedings.

15. In the present case, the writ petitioner management has permitted the fifth respondent to retire without reserving any rights to proceed departmentally and admittedly the allegations against the fifth respondent that a criminal case is pending against her does not relate to any pecuniary loss to the management. Hence, we do not find that the contentions that the Rules 60, 66 and 69 of the Tamil Nadu Pension Rules have been violated are not factually correct.

16. In the present case, the college management has no locus standi to question the payment of provisional pension or the provisional DCRG which is being paid by the Government. Moreover, the original payment of the provisional pension and the provisional gratuity was not challenged by the college management.

17. Under the impugned order, the provisional pension and the provisional DCRG have been enhanced based upon the implementation of 7th Pay Commission which is just consequential. Hence, we do not find any ground to interfere with the order of the learned Single Judge and the Writ Appeal stands dismissed.



No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. Senior Accounts Officer,
Pension 24, O/o. The Principal Accountant General,
(Accounts & Entitlements),
361, Annasalai, Teynampet, Chennai - 600 018.
2. The Secretary to Government,
Higher Education Department,
Fort St. George, Chennai - 600 009.
3. The Director of Collegiate Education,
College Road, Chennai - 600 006.
4. The Joint Director of Collegiate Education,
Coimbatore Region, Coimbatore - 641 018.

+1cc to Mr.K.Shakespeare, Advocate, S.R.No.56820
+1cc to Mr.R.Subramanian, Advocate, S.R.No.57029
+1cc to the Government Pleader, S.R.No.57682

W.A.No.2401 of 2021

SJ(CO)
PM/13/12/2021