IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	11.08.2021
Pronounced On	16.08.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.26916 of 2018
and
W.M.P.No.31273 of 2018

(Through Video Conferencing)

N.Karthikeyan ... Petitioner

Vs.

1. State of Tamil Nadu
   represented by its Secretary
   Finance (Pay Cell) Department,
   Fort St.George,
   Chennai - 600 009.

2. The Chief Executive Officer,
   Tamil Nadu Khadi and Village
   Industries Board,
   Kuralagam, Chennai - 600 108. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the second respondent in his proceedings No.4545/E1(1)/2013 dated 24.04.2017 and quash the same, and direct the respondents to revise the petitioner's pension at Rs.20,340/- and confer all the consequential benefits including arrears.

For Petitioner : Mr.C.Vediappan
for M/s.C.S.Associates

For First Respondent :Mr.V.P.R.Elamparithi,G.A.
(Government Advocate)

For Second Respondent : Mr.S.K.Bose.

O R D E R

The petitioner has challenged the impugned Communication dated 24.04.2017 of the second respondent. By the impugned Communication, the second respondent has rejected the request of the petitioner for modifying the pension of the petitioner.

2. The petitioner had earlier sent a representation dated 09.01.2002 to the respondent to revise his pension. By letter dated 10.03.2012, the respondent rejected the request of the petitioner.

3. Under these circumstances, the petitioner filed W.P.No.33521 of 2012. By an order dated 14.12.2012, the said writ petition was disposed by directing the second respondent to consider the petitioner's representation and to pass appropriate orders. It appears that there were delay and therefore the petitioner was constrained to file Cont.P.No.1398 of 2013. The Contempt Petition was closed on 21.10.2016.

4. It is pursuant to the aforesaid order of this Court, the petitioner sent a fresh representation dated 20.03.2017, which has culminated in the impugned order.

5. On the date of this Writ Petition, the petitioner was aged about 85 years. The petitioner is now aged about 88-89 years and is currently drawing a pension. The petitioner retired from the service of the second respondent in the year 1991. At the time of retirement, the petitioner was getting a pension of Rs.1,425/-per month.

6. Later, the petitioner's pension was increased to Rs.6,000/- per month after G.O.Ms.No.200, Finance (Pay Cell) Department, dated 18.05.1999 was issued. As per the aforesaid Government Order, decision taken was to be given effect from 25.09.2003. Dearness Allowance equal to 50% of the pension with effect from 01.01.2016, was to be merged with pension and shown distinctly as Dearness Pension. This Dearness Pension was to be taken into account for the purpose of calculation of Dearness Allowance alone.

7. Thus, in view of the above Government Order, the petitioner was entitled to a Basic Pension of Rs.6,000/- + Dearness Pension of Rs.3,000/-.

8. The Government thereafter issued G.O.Ms.No.235, Finance (Pay Cell) Department, dated 01.06.2009. According to the petitioner, after the issue of the above Government Order, the pension of the petitioner should have been increased to

Rs.20,340/-.

9. According to the respondent, the pension of the petitioner as per the above Government Order was only Rs.13,560/- and therefore there is nothing irregular in the impugned communication rejecting the request of the petitioner for re-quantifying the pension to Rs.20,340/-.

10. The calculation as per the petitioner and the respondents are reproduced below:-

Sl. No.	Details	Basic Pension fixed and continued till date	Basic Pension required to be fixed
1	Existing Pension	Rs.6,000/-	Rs.6,000/-
2	Implementing G.O.105 to merge 50% of Existing Pension as Dearness Pension	-----------	Rs.3,000/-
Sub-Total		Rs.6,000/-	Rs.9,000/-
3	Dearness Allowances at 50% Basic Pension	Rs.3,000/-	Rs.4,500/-
4	As per Para 2(ii)C of G.O.235, Dearness Allowances at 24% on Basic Pension	Rs.2,160/-	Rs.3,240/-
5	As per Para 2(ii)D of G.O.235, Dearness Allowances at 40% on Basic Pension	Rs.2,400/-	Rs.3,600/-
Total		Rs.13,560/-	Rs.20,340/-

11. I have heard the learned counsel for the petitioner and respondent. I have also perused the Government Orders referred to supra.

12. The petitioner is only entitled to a Dearness Pension of Rs.3,000/- over and above the basic pension of Rs.6,000/- as per the G.O.Ms.No.105, Finance (Pay Cell) Department, dated 07.02.2006. Dearness Pension is to be shown separaely for the purpose of calcuation of Dearness Allowances.

13. It is the interpretation of the G.O.Ms.No.235, Finance (Pay Cell) Department, dated 01.06.2009, which has given rise to the present Writ Petition. Paragraph 2 of the aforesaid Government Order reads as under:-

> 2. The Government has carefully examined the recommendations of the Official Committee and pass the following orders:-
>
> i. All the existing pensioners who retired from posts on standard pay scales and family pensioners shall be allowed increase in pension at 40% of basic pension;
>
> ii. The Pension/ Family Pension of the existing pre-2006 Pensioners/ Family Pensioners shall be computed by adding the following:-
>
> (a) The existing Pension (before commutation)/ Family Pension;
> (b) Dearness Pension, wherever applicable;
> (c) Dearness Allowance as on 1st January 2006 i.e. @ 24% on Basic Pension / Basic Family Pension plus dearness pension as admissible.
> (d) Fitment weightage @ 40% of the existing Basic Pension (before commutation)/ Basic Family Pension.
>
> The amount so arrived at shall be the Consolidated Pension / Family Pension with effect from 1.1.2006. The consolidated Pension/ Family Pension shall be treated as final Basic Pension with effect from 1.1.2006 and shall be entitled for grant of Dearness Allowance sanctioned thereafter.

14. A reading of the above Government Order makes it clear that the calculation of the respondents is correct. The petitioner has wrongly added Dearness Pension of Rs.3,000/- to the Basic Pension of Rs.6,000/- contrary to G.O.Ms.No.105, Finance (Pay Cell) Department, dated 07.02.2006 and wrongly applied on the same Para 2 (ii) of G.O.Ms.No.235, Finance (Pay Cell) Department, dated 01.06.2009 which results in a higher calculation of pension by the petitioner. A reading of the above G.O.Ms.No.235, Finance (Pay Cell) Department, dated 01.06.2009, makes it clear that both have to be treated separately except for the purpose of determining Dearness Allowance at 24% of the Basic Pension plus Dearness Pension. Therefore, the calculation of the petitioner is not correct. Under the circumstances, the

present writ petition filed by the petitioner is liable to be dismissed.

15. While dismissing the present Writ Petition, this Court is inclined to observe that persons like the petitioner who retired in the year 1991 as the Joint Director of the second respondent appear to get the lesser pension from the Joint Director's who retire later. The advantages conferred to employees due to implementation of Successive Pay Commissions should not result in disparity in the pensions between the persons who have served at different point of time.

16. The Government may take note of the same and endeavour to redress the same, so that, the subsequent pay revision does not result in a differential pension to the employees. The parity in the pension should be maintained depending upon the posts held by such employees of the Government.

17. This Writ Petition is accordingly dismissed with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

s/d
Assistant Registrar(CS IV)

True Copy
Sub-Assistant Registrar

jen

To
1. The Secretary,
   Finance (Pay Cell) Department,
   State of Tamil Nadu,
   Fort St.George,
   Chennai - 600 009.

2. The Chief Executive Officer,
   Tamil Nadu Khadi and Village Industries Board,
   Kuralagam, Chennai - 600 108.

+1cc to M/S.C.S.Associates, Advocate, SR.No.40615
+1cc to Government Pleader, SR.No.41070

W.P.No.26916 of 2018 and
W.M.P.No.31273 of 2018

AJS(CO)
PM(03/09/2021)