



W.P.No.17016 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2022

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.No.17016 of 2012

1.K.V.Perumal (Deceased)

2.V.P.K.Thyagarajan

3.K.Karpagam

4.C.V.Karunakaran

5.T.V.Kanagarajan

... Petitioners

[P2 to P5 are substituted as Lrs of
deceased sole petitioner vide order
dated 14.09.2022 made in
W.M.P.No.20457 of 2022 in
W.P.No.17016 of 2012]

vs.

1.Government of Tamil Nadu,

Rep. by its Secretary,

Co-operative, Food and Consumer Protection Department,

Fort St. George,

Chennai – 600 009.

2.Tamil Nadu Public Service Commission,

Rep. by its Secretary,

Greens Road,

Chennai – 600 006.

3.Registrar of Co-operative Societies,

Kilpauk,



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Chennai – 600 010.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India,

to issue a Writ of Certiorarified Mandamus, after calling for the concerned records from the 1st respondent, quash the order of the 1st respondent dated 07.06.2011 bearing G.O.(3D) No.10, Co-operative, Food and Consumer Protection (CD2) Department in so far as fixing the pension at Rs.906/- and recovering 1/3rd from it permanently viz., Rs.302/- and fixing the actual pension to be paid as Rs.604/- on the basis of the recommendations made by the 2nd respondent is illegal and consequently direct the respondents to fix the basic pension at Rs.1455/- with effect from 21.09.1991 and on that basis revise the pension or in the alternative revive the 1/3rd of the recovered pension and pay all the arrears of subsistence allowance and continue to pay pension.

For Petitioners : Mr.Balan Haridas

For R1 & R3 : Mr.G.Ameedius for
Mr.K.K.Prasanth
Government Advocate

For R2 : Mr.Karthickrajan
* * * * *

ORDER

The writ petition is filed for a Writ of Certiorarified Mandamus, after



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calling for the concerned records from the 1st respondent, quash the order of

the 1st respondent dated 07.06.2011 bearing G.O.(3D) No.10, Co-operative, Food and Consumer Protection (CD2) Department in so far as fixing the pension at Rs.906/- and recovering 1/3rd from it permanently viz., Rs.302/- and fixing the actual pension to be paid as Rs.604/- on the basis of the recommendations made by the 2nd respondent is illegal and consequently direct the respondents to fix the basic pension at Rs.1455/- with effect from 21.09.1991 and on that basis revise the pension or in the alternative revive the 1/3rd of the recovered pension and pay all the arrears of subsistence allowance and continue to pay pension.

2.The writ petitioner joined the service of the 1st respondent on 01.05.1958 as Senior Inspector of Co-operative Societies. In a course of time, he was promoted as Sub Registrar and thereafter promoted as Deputy Registrar of Co-operative Societies. A charge memo was issued on 03.11.1987 (Containing five charges) and the punishment of removal from service was passed on 20.09.1991, which order was challenged by the writ petitioner in O.A.No.1053 of 1992 in the Tamil Nadu Administrative Tribunal, the matter went up to the Hon'ble Supreme Court and the Hon'ble



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Supreme Court remitted the matter to the Tribunal for fresh disposal.

Thereafter, the Tribunal reheard the matter and dismissed the Original Application. The writ petitioner challenged the order in W.P.No.29917 of 2004 and this Hon'ble Court vide order dated 04.01.2008 interfered with the punishment and modified the same into one of compulsory retirement, instead of removal from service.

3. Thereafter, the respondent passed G.O.Ms.(3D)No.14, Cooperation, Food and Consumer Protection (CD2) Department, dated 13.10.2008, cancelling the order of removal with a further direction that the writ petitioner would be deemed to have compulsorily retired with effect from 21.09.1987. As the respondent did not settle the terminal benefits, the writ petitioner filed contempt petition in Cont.P.No.1346 of 2011. When the contempt petition came up for hearing, the respondent informed the Court that the order was complied with and in support thereof G.O.(3D).No.10, Cooperation, Food & Consumer Protection Department, dated 07.06.2011, was produced. The writ petitioner aggrieved by the fixation of pension in the said G.O. filed the above writ petition seeking re-fixation of pension.



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4.The respondents filed counter and additional counter, wherein the entire factual matrix of the case is narrated. The respondent relied on Rule 39 of the Tamil Nadu Pension Rules, 1978, to support the cut of 1/3rd pension, as the writ petitioner was compulsorily retired in pursuance of the disciplinary proceedings. The respondents therefore submitted that the impugned order could not be assailed and hence prayed for the dismissal of the writ petition.

5.The learned counsel for the petitioners submitted that the respondent erred in invoking Rule 39 to recover 1/3rd of the pension amount permanently, on the ground that the writ petitioner was compulsorily retired in pursuance of the Disciplinary Proceedings. According to the petitioners' counsel, the last drawn salary of the writ petitioner was Rs.2,575/- and accordingly the writ petitioner was entitled for 50% of the last drawn salary, as basic pension which worked out to Rs.1,455/-. The respondent by invoking Rule 39 had drastically reduced the basic pension to Rs.604/- by recovering 1/3rd permanently.

6.The learned counsel for the respondent on the other hand submitted



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that the fixation of pension and invocation of Rule 39 was justified in the facts and circumstances of the case and therefore there were no merits in the writ petition and the same deserved to be dismissed.

7.I have heard both the counsels and I have gone through the records.

8.In the earlier round of litigation in W.P.No.29917 of 2004 filed by the writ petitioner, this Court had passed an order dated 04.01.2008, modifying the order of punishment from termination of service to one of compulsory retirement with effect from the date of punishment i.e. 21.09.1981. This Court further directed that the period of suspension would be treated as such. The Court further directed that terminal benefits may be quantified and paid to the petitioners and taking into consideration his age, a time limit of 4 months was fixed for compliance.

9.The learned counsel for the petitioners submitted that there was no direction to the respondents to invoke Rule 39, while modifying the punishment to 'one of compulsory retirement'. The further submission is that and 1/3rd of the pension cannot be permanently with-held till the petitioners'



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grave. The petitioners' counsel further submitted that with-held pension should have been restored by 22.09.2006 on completion of 15 years of drawing pension by adopting the same analogy of commutation of entire pension.

10.In order to appreciate the petitioner's counsel's submissions, I feel that the reasons “for modifying the Punishment from one of Removal from service to compulsory retirement” in the order dated 04.01.2008 in W.P.No.29917 of 2004 by this Hon'ble Court is relevant. This Hon'ble Court while interfering with the Punishment stated as follows:

“8.The main question is regarding the punishment to be imposed. It is no doubt true that the petitioner had not attended the Medical Board on the second occasion and had remained absent. The materials on record indicate that the petitioner was keeping ill-health for quite sometime. While there cannot be any dispute that transfer is an incidence of service and therefore a Government servant is expected to obey any order of transfer, the explanation of the petitioner that he was



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mentally disturbed by frequent transfers which ultimately led to his deteriorating health cannot be brushed aside lightly in the peculiar facts and circumstances of the present case. Moreover, the petitioner's assertion that he has otherwise an unblemished service record has also not been disputed.

9. Having regard to these aspects, we feel that the order of termination from service which would have the effect of depriving the petitioner the normal fruit of getting pension is required to be modified and instead of passing the order of termination, we feel interest of justice would be served by directing that the petitioner is deemed to have been compulsorily retired with effect from the date of punishment, namely, 21.9.1991. The period of suspension should be treated obviously as such. On the aforesaid basis, the terminal benefits may be quantified and be paid to the petitioner. Keeping in view the age of the petitioner, such exercise should be completed by the respondents within a period of four months from the date



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of receipt of the present order. The writ petition is accordingly allowed in part to the extend indicated above.

There would be no order as to costs.”

11.This Court was aware of the petitioner's advanced age and did not want to deprive him of pension. The respondents should have refrained from invoking Rule 39 considering the petitioner's advanced age and the above order this Hon'ble Court. I am in agreement with the petitioner's counsel that the analogy of commutation of pension can be applied to the present case considering the petitioner's Advanced age (88 years).

12.I am therefore of the view that the impugned order is not sustainable and the same deserves to be set aside.

13.The matter is therefore remitted to the 1st respondent for fresh consideration. The 1st respondent is directed to pass orders keeping in mind the observations made herein within six weeks from the date of receipt of a copy of this order. The Writ Petition is allowed. There shall be no order as to costs.



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Index : Yes / No

Internet : Yes / No

Speaking Order: Yes/No

ah/dsn

To

- 1.The Secretary,
Government of Tamil Nadu,
Co-operative, Food and Consumer Protection Department,
Fort St. George,
Chennai – 600 009.
- 2.Secretary,
Tamil Nadu Public Service Commission,
Greaves Road,
Chennai – 600 006.
- 3.Registrar of Co-operative Societies,
Kilpauk,
Chennai – 600 010.



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N.MALA, J.

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