BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.03.2022

DELIVERED ON : 07.07.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

CONTP.(MD)No.956 of 2021

R.Krishnasamy ... Petitioner

vs

1. Dr.K.Gopal, I.A.S
The Principal Secretary to the Government,
Rural Developmeny and Panchayat Raj Department,
Secretariat, Fort St.George,
Chennai – 600 009.

2. Mr.Parveen P.Nair, I.A.S.,
The Director of Rural Development and
Panchayat Raj, Panagal Building,
Saidapet,
Chennai – 600 015.

3. Shri.D.Jaisankar, IA & IS.,
The Accountant General (A&E),
Tamilnadu, Teynampet,
Chennai – 600 018. ... Respondents

PRAYER: Petition filed under under Section 11 of the Contempt of Court Act, 1971, to punish the respondent herein for their willful and wanton disobedience of the orders passed by this Court in W.P.(MD)No.16947 of 2013 dated 03.11.2020 under the contempt of Courts Act.

For Petitioner : Mr.C.Jeganathan

For Respondents : Mrs.D.Farjana Ghoushia for R1 & R2
Special Government Pleader
Mr.P.Gunasekaran for R3

O R D E R

This Contempt Petition is filed alleging the disobedience by non-implementing the order dated 03.11.2020 passed in W.P(MD)No.16947 of 2013.

2. The claim in the writ petition is to direct the respondents to pay the commuted value of pension taking into account of petitioner's age as 58 on the date of superannuation on 31.03.2008 intsead of 63 years as on 12.04.2012, the date on which the second respondent forwarded pension proposal and this Court

has held as under:

> *"13. In the result, this Writ Petition is allowed with a direction to the respondents to take correct factor for computation of commuted value of pension by taking into account the age of the petitioner as 58 on the date of superannuation, calculate the same in accordance with law and pay the balance amount payable to the petitioner with interest at the rate of 12% per annum from the next day of retirement till the date of payment. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order."*

This Court has directed to take correct value while computation of commuted value and pay the balance amount with interest of 12%.

3. When the Contempt Petition was taken up for hearing, the third respondent had produced the communication dated 10.02.2022, where it is stated earlier the commuted value was taken mistakenly and it was rectified in the present order dated 10.02.2022 and has referred Sl.No.3, where it is stated that the commuted value as Rs.6,18,383 and now the commuted value is taken as Rs.7,14,744/- and the grievance of the petitioner was redressed.

4. However, the petitioner has disputed the commutation itself. Therefore, the respondents are directed to file a counter affidavit explaining the calculation. The respondents have filed a counter affidavit stating that the petitioner was appointed as Junior Assistant in the year 1974 and was promoted to various post. Finally, the petitioner was promoted as Joint Director in the year 2002. The petitioner attained superannuation on 31.03.2008. On that date, three charge memos were pending against the petitioner in respect of irregularities and misappropriation. However, the petitioner was permitted to retire from service as Joint Director on 31.03.2008 without prejudice to the disciplinary proceedings pending against him in respect of three charges, vide G.O.Ms.No.196, Rural Development and Panchayat Raj (E2) Department dated 31.03.2008. The charges raised against the petitioner dated 14.03.2008, 18.03.2008 and 28.09.2007 were dropped by the first respondent, vide G.O.(D)Nos.376, Rural Development and Panchayat Raj (E2) Department, dated 12.07.2012, G.O.(D)Nos.375, Rural Development and Panchayat Raj (E2) Department, dated 12.07.2012 and G.O.(D)No.615, Rural Development and Panchayat Raj (E2) Department, dated 03.12.2012 respectively. Since all the charges were dropped, the petitioner was

deemed to be permitted to retire from service on attaining superannuation. After dropping of the charges vide the said orders, the second respondent herein submitted pension proposals vide dated 04.12.2012. The third respondent, vide PPO order, dated 10.01.2013 has calculated the commuted value by taking into account that the petitioner was allowed to retire from service on 31.03.2008. However, the factor of commutation purchase value of 8.371 was taken for calculation as per revised table issued as per G.O.(MS)No.235, Finance (Pay Cell) Department, dated 01.06.2009.

5. The petitioner has submitted a representation dated 28.02.2013 requesting to revise the commutation value and was duly replied, vide letter, dated 24.05.2013. As per Rule Note 3 of Tamil Nadu Civil Pension (Commutation) Rules, 1944, and the relevant portion is extracted hereunder:

> *"No Government servant against whom departmental or judicial proceedings have been instituted shall be eligible to commute a fraction of the provisional pension during the pendency of such proceedings."*

Since the departmental proceedings was dropped on 03.12.2012, the papers were sent to the third respondent immediately on 04.12.2012 by granting all pensionary benefits and therefore there is no delay. The petitioner again submitted a representation with a request to release a sum of Rs.27,219/- as balance commuted value of pension by taking retirement age as 58 years, since the petitioner was allowed to retire on 31.03.2008 on that date his age is 58. Since the petitioner request was not allowed, the petitioner has challenged in the writ petition in W.P.(MD)No.16947 of 2013 and this Court has directed the respondents to grant the same. The petitioner has preferred earlier round of litigation which was ended up in appeal preferred by the respondents in W.A.(MD) No. 358 of 2020 and 360 of 2020. Finally, it was held as "He is entitled to interest on belated payment of DCRG and its arrears at the rate applicable to GPT. But he not eligible for interest for GPF, SPF, EL, UEL, Commutation and Provisional Pension. On the arrears of GPF he is entitled to 12% interest." In the appeal it has been specifically held as under:

> "45. In respect of the commutation, the delay has been properly explained and therefore the respondent / writ petitioner is not entitled to any interest and so also in respect of Provisional Pension, there is no delay"

But the petitioner while contesting this contempt petition, submitted that there is delay in the payment of the commutation and the same has not been taken into account. However the respondents / contemnor submitted that the issue was considered in the above writ appeal and the petitioner was party to the writ appeal and the claim of the writ petitioner was declined in the writ appeal. This fact was not brought to the knowledge of the Court, but the petitioner tried to reagitate the issue in the contempt. The attitude of the writ petitioner should be deprecated and this Court warns the petitioner from indulging is such act.

6. The respondents/contemnors submitted that the GPF interest has been paid. The commutation was settled to the petitioner on 10.01.2013 immediately after dropping of all charges and immediately on sanction of the same by the AG on 10.01.2013. The petitioner has submitted the commutation application after dropping of charges. The petitioner's request dated 28.02.2013 was declined by the Accountant General, vide order, dated 24.05.2013 and the same was not put to challenge. The respondents submitted that the employees are entitled to

commutation only on application and to that effect commutation shall be based on the original application even if the retirement is after the disposal of the disciplinary proceedings and the commuted value shall be paid with reference to the next birth date on the date of final orders of the disciplinary proceedings. However, in compliance to the order of this Court, the proposal was sent to the third respondent by taking 58 as age and the respondents submitted that the interest was also calculated and the same was disbursed. Now the petitioner's dispute the period taken by the respondents. Since there was a different rate of interest prescribed for earlier period and a different rate of interest was imposed for a subsequent period. The petitioner alleges that the interest taken by the respondents was incorrect. However the Government has issued a clarification, vide letter No.64902 / Finance (Pension Department/2009-1, dated 24.11.2009 wherein it has been stated as under:

> *“After careful examination of the points raised by the Accountant General, the following clarifications are issued*
> *(i)In respect of pensioner whose commutation became absolute between the period from 01.01.2006 to 31.05.2009, pre-revised table shall be adopted for payment of commutation of pension based on pre-revised pension.*
> *(ii)The commutation factor in the revised table shall be adopted for commutation of additional amount of pension that has become*

commutable on account of retrospective revision of pay & consequent revision of pension (i.e.)
(1/3rd of revised pension-1/3rd of Pre-Revised Pension) x 12 x factor as per revised table)
(iii)The revised table shall be adopted for all commutation of pension which become absolute on or after 01.06.2009.
(iv) In respect of pensioners retired between 01.06.2006 and 31.05.2009 the age reckoned for calculation of commuted value of pension at the time of original application for commutation of pension will apply for calculation of commutation value of additional commutable pension.
(v) In respect of pensioners who retired between 01.01.2006 to 30.05.2009 but died before the issue G.O.(MS)No.235 Finance (Pension) Department, dated 01.06.2009 shall not be entitled for revised commutation on additional pension since the additional commutation is based on the option exercised by the pensioner.
(vi) The same procedure shall be followed in respect of U.G.C pensioners also."

7. On hearing the rival submissions, it is seen that the respondents have taken the period prior to 01.06.2009 and has paid the rates applicable to that period. For the period after 01.06.2009, the respondents have taken the rates applicable thereafter. However, according to the petitioner, the change in rate is not permissible since the petitioner is entitled to the rate fixed prior to 01.01.2006. In short, the rate of interest applicable for a period prior to 01.06.2006 is 10.46 and after the said period it is 8.371. This Court is of the

considered opinion that since there was a shift in the prescription of rate, it is a policy decision of the Government and it cannot be said that there is a willful disobedience. The respondents have fixed the correct rate of interest and it is not as alleged by the petitioner. Therefore, the amount paid by the respondents was as per law and there is no willful disobedience at all. There is no contempt as alleged by the petitioner and hence the contempt petition is liable to be closed.

8. Hence, the Contempt Petition is closed. No costs

07.07.2022

Index : Yes / No
Internet : Yes
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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.

To

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   Rural Developmeny and Panchayat Raj Department,
   Secretariat, Fort St.George,
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S.SRIMATHY, J

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Pre-delivery Order made in
CONTP.(MD)No.956 of 2021

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