IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2023

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THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.No.15735 of 2011

E.Pitchai … Petitioner

Vs

1.The Chennai Port Trust,
Represented by its Chairman,
Chennai Port, Rajaji Salai,
Chennai – 600 001.

2.Accounts Officer (Pension),
Pension Section, Accounts Department,
Chennai Port Trust, Chennai. … Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the order No.A.O.(Pension)/PPO No.13605/111/2010/F dated 17.09.2010 passed by the 2nd respondent and quash the same and to direct the respondents to compute pension, gratuity and other retiral benefits due to the petitioner in accordance with Regulations 23 (ii) (a) and 24 of Madras Port Trust (Pension) Regulations, 1987 and to pay the balance of gratuity and pensionary benefits to the petitioner with interest at 12% p.a. from the date of his superannuation to the date of payment and pass such further orders.

For Petitioner : Ms.Y.Kavitha
for M/s..P.V.S.Giridharan and Sai
For Respondents : Ms.Babitha Sunil

ORDER

This Writ Petition has been filed challenging the communication of the 2nd respondent dated 17.09.2010 holding that the gratuity and commutation amounts paid to the petitioner were correct and therefore, there is no discrepancies in the pension calculation sheet.

2. Heard Ms.Y.Kavitha, learned counsel for M/s..P.V.S.Giridharan and Sai and Ms.Babitha Sunil, learned counsel for the respondents.

3. The case of the petitioner is that the petitioner was originally serving in the CISF and thereafter, was absorbed into the services of the Chennai Port Trust and that he retired on 30.06.2010. He had also exercised the option of counting his previous services for pension in the

Chennai Port Trust. On his retirement, the gratuity was calculated and also commutation of his pension was also calculated based upon his basic pay.

4. The learned counsel for the petitioner would submit that such calculation on the basis of the basic pay is only erroneous and for calculation of pension, the 2nd respondent had not taken into account the relevant provisions of the Madras Port Trust (Pension Regulations) 1987, particularly Rules 23 and 24 while calculating pension. According to her, the petitioner was a Class-IV employee and Regulation 23 in particular deals with employees such as the petitioner and for calculating the emoluments the pay defined under FR 9 (21), dearness allowance including additional dearness allowance, piece rate earnings, incentive earning and other such payments and that the payment by result of scheme where ever applicable would have to be taken as emoluments. For calculating the gratuity and pension, the average emoluments as defined under Regulation 24 would have to be taken. She would also take me to the pay slips given by the respondent

to the petitioner to contend that in June 2010 namely the last month in which the petitioner had worked. She would submit that apart from basic pay calculating all other benefits that he was entitled to, the petitioner had been paid Rs.23,620/-. But, however, calculating pension, the petitioner had only taken into account the basic pay as emoluments which according to her was contrary to the aforesaid regulations. She had also relied upon the pension calculation sheet to substantiate her claim that only the basic pay had been taken into account as emoluments and the average emoluments calculated.

5. Further, she would submit that in reply to the petitioner's representation by communication dated 17.09.2010, the 2nd respondent had categorically stated that the average emoluments for pension as per the last drawn pay worked out to Rs.10,288/- and since the last drawn pay was Rs.10,660/- the higher amount which was beneficial had been taken for pension calculation. According to her, such communication is wholly erroneous as in contrary to the aforesaid regulation. Therefore,

she would seek interference of this Court to set aside the communication as also the pension calculation sheet and rework the gratuity and pension of the petitioner based upon the regulations governing the employment of the petitioner.

6. Countering the arguments, Ms.Babitha Sunil, learned counsel for the respondents would submit that the last drawn pay of the petitioner was only Rs.10,660/- and on calculation of the average emoluments since, the pay that she had drawn earlier period of 10 months was lesser to the average emoluments which came to Rs.10,288/-, therefore, the last drawn pay which was higher and beneficial to the petitioner was taken correctly for calculation of pension. She would contend that the petitioner had only been receiving basic pay and no dearness allowance, his basic pay alone became eligible for calculation of pension and therefore, such pension had been calculated and had been paid to her.

7. Further, relying upon the counter filed by the 2nd respondent,

she would heavily rely upon the Wage Revision Settlement that had been entered between the Management and the workmen. She would submit that as per the settlement, once an employee renders a minimum pensionable service of 20 years then the pension will be paid at 50% of the average emoluments received during the past ten months or the last drawn pay whichever is more beneficial. This is effective from 01.01.2007. Hence, according to her, the pension of the petitioner had been rightly calculated.

8. I have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record before this Court.

9. At the outset, a bare looking of the pension calculation sheet, it could be seen that for calculating the average emoluments, the respondent had taken the basic pay of the petitioner. It is seen from the pay slips that were produced before this Court that the petitioner apart

from getting the basic pay, he had also been getting variable dearness allowances and other benefits. The pay slips of the petitioner for the months of February 2009, March 2009, September 2009 and June 2010 had been placed before this Court for appreciation. But, however, the respondent in his counter has categorically stated that the petitioner had only received the correct pay and he had not been paid any dearness allowance. This is contrary to the documents that have been placed before this Court. It is also seen from the calculation sheet that the pension of the petitioner had been calculated simply on basis of the basic pay alone. The pension had not been calculated as per Regulation 24 read with Section 23 which deals with average emoluments and emoluments. Clause 23 of the Madras Port Trust (Pension Regulation) had defined emoluments as pay defined under FR 9 (21), dearness allowances including additional dearness allowance, piece rate earning, incentive earnings and other such payment under a payment by result of a scheme. The average emoluments as defined under Regulation 24 would mean the average of emoluments earned by the employee during

10 complete months immediately preceding the date of quitting the service or the date of his death as the case may be.

10. From the reading of the aforesaid Regulation, it could be seen that while calculating the average emoluments, the emoluments as prescribed under Regulation 23 would have to be taken into consideration. From the pay slips that had been generated on behalf of the petitioner, it could be seen that the petitioner apart from being given a basic pay had also been given various other pay such as dearness allowance also. But, however, looking at the calculation sheet, the 2nd respondent had taken only the basic pay into consideration as the emoluments received by the petitioner to calculate his pension. This in my view is wholly erroneous and contrary to the Madras Port Trust (Pension Regulations).

11. For the aforesaid reasonings, the entire pension calculation sheet arrived at by the 2nd respondent for granting pension to the

petitioner and also the communication impugned in this Writ Petition are set aside. The 2nd respondent is directed to recalculate the pension taking into consideration the various pay as prescribed under Regulation 23 for first arriving at the emoluments and then calculate his average emoluments and recalculate his pension. The said exercise shall be done within a period of eight (8) weeks from the date of receipt of a copy of this order. Till such time, the petitioner would be entitled to receive the pension as paid to him as on today. On such calculation the petitioner would also be entitled to receive the arrears of pension.

12. In fine, this Writ Petition is allowed. However, there shall be no order as to costs.

10.11.2023

gba
Index : Yes/No
Speaking order : Yes/No
Neutral Citations : Yes/No

To

1.The Chennai Port Trust,
Represented by its Chairman,
Chennai Port, Rajaji Salai,
Chennai – 600 001.

2.Accounts Officer (Pension),
Pension Section, Accounts Department,
Chennai Port Trust, Chennai.

K.KUMARESH BABU,J.

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