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W.P.No.3197 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE **K.KUMARESH BABU**

W.P.No.3197 of 2009

1. K.Kasthuri (Deceased)
2. K.Saravanakumar
3. K.Bhasker
4. K.Ganesh
5. K.Sivagami

(P2 to P6 are substituted as LR's of the Deceased P1,
as per order dated 28.11.2023 in W.M.P.No.33371 of 2023 in
W.P.No.3197 of 2009)

...Petitioners

Vs.

1. The Commissioner of Police,
Egmore,
Chennai – 600 008.
2. The Joint Commissioner of Police,
North Zone,
Perambur,
Chennai.

...Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, pleaded to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in his proceedings RC No.7597 /Pension(N)/2008 dated 10.06.2008 and 29.09.2008 and quash the same and consequently direct the respondent to grant selection grade to the petitioner's husband with effect from 7.7.86 and special grade with effect from 07.07.1996 along with all arrears and



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consequentially revise and refix the family pension payable to the petitioner with effect from 24.11.1996 by correctly reckoning the qualifying service as 23 years 5 months and 19 days.

For Petitioners : Mr.V.Vijaya Shankar

For Respondents : Mr.S.Ravichandran
Additional Government Pleader

ORDER

This Writ Petition had been filed seeking to quash the orders dated 10.06.2023 and 29.09.2008 and consequently direct the respondent to grant selection grade to the petitioner's husband with effect from 07.07.1986 and special grade with effect from 07.07.1996 along with all arrears and consequentially revise and refix the family pension payable to the petitioner with effect from 24.11.1996 by correctly reckoning the qualifying service as 23 years 5 months and 19 days.

2. Heard Mr.V.Vijaya Shankar learned counsel appearing for the petitioners and Mr.S.Ravichandran, learned Additional Government Pleader appearing for the respondents.



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3. The learned counsel for the petitioner would submit that, husband of the 1st petitioner entered into Police Service in the year 1964 and later promoted as Inspector of Police in the year 1976. While he was working as Inspector of Police, the first respondent imposed penalty of compulsory retirement on 02.12.1982. The delinquent had challenged the aforesaid order before the Administrative Tribunal, which by its order dated 07.11.1991 in T.A.No.966 of 1989 had set aside the order of punishment and he was reinstated in service only on 24.11.1995. While he was in service, he had died on 23.11.1996. After the order of the Tribunal, the husband of the 1st petitioner had made a request to treat the period from 1991 to 1995 (ie., from the date of compulsory retirement to the date of reinstatement) as the period spent on duty. The same was rejected by an order dated 04.09.1996. He had challenged the same before the Tribunal in O.A.No.6403 of 2002 and the Tribunal by its order dated 21.03.2003 had set aside the order passed by the first respondent and had directed that the husband of the 1st petitioner would be entitled for full wages for the period between 1991 and 1995 ie., earlier order of the Tribunal setting aside the order of punishment and the order of reinstatement. As regards to the period of unemployment between 1982 to 1991, it was directed to be treated as a service period for the purpose of revision of pay and fixation of family



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pension. Even after the said order, the request was again rejected, which forced the petitioner to approach this Court through W.P.No.22945 of 2006.

4. The learned counsel for the petitioner would further submit that, taking into consideration of the facts of the case, this Court had set aside the order against rejecting the request of the petitioner had directed strict compliance of the order passed by the learned Tribunal and had also imposed a cost of Rs.3,000/- payable to the petitioner. Pursuant to the said order, 2nd respondent paid arrears towards subsistence allowance for the period from 02.12.1982 to 06.11.1991 and also the salary for the period from 07.11.1991 to 24.11.1995. Since there was no breakup details given, the petitioner had made a request to the 2nd respondent to give a split up details.

5. From the reply given by the 2nd respondent, it could be seen that the respondents had not taken into account the period of service between 1982 to 1991 as duty for all purpose namely for calculating the salary and pensionary benefits. To make further representations explaining the consequences of the order of the Tribunal as well as this Court including the request to pay selection grade and special grade as available to the petitioner's husband and again with



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the same infirmity the orders have been passed, which both have been included.

According to him, the conduct of the appellant not been complied with the orders of the tribunal as also this Court is highly contentious. He would further submit that, he is also entitled for the claim of selection grade and special grade in respect of the petitioner.

6. Countering this arguments, learned counsel for the respondents would submit that, calculations have been made in consonance with the orders passed by the learned Tribunal. He would further submit that, period between 1982 to 1991, petitioner would be entitled to only subsistence allowance, which would mean that, period of such service cannot be counted as he had been imposed with the minor punishment. He would further submit that, there is no illegality or infirmity in such calculation made by the respondent.

7. Considered the submissions made by the respective counsels. It is pointed out by the learned Government Advocate that, while there is not been strict compliance of the order passed by the Tribunal, since the Tribunal had directed that the period between 1982 and 1991 should also be treated as period of service for the purpose or revision of pay and fixation of family pension.



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8. The learned Government Advocate had produced the calculation sheet indicating that, if the said period is taken up for calculating service with regard to revision of pay and for fixation of family pension, then the petitioner would be entitled for arrears of Rs. 1,05,696/-. The said calculation has also been accepted by the learned counsel for the petitioner. But, however, he would submit that, since the Tribunal had directed that the said period to be counted as period of service and the husband of the petitioner would also be entitled to selection grade and special grade. The said request had not been considered by the respondents. Even in the calculation produced before this Court, the claim of the petitioner seems to have not been answered. The Tribunal while passing the order on 21.03.2003 had issued the following direction.

Treating the period between 1991 and 1995 as leave on loss of pay is atrocious. Order of reinstatement has been made by this Tribunal on 07.11.1991. The order must have been implicitly obeyed by the respondents and they have been allow in implementing the order and finally Kandasamy was reinstated only on 30.11.1995 cannot be treated as leave and this period ought to have been treated as duty period. Kandasamy is entitled to full wages for this period between 1991 and 1995. Since Kandasamy is dead, the amount due as arrears shall be paid to the applicant who is th lawfully married wife of the deceased



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Government Servant. The period of unemployment between 1982 and 1991 has to be regularized with reference to F.R.54 and F.R.54-A read with 54(g) Kandasamy definitely is entitled to pay atleast not less than subsistence allowance from 02.12.1982 to 07.11.1991. So, this amount also has to be calculated and paid to the applicant. This period also has to be treated as service period for the purpose of revision of pay and ultimately for fixation of family pension to which the applicant is entitle.

9. Further, this Court in W.P.No.22945 of 2006 had issued the following order:

Taking note of the over all facts and having got the order of Tribunal and order of the Commissioner of Police, the impugned order passed by the fourth respondent is illegal. The fourth respondent has no jurisdiction to interpret the Tamilnade Administrative Tribunal order and also the order passed by the Commissioner of Police, who in turn passed the order after getting the opinion of the Senior Standing Counsel of the Tamil Nadu Administrative Tribunal. The 4th respondent has not only violated the order of the Tamilnadu Administrative Tribunal, but also the order of the third respondent and the same has to be treated as failure on his part to perform the task assigned to him within the time stipulated for the purpose and with the quality of the performance expected of him and the same shall be deemed to be



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lacking in devotion to duty. I am only pointing out this while allowing the writ petition and it is for the appropriate authority to take action or not against the 4th respondent, who has chosen to pass the order impugned in this writ petition. Certainly the impugned order is not in consonance with the order of the Tribunal and that of the third respondent. The petitioner, who is a widow was denied of her just claim stating unjust reasons by the 4th respondent.

9. Therefore, the impugned order is set aside and the fourth respondent is directed to comply with the direction issued by the Tribunal as well as the Commissioner of Police dated 21.03.2003 and 31.07.2004 respectively. The amount payable to the petitioner shall be paid with interest at the rate of 9 % per annum for the arrears from 31.07.2004 on or before 31.08.2006. As the petitioner has been unwillingly compelled to file this Writ Petition, the 4th respondent is directed to pay a cost of Rs.3,000/- to the petitioner.

10. From the reading of the above directions, the learned Single Judge had directed payment of 9% interest. Therefore, respondent shall make the payment of the admitted amount Rs. 1,05,696/- together with interest at rate of 9% as ordered by this Court in W.P.No.22945 of 2006. Further, as regards to the claim of the petitioner seeking selection grade and special grade, the



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respondent shall take decision of the same. If the respondent comes to a conclusion that the petitioner is entitled for such a claim, payment and family pension shall be revised accordingly. The arrears of admitted payment shall be made within a period of 8 weeks from the date of receipt of copy of the order. It is also made clear that the decision on eligibility of selection grade and special grade shall also to be made within the said period.

10. With the above observations and directions, this Writ Petition is disposed of. No cost.

18.12.2023

Index :Yes/No
Internet :Yes/No
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K.KUMARESH BABU, J.

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To

1. The Commissioner of Police,
Egmore,
Chennai – 600 008.
2. The Joint Commissioner of Police,
North Zone,
Perambur,
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