IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2023

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THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.20364 of 2015
and M.P.Nos.2 and 3 of 2015

R.Chinnasamy ... Petitioner

-Vs-

1. State of Tamil Nadu,
   represented by its Secretary to Government,
   Social Welfare Department,
   Fort.St.George,
   Chennai 600 009.

2. The State Commissioner of Differently Abled,
   K.K.Nagar,
   Chennai 600 078.

3. The District Differently Abled Welfare Officer,
   District Collector Office,
   Coimbatore. ... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the Orders passed by the first Respondent dated 20.05.2014 in Letter No. 5658/மாதிந.1/2014-1 another order in Letter No. 5658/மாதிந.1/2014-2 dated 06.08.2014 and the Order passed by the second Respondent in Na.Ka.No.4421/நிர்-3/2014 dated 09.09.2014 and quash the same consequently direct the Respondents to pay DCRG, Surrender of Earn Leave, General

Provident Fund and Special Provident Fund amount to the Petitioner with 12% interest compounded annually as per G.O.Ms.No.122 Finance (Pension) Department dated 20.02.1995.

For Petitioner : Mr.A.R.Nixon
For Respondents : Mr.V.Veluchamy
Additional Government Pleader

ORDER

This Writ Petition has been filed challenging the order passed by the first Respondent dated 20.05.2014 in Letter No. 5658/மாதிந.1/2014-1 another order in Letter No. 5658/மாதிந.1/2014-2 dated 06.08.2014 and the Order passed by the second Respondent in Na.Ka.No.4421/நிர்-3/2014 dated 09.09.2014, thereby ordered for stoppage of terminal benefits for the reason due to revised scale of pay.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials available on record. Though the writ petition is pending from the year 2015, the respondents have not chosen to file counter.

3. The petitioner was appointed as Workshop Attendant in the

Differently Abled Social Welfare Department on 17.03.1982. On attainment of superannuation, he had retired from service on 30.04.2014. However, the respondents refused to implement the recommendation of V and VI Pay commission to the petitioner's service in the post of Workshop Attendant. On the other hand, the Director of Social Welfare passed an order dated 04.11.2004, stating that the Tailoring Instructor who worked in the Social Welfare Department and III Pay commission has stated that the Workshop Attendant and Tailoring Instructor are equal and the scale of pay was fixed as Basic Scale of Pay Rs.325-10-445-15-550. The petitioner had also worked in the same scale of pay from his appointment namely from 17.03.1982 as Workshop Attendant. The qualification for Tailoring Instructor and the Workshop Attendant are one and the same. As per the V Pay commission recommendation, the scale of pay ought to have been fixed at Rs.1200-30-1560-40-2040. However, the petitioner's scale of pay was fixed as Rs.950-1500. It was brought to the knowledge of the third respondent and recommended the rights of the petitioner after scrutinizing the records dated 18.04.1986 and 27.06.1989 and for implementation of V and VI Pay Commission. On receipt of the said recommendation, the Director of Audit Department had also accepted and recommended to re-fix the scale of pay. Accordingly, the salary was revised and re-fixed by an order dated 17.07.2012 as 5200-20200+basic pay 2800 and paid the arrears to the petitioner.

4. However, on the date of the petitioner's retirement, the second respondent passed an order dated 09.09.2014 stating that the scale of pay was wrongly fixed and once again they wanted to revise the same. On the petitioner's superannuation, he was not paid DCRG, Surrender of Earn Leave, General Provident Fund and Special Provident Fund. In fact, the Office of the Accountant General sanctioned his pension by an order dated 21.07.2014. However, the pension benefit was not paid, for the reason that already the petitioner was paid excess payment based on V Pay Commission recommendation. Therefore, directed the officer's concerned to stop pension benefit and also demanded the break up figure. Accordingly, by an order dated 06.08.2014, the first respondent revised his salary as 5200-20200+basic pay 2600, from 01.06.1988 till the date of his super annuation and also directed to recover the excess amount if any paid to the petitioner. Following the said order, on 09.09.2014, the second respondent directed the third respondent to recover the excess payment from the pension benefits.

5. The revision of Scale of Pay of the petitioner as Workshop attendant

is on par with the Tailoring Instructor. Therefore, the basic scale of pay ought to be fixed on par with the equivalent post. In fact, the petitioner had retired from service on 30.04.2014. After his retirement, the respondents passed impugned orders cancelling the earlier order of revised pay scale and re-fixed the scale of pay from 01.06.1988. Because of the impugned orders, the retirement benefits of the petitioner was also stopped and no retirement benefits were paid to the petitioner so far.

6. Even if it is accepted for the sake of arguments that the salary of the petitioner is fixed in non-scale of pay, it is the fault committed by the respondents for which the petitioner should not be penalised after lapse of number of years that too after the petitioner attained superannuation. Further, higher scale of pay was not paid to the petitioner on account of any misrepresentation made by petitioner. It was paid to him by wrong calculation and as such, the petitioner cannot at all be held to be liable for excess payment if any.

7. Therefore, the impugned orders cannot be sustained and are liable to be quashed. Accordingly, the orders passed by the first Respondent dated

20.05.2014 in Letter No. 5658/மாதிந.1/2014-1 and in Letter No.5658/மாதிந.1/2014-2 dated 06.08.2014 and the order passed by the second Respondent in Na.Ka.No.4421/நிர்-3/2014 dated 09.09.2014 are hereby set aside. The respondents are directed to pay the terminal benefits such as DCRG, Surrender of Earn Leave, General Provident Fund and Special Provident Fund to the petitioner with the interest applicable as per G.O.Ms.No.122 Finance (Pension) Department dated 20.02.1995, within a period of four weeks from the date of receipt of a copy of this order.

8. In the result, this writ petition stands allowed. Consequently, connected Miscellaneous petitions are closed. There shall be no order as to costs.

05.07.2023

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
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To

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G.K.ILANTHIRAIYAN, J.

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