IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.P.No.4318 of 2012

T.Parameswaran ... Petitioner

..Vs..

1. State of Tamil Nadu rep.by its
   Secretary to Government,
   Finance Department,
   Fort.St.George,
   Chennai - 600 009.

2. The Principal Accountant General (A&E),
   O/o. Accountant General,
   Teynampet,
   Chennai - 600 018. .. Respondents

Prayer:- Writ Petition is filed, under the Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the G.O.Ms.No.41 Personnel and Administrative Reforms (FR III) Department, dated 15.04.2009 as far as giving effect of the G.O from 31.07.2006 to 01.04.2003 and the order of the 1st respondent in அரசு கடித எண்.54327/ஓய்வூதியம்/2011 dated 06.09.2011 and quash the same consequently direct the 2nd respondent to sanction the arrears of DCRG as per the rules governed on 02.01.2006.

For Petitioner : Mr.A.R.Nixon

For R1 : Mr.M.Muthusamy,
Government Advocate

For R2 : Mr.S.Balaji,
Central Government Standing Counsel

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ORDER

This Writ Petition has been filed praying to call for the records relating to G.O.Ms.No.41, Personnel and Administrative Reforms (FR III) Department, dated 15.04.2009 in sofar as giving effect of the G.O from 31.07.2006 to 01.04.2003 and the order of the 1st respondent in அரசு கடித எண்.54327/ஓய்வூதியம்/2011 dated 06.09.2011 and quash the same and consequently direct the 2nd respondent to sanction the arrears of DCRG as per the Rules governed on 02.01.2006.

2. The petitioner worked in the office of the Treasury as Assistant Treasury Officer. Because of his ill health, as per the Government Scheme, the petitioner has opted for Voluntary Retirement Service. He has been permitted to retire from service on and from 02.01.2006. The petitioner's PPO Number is C223146/TRY. At the time of retirement, the respondents had given due weightage of service to the employees who opted for Voluntary Retirement Service. After retirement, the pensionary benefits had been revised twice, taking into consideration the benefit of weightage. But presently, the 2nd respondent has once again revised

the pensionary benefits, while calculating DCRG, and failed to take the required weightage of service given to the petitioner so far.

3. In the writ petition, he has challenged G.O.Ms.No.41, Personnel and Administrative Reforms (FR III) Department, dated 15.04.2009, as far as giving effect to the said G.O. from 31.07.2006 to 01.04.2003. The petitioner has opted for Voluntary Retirement while G.O.Ms.No.302, Personnel and Administrative Reforms (FR III) Department, dated 06.07.2004 was in force. The Voluntary Retirement Service has been granted to the petitioner on and from 02.01.2006. The petitioner is covered by the above said G.O, based on which, all pensionary benefits may be granted by the respondents.

4. The short point that arises for consideration on the above factual matrix is that:-

(i) The petitioner had retired voluntarily retired from service as Assistant Treasury Officer on 02.01.2006. His actual qualifying service was 30 years 3 months and 15 days and he was given weightage i.e., there should be addition to qualifying service of 2 years 9 months and 11 days to make his net qualifying service rounded off to 33 years and pensionary benefits settled.

(ii) Government have issued G.O.496 Finance (Pension) Department dated 01.08.2006, as per which the required qualifying service of 33 years for full pension has been reduced as 30 years and was made applicable from 01.08.2006.

(iii) Government have further issued G.O.41 Personnel and Administrative Reforms Department, dated 15.04.2009 by amending the Fundamental Rule No.56(3) by giving effect to G.O.496 Finance (Pension Department) from 01.04.2003. This amendment is with retrospective effect, vide G.O.41 Personnel and Administrative Reforms (FR III) Department and Government letter No.54327/Pen/2011 dated 06.09.2011 is challenged in the petition, since the benefit given to him are sought to be recovered. The DCRG was calculated with reference to 33 years by adding the weightage of service and revision of the same, after the issuance of G.O amending the Rules and the qualifying service was reduced to 30 years, thereby DCRG is reduced to Rs.25,947/-.

5. As per the counter affidavit filed by the second respondent, I find that the amendment with retrospective effect was given in G.O. as further orders in G.O.41 with amendment of Fundamental Rules by giving effect to the said G.O.No.41 from 31.07.2006 to 01.04.2003 and hence, I find that the amendment was with retrospective effect. The G.O. sought to unsettle the issue by giving the retrospective effect. The

DCRG was calculated based upon the weightage given to 33 years of service rendered by the petitioner. However, now taking into account the present G.O., the retrospective effect, the qualifying year was reduced to 30 years, and thereby, DCRG was reduced to Rs.25,947/- and hence, the second respondent sought to recover the amount already paid in view of the retrospective effect of the G.O. is of the year 2006. The law is well-settled that an executive order cannot be retrospectively affecting any right. Furthermore, by an executive order the statutory rules cannot be whittled down nor can any retrospective effect be given to such executive order so as to destroy any right which became crystallized. Now reference is to be made after several years, in view of the retrospective and the G.O., the same is impermissible in law.

6.For the reasons stated above, this writ petition is allowed and the impugned order of recovery is set aside. There shall be no order as to costs.

24.08.2023

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Index:Yes/No
Neutral Citation : Yes/No

RMT.TEEKAA RAMAN,J.,

nvi/sji

To

1. The Secretary to Government,
   Finance Department,
   Fort.St.George,
   Chennai - 600 009.
2. The Principal Accountant General (A&E),
   O/o. Accountant General,
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