IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:12.09.2023

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU

Writ Appeal No.1971 of 2019

N.K.Swaminathan,
S/o.Kundan ... Appellant

Vs

The Director of Government Examination,
College Road, Chennai – 600 006. .. Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, to allow the writ appeal by setting aside the order made in W.P.No.3570 of 2017 dated 12.04.2019.

For Appellant : Mr. R.Vasudevan

For Respondents : Mr. Vadivelu Deenadayalan
Additional Government Pleader

JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR,J.)

This writ appeal has been directed against the order passed by the Writ Court dated 12.04.2019 made in W.P.No.3570 of 2017.

2. The appellant, who stood as the writ petitioner before the Writ Court was working as Personal Assistant to the Director of Government Examinations of the Education Department and he retired from service on his superannuation on 31.03.2012.

3. After his retirement, his pension was calculated and had been paid. In this regard, it is the grievance as espoused by the petitioner/appellant that, while calculating the pensionary benefits his dearness allowance has not been taken into account for the purpose of calculating total pension payable to him and if it is calculated additionally Rs.7,000/- would be added to his pension, therefore, in order to calculate the same, he has made a request on 06.09.2016 to the respondent Department, which was considered and turned down by order dated 26.09.2016 passed by the Director of Government Examinations.

4. Challenging the said order dated 26.09.2016, the said writ petition was filed.

5. The learned single Judge, who heard the writ petition having considered the submissions made by both sides and also considered some

of the judgments relied upon by the petitioner/appellant, has ultimately concluded that the petitioner's/appellant's plea made in this regard is untenable and accordingly, she has dismissed the writ petition. As against which, the present writ appeal has been made.

6. Heard Mr.R.Vasudevan, learned counsel appearing for the appellant and Mr.Vadivelu Deenadayalan, learned Additional Government Pleader appearing for the respondent.

7. Insofar as the appellant's case is concerned, while he was working before his superannuation as has been done to every Government employee pursuant to the VI Pay Commission Recommendation, the pay has been restructured with effect from 01.01.2006. At the time of restructuring the pay, the basic pay hitherto received by the appellant along with the dearness allowance and personal pay, if any having been taken note of and accordingly, the new pay structure has been fixed and that was directed to be paid to every employee including the appellant with effect from 01.01.2006.

8. At the time of fixing the basic pay from 01.01.2006 based on the VI Pay Commission Recommendation a component of Grade pay has also been introduced and that has also been fixed and paid to the appellant.

9. With that pay structure as fixed with effect from 01.01.2006, the appellant had been working and during the period i.e., from 01.01.2006 still he superannuates on 31.03.2012 what was the dearness allowance that was made available to employees also had been extended to the appellant, therefore, at the time of superannuation on 31.03.2012, the appellant was receiving a particular amount as basic pay and another particular amount as grade pay and also he was getting some amount as dearness allowance.

10. However, on superannuation when calculating the pension the respondent Department having taken the calculation method i.e., basic pay + Grade pay as well as the personal pay, if any for 60 half years that will be the maximum, that can be taken and would be considered and accordingly, the pension has been arrived at Rs.11,395/-, which was directed to be paid.

11. However, not satisfied with the said amount of Rs.11,395/- as pension, he made a request to the respondent to enhance his pension to the extent of further amount of Rs.7,000/- by calculating or adding or including the dearness allowance, which he has received at the time of superannuation as one of the components to be included for calculating the total pension.

12. That was denied by order dated 26.09.2016, which was under challenge before the Writ Court.

13. The learned Judge, who heard the writ petition, has exhaustively discussed the issue and certain portion of the order can be usually referred to hereunder:

> *18. The definition of 'emoluments' is no doubt an inclusive one. However, any payment towards dearness pay would have to be 'dearness pay' alone in terms of Rule 30 of the Tamil Nadu Pension Rules, as categorically explained by the Supreme Court in the case of N.D.P.Namboodripad (dead) by LRs's case (Review Petition) (supra). While the term 'emolument' is one which has a wider meaning ascribed to it in English, it is*

specifically defined vide an inclusive definition in Rule 30 and there would be no justification whatsoever to expand the definition to beyond what is specifically provided.

19. Accepting the argument of the petitioner would tantamount to inserting another component to the definition of 'emoluments' which is impermissible. Thus, it is only if the petitioner has been receiving 'dearness pay' specifically that the same could be taken note of in the computation of pay for the purpose of arriving at pension and commutation value thereof. In the present case, the components of dearness pay and dearness allowance have been taken note of in the fixation, and telescoped into, basic pay itself. Admittedly, it is not the case of the petitioner that he had been receiving dearness pay. His case is only that 'dearness allowance' that he is entitled to, be equated with 'basic pay'. In the light of the discussion above, I find no justification for accepting this argument.

20. I am also of the view that no prejudice is caused to the petitioner by virtue of my conclusion as above, in so far as the concept of dearness pay/dearness allowance, as explained by the Supreme Court in the case of Kallakurichi (supra), is integrated into basic pay *introduced as a compensatory measure in order to compensate the petitioner for inflationary effects faced by him after retirement. However, as G.O.Ms.No.105 dated 07.02.2006 provides, this aspect of the matter has already been taken into account while fixing basic wage. The merging of dearness allowance equal to 50% of the basic pay/pension with basic pay/pension with effect from 1.1.2006 that has been achieved by virtue of G.O.Ms.No.105 dated 07.02.2006 thus streamlining the concept of an integrated single payment and no allowance except as specifically contemplated by the Rules can be taken into account. The rationale of the judgment in case of Kallakurichi (supra) cannot be pressed into service by the petitioner in the light of G.O.Ms.No.105 dated 07.02.2006. The operative part of the G.O. is extracted below."*

14. The learned Judge having considered the G.O.Ms.No.105, has ultimately rejected the writ petition.

15. Before the Writ court, it was the stand taken by the respondent Department that the pension to be calculated in the following method viz., last pay drawn, which is equivalent to basic pay + grade pay + personal

pay, if any. The net qualification service for the petitioner was 64 half years, which has to be restricted to maximum of 60 half years. Therefore, the calculation would be i.e., pension equivalent to basic pay + Grade pay X 60 / 2 X 60. Accordingly, the following calculation has been made:

> *"Pension*
>
> *Last Pay Drawn = Basic Pay + Grade pay + pp (if any)*
>
> *Net qualifying service = 64 half years.*
>
> *Pension = LPD X No. of half years of NQS (Sub to Max of 60 Half years*
>
> *---*
>
> *2 X 60*
>
> *In the case of the petitioner herein, the individual was drawing a pay of Rs.17390/- and Grade Pay of Rs.5400 and no personal pay Hence, his petition is worked as follows:*
>
> *Pension = (17390+5400) X 60*
>
> *--------------------*
>
> *2 X 60*
>
> *Pension = Rs.11395/-"*

16. Insofar as the DCRG is concerned, the calculation would be basic pay + Grade pay + personal pay (if any) + Dearness allowance.

17. In the case of the appellant that he retires on superannuation on 31.03.2012, at the time, he had drawn 65% dearness allowance, therefore the DCRG was calculated in the following manner:

Basic pay + Grade pay + personal pay (if any) +Dearness allowance.

18. Accordingly, the DCRG would be Rs.6,01,664/- and this was calculated in the following method:

*"**DCRG***

LPD + Basic Pay + Grade + PP (if any) + DA (65% Drawn on the date of retirement)

DCRG = LPD X No.of half years of NQS (Sub to max of 66 half years)

$$DCRG = \frac{(17390 + 5400 + 14814) \times 64}{4}$$

$$DCRG = \frac{37,604 \times 64}{64}$$

DCRG = Rs.6,01,664/-"

19. However, it is the case of the appellant that, in the method that was adopted for calculating the DCRG, the pension also to be calculated and be paid.

20. Assuming for arguments sake that if the pension is calculated by taking into account of the dearness allowance also, which was drawn at the time of superannuation, insofar as the appellant's case is concerned,

his basic pay since would be Rs.17,390/- and his grade pay was Rs.5,400/- and his dearness allowance was Rs.14,814/- and if, all the three put together the net pension would come to Rs.18,395/-.

21. The very basic pay that was last drawn by the appellant during the superannuation was Rs.17,390/- whereas the pension would come to Rs.18,395/- if the calculation sought to be adopted by the appellant is adopted for calculating the pension.

22. This kind of calculation can never be imagined and that is not possible either under the pension rules or under any other method to be adopted by any employer.

23. No retired employee can be expected more pension than the basic pay as he has drawn during the time of superannuation. Though this has been explained by the respondent Department in the order, which was impugned before the Writ Court, not satisfied with the same, he has filed a writ petition before the Writ Court, where the Writ Court has passed a very exhaustively judgment, still not satisfied with the same, the appellant has chosen to prefer this appeal.

24. After having gone through the same and as discussed herein above, we are of the view that it is frivolous litigation, which has to be dismissed with costs. However, since the appellant being the retired employee, we do not want to pinch more on his personal exchequer as that would cause harm in his retirement life. Therefore, we are desisting from imposing costs while dismissing the writ appeal.

25. In the result, this writ appeal stands dismissed. No costs.

(R.S.K.,J.) **(K.B., J.)**

12.09.2023

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation:Yes/No

mp

To

The Director of Government Examination,
College Road, Chennai – 600 006.

R.SURESH KUMAR., J.
and
K.KUMARESH BABU.,J.

mp

Writ Appeal No.1971 of 2019

12.09.2023