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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.09.2023

Pronounced on : 10.10.2023

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

W.P.Nos.29274 & 26702 of 2022 and 628 & 1991 of 2023
and W.M.P.Nos.28569 & 28570 of 2022 and 2073, 2076, 565 & 567 of
2023

1.M.Arumugam

2.A.Asokan

3.K.Natarajan

4.U.S.Appathurai

5.V.Natarajan

6.S.Rengarajan

7.G.Ramamurthy

8.T.A.Sivakolundhu

.. Petitioners in W.P.No.29274 of

2022

K.Shanmugrajan

.. Petitioner in W.P.No.26702 of 2022

Tamil Nadu Kudineer Vadikal Variya Oyvuthiyarkal

Mattrum Kudumba Oyvuthiyarkal Nala Sangam

Old No.6/2, New No.15, Murugappa Street

Ice House, Triplicane

Chennai – 600 005

Rep by its General Secretary

Pon. Arumugam

S/o.Ponnusamy Gounder

.. Petitioner in W.P.No.1991 of 2023

Tamil Nadu Water Supply and Drainage Board

Pensioners' Association

Rep by its General Secretary

Mr.Rajkumar

No.41/19, Prashanthi Apartments, Welcome Colony



Anna Nagar West Extension, Chennai – 600 101

.. Petitioner in W.P.No.628 of 2023

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Versus

1.The State of Tamilnadu

Represented by Additional Chief Secretary to Government

Finance (Pension) Department

Fort St.George, Secretariat, Chennai – 600 009

3.Tamil Nadu Water Supply and Drainage Board (TWAD)

Represented by its Managing Director

31, Kamarajar Salai

Chepauk, Chennai – 600 005

.. Respondents in WP.No.29274 of 2022

1.The State of Tamilnadu

Represented by its Principal Secretary to Government

Municipal Administration and Water Supply Department

Fort St.George, Chennai – 600 009

2.The State of Tamilnadu

Represented by its Principal Secretary to Government

Finance Department

Fort St.George, Chennai – 600 009

3.Tamil Nadu Water Supply and Drainage Board (TWAD)

Represented by its Managing Director

31, Kamarajar Salai

Chepauk, Chennai – 600 005

.. Respondents in WP.No.26072 of 2022

1.The State of Tamilnadu

Represented by Additional Chief Secretary to Government

Municipal Administration and Water Supply Department

Fort St.George, Chennai – 600 009

2.The State of Tamilnadu

Represented by Additional Chief Secretary to Government



Finance Department

Fort St. George, Chennai – 600 009

3. The Managing Director

Tamil Nadu Water Supply and Drainage Board (TWAD)

31, Kamarajar Salai

Chepauk, Chennai – 600 005

.. Respondents in WP.Nos.628 & 1991 of 2023

Prayer in W.P.No.29274 of 2022: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order bearing Proceedings No. 157/Estt(Per)/A1/2022 dated 29.09.2022 on the files of the 2nd Respondent and quash the same and consequently direct the 2nd Respondent to revise the dearness allowance from 17 % to 31 % in terms of G.O.Ms.No.06, Finance (Pension) Department dated 01.01.2022 with effect from 01.01.2022 and to further revise the dearness allowance from 31% to 34% with effect from 01.07.2022 in terms of G.O.Ms.No.257, Finance (Pension) Department dated 18.08.2022 and pay over the benefits accrued therefrom to the Petitioners.

Prayer in W.P.No.26702 of 2022: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents to increase the Dearness Allowance from 01.01.2022 as paid to the Government pensioners and continue to pay the dearness allowance as applicable to the Government pensioners to the petitioner.

Prayer in W.P.No.628 of 2023: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent Proceedings No. 157/Estt(Per)/A1/2022 dated 29.09.2022 and to quash the same and thereby consequently direct to implement the G.O.Ms.No.6, dated 01.01.2022 and the G.O.Ms.No.257 dated 18.08.2022 with the letter and spirit to release the enhanced Dearness Allowance to 34% to all petitioner family pensioners those who are entitled including the recent announcements of 4% enhanced Dearness allowances dated 01.01.2023.

Prayer in W.P.No.1991 of 2023: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified



Mandamus, calling for the records relating to the impugned Government Letter in Letter No.38307/Finance(BPE)/2022-1 dated 18.08.2022 issued by the 2nd respondent and the consequential impugned Board Proceedings in B.P.Ms.No.91, TWAD Estt (Per.) Wing dated 18.10.2022 issued by the 3rd respondent and to quash the same insofar as the pensioners/family pensioners of TWAD Board is concerned and consequently directing the respondents to sanction revision of Dearness Allowance in favour of the petitioners/family pensioners of Tamil Nadu Water Supply and Drainage Board, the Members of Petitioners Association, in accordance with the Government Orders on par with the Government pensioners/family pensioners with payment of arrears of pension.

W.P.No.29274 of 2022

For Petitioners : Mr.V.Kalyanaraman
for M/s.Aiyar and Dolia

For Respondents : Mr.P.Baladhandayutham for R1
Special Government Pleader
Mr.S.Silambanan, AAG
assisted by
Mrs.S.Shahila Babu for R2

W.P.No.26702 of 2022

For Petitioner : Mr.T.N.Rajagopalan

For Respondents : Mr.P.Baladhandayutham for R1 & R2
Special Government Pleader
Mr.S.Silambanan, AAG
assisted by
Mrs.S.Shahila Babu for R3

W.P.No.628 of 2023

For Petitioner : Mr.C.Kanagaraju

For Respondents : Mr.P.Baladhandayutham for R1 & R2
Special Government Pleader
Mr.S.Silambanan, AAG
assisted by



Mrs.S.Shahila Babu for R3

WEB COPY W.P.No.1991 of 2023

For Petitioner

: Mr.G.Sankaran, Senior Counsel
for Mr.S.Nedunchezhiyan

For Respondents

: Mr.P.Baladhandayutham for R1 & R2
Special Government Pleader
Mr.S.Silambanan, AAG
assisted by
Mrs.S.Shahila Babu for R3

COMMON ORDER

W.P.No.29274 of 2022 is filed challenging the Proceedings No. 157/Estt(Per)/A1/2022 dated 29.09.2022 issued by the 2nd Respondent, quash the same and consequently direct the 2nd Respondent to revise the dearness allowance from 17 % to 31 % in terms of G.O.Ms.No.06, Finance (Pension) Department dated 01.01.2022 with effect from 01.01.2022 and to further revise the dearness allowance from 31% to 34% with effect from 01.07.2022 in terms of G.O.Ms.No.257, Finance (Pension) Department dated 18.08.2022 and pay over the benefits accrued therefrom to the Petitioners.

W.P.No.26702 of 2022 is filed seeking to direct the respondents to increase the Dearness Allowance from 01.01.2022 as paid to the Government pensioners and continue to pay the dearness allowance as applicable to the



Government pensioners to the petitioner.

WEB COPY W.P.No.628 of 2023 is filed challenging the 3rd respondent Proceedings No. 157/Estt(Per)/A1/2022 dated 29.09.2022 and to quash the same and thereby consequently direct to implement the G.O.Ms.No.6, dated 01.01.2022 and the G.O.Ms.No.257 dated 18.08.2022 with the letter and spirit to release the enhanced Dearness Allowance to 34% to all petitioner family pensioners those who are entitled including the recent announcements of 4% enhanced Dearness allowances dated 01.01.2023.

W.P.No.1991 of 2023 is filed challenging the Government Letter in Letter No.38307/Finance(BPE)/2022-1 dated 18.08.2022 issued by the 2nd respondent and the consequential impugned Board Proceedings in B.P.Ms.No.91, TWAD Estt (Per.) Wing dated 18.10.2022 issued by the 3rd respondent and to quash the same insofar as the pensioners/family pensioners of TWAD Board is concerned and consequently directing the respondents to sanction revision of Dearness Allowance in favour of the petitioners/family pensioners of Tamil Nadu Water Supply and Drainage Board, the Members of Petitioners Association, in accordance with the Government Orders on par with the Government pensioners/family pensioners with payment of arrears of



pension.

WEB COPY 2. Since, the facts and circumstances of these cases are similar in nature, they are disposed of by way of this Common Order.

3. The petitioners are retired from their service of the Tamil Nadu Supply and Drainage Board, were paid the terminal benefits and had been drawing pension which was revised from time to time. During the year 2009, the Government of Tamil Nadu formed a Committee for the purpose of revision of pension and pensionary benefits to the Board's pensioners/family pensioners. On the basis of recommendation made by the Committee, the Government sanctioned payment of interim arrears. The same was adopted by the second respondent by issuing B.P.Ms.No.88 dated 11.08.2009 authorising the Chairman and Managing Director to implement any orders issued revising the scale of pay in future and to rectify the defects/omissions if any.

4. G.O.Ms.No.327, Finance (Pension) Department dated 21.10.2019 issued by the Government sanctioning the revised rates of dearness allowance to the State Government Pensioners/family pensioners at the rate of 17% of



Basic pension/family pension with effect from 01.07.2019. Due to the outbreak of Covid-19 pandemic, the Government of India decided to freeze the dearness allowance at the current rates till December 2021 and the decision taken by the Central Government was adopted by the State Government by issuing G.O.Ms.No.232, Finance (Allowances) Department dated 27.4.2020.

5. After the pandemic, the Central Government issued Office Memorandum dated 25.10.2021 revising the rate of dearness allowance for Central Government employees from 17% to 28% and from 28% to 31% of the basic pension. The said office memorandum was adopted by the Government of Tamil Nadu by enhancing the dearness allowance payable to the employees and to the pensioners/family pensioners from 17% to 31% with effect from 01.01.2022. Even though, the Government had issued the Government Order revising the dearness allowance for the pensioner/family pensioners, the same was not implemented by the Respondent Board in respect of the petitioners.

6. On 31.03.2022, the Central Government issued a Office



Memorandum revising the dearness allowance from 31% to 34% with effect from 01.07.2022. The same was adopted by the Government of Tamil Nadu by issuing Government Orders dated 18.08.2022. Further, by impugned proceedings dated 29.09.2022, the Respondent Board conveyed the decision taken by the first respondent to implement the revised rate of dearness allowance from 17% to 31% with effect from 01.10.2022 instead from 01.01.2022. No reference was made in the impugned order as to the further revision of dearness allowance from 31% to 34% which was issued by the first respondent/Finance(Pension) Department by issuing G.O.Ms.No.254 dated 18.08.2022. Hence, the writ petitions.

7. It is the contention of the Board, admitting the issuance of G.O.Ms.No.6, Finance (Pension) Department dated 01.01.2022 sanctioning revised rate of dearness allowance with effect from 01.01.2022 at 31% from 17% of basic pension to the State Government pensioners and family pensioners. In this connection, the additional financial commitment for implementing the above Government Orders in Tamil Nadu Water Supply and Drainage Board, arrived on 07.01.2022, is 32.40 crore ($2.70 \times 12 = 32.40$) per annum. The subject was placed before the Board on 22.03.2022. The



Board, after detailed deliberations, has observed that as the Tamil Nadu Water Supply and Drainage Board is in financial crunch now, the request of the Pensioners/family pensioners to enhance the rate of dearness allowance as per G.O.Ms.No.6, Finance (Pension) Department dated 01.01.2022 will be considered once the financial position of Tamil Nadu Water Supply and Drainage Board is improved. Again, the matter was placed before the Tamil Nadu Water Supply and Drainage Board on 30.05.2022. Further, the Board resolved to adopt the revised rate of dearness allowance to the Tamil Nadu Water Supply and Drainage Board pensioners/family pensioners with prospective effect i.e., from June 2022 in view of the financial position of the Tamil Nadu Water Supply and Drainage Board.

8. It is the further contention that as per G.O.Ms.No.27, Finance (BPE) Department dated 21.01.2002, any welfare scheme implemented for Government employees should not be extended to the employees of loss making undertakings. However, such welfare schemes may be extended to other State Public Sector Undertakings based on their profitability after obtaining prior concurrence of Government. As per the above guidelines, the Board resolved to obtain the prior concurrence of the Government in this



regard, as it is a loss making organization. As per the resolution of the Tamil Nadu Water Supply and Drainage Board, a detailed proposal was sent to Government in letter No.000157/Estt(Per)/A1/2022 dated 22.06.2022 to issue orders for sanctioning revised rate of dearness allowance at 31% from 17% of basic pension to the pensioners and family pensioners of Tamil Nadu Water Supply and Drainage Board. The Government after examination decided to agree to the above proposal with effect from 01.10.2022, subject to the caveat that the Tamil Nadu Water Supply and Drainage Board has to bear the cost from their own funds and shall not seek any Government support.

9. After receipt of the clearance from the Government, the Managing Director, Tamil Nadu Water Supply and Drainage Board, issued orders in Proceeding No.157/Estt(per)/A1/2022 dated 29.09.2022 to enhance the rate of dearness allowance from 17% to 31% with effect from 01.10.2022 to the pensioners and family pensioners of the Tamil Nadu Water Supply and Drainage Board. As the Board is in severe financial crisis and finding it very difficult to pay salary, pension/family pension every month, the Board has paid the increased dearness allowance from 01.10.2022 onwards as per the Orders of the Government. Hence, it is the contention that the Board is in



financial crisis and they are not liable to pay.

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10. It is the contention of the learned counsel for the petitioner that the benefits are extended to all others including serving employee of the Board and the benefits are not extended to the petitioners merely on the basis of financial crisis. It is a clear case of discrimination. Hence, it is the contention that when the dearness allowance and the pensionary benefits are enhanced from time to time is applicable to all the factions there cannot be any discrimination on the ground of financial crunch. Much reliance also placed in the Judgment of the Hon'ble Apex Court in the decisions reported in *(2008) 7 SCC 375* and *(2012) 12 SCC 210*.

11. Whereas, the learned Additional Advocate General submitted that though the G.O.Ms.No.6, Finance (Pension) Department dated 01.01.2022, permitting the enhancement of dearness allowance from 17% to 31% payable from 01.01.2022 that order will be applicable State Government employees who had drawn lump-sum payment on absorption in Public Sector Undertaking/Autonomous Body/Local Body/Co-operative Institution, Government Pensioners, Teacher Pensioners of aided and Local Body



educational institutions and other pensioners of local bodies and his further contention is that as per the G.O.Ms.No.27, Finance (BPE) Department dated

21.01.2002, the Government has issued guidelines indicating that any welfare scheme implemented for Government employees should not be extended to the employees of loss making undertakings. However, such welfare schemes may be extended to other State Public Sector Undertakings based on their profitability after obtaining prior concurrence of Government. The dearness allowance enhancement in loss making public sector undertakings should be referred to Government for approval before implementation. Hence, it is the contention as per the above guidelines, considering the financial crisis of the Board, a detailed proposal has been sent to the Government to extend the benefits to the pensioners from 01.10.2022 instead of 01.07.2022, the same has been agreed by the Government with a caveat that the Tamil Nadu Water Supply and Drainage Board has to bear the cost from their own funds and shall not seek any Government support. Therefore, it is the contention that only due to the financial crisis the amount has not been paid and Government Orders restricting the amount is also well within the power of the Board as well as the Government. Hence, disputed the entire writ petitions.



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12. I have perused the entire materials. The petitioners were denied the benefits of enhancement of dearness allowance from 17% to 31% from the date of implementation, i.e., 01.01.2022 and the same has been postponed to 01.10.2022 only on the ground of financial crisis and certain guidelines of the Government.

13. It is the stand of respondent that the benefits to the Government servants shall not be extended to the loss making undertaking without the concurrence from the Government. Accordingly, they sent a proposal and the Government has agreed their proposal to extend the benefit from 01.10.2022 instead of 01.01.2022.

14. It is relevant to note that TWAD Board is a statutory body constituted under the Tamil Nadu Water Supply and Drainage Board Act, 1970 (Tamil Nadu Act 4 of 1971) and it under the control of the Municipal Administration and Water Supply Department, Government of Tamil Nadu. Though it is stated that in loss making undertaking, the benefits cannot be



extended automatically without the concurrence of the Government. The benefit conferred under Government Order, ie., enhancement of dearness allowance from 01.01.2022 to the serving employees, this fact is not disputed during the submissions. The petitioners have been discriminated only on the ground of financial crisis. If really, the Board is of the view any such benefit extended employees on its own as per the Government guidelines, they ought not to have extended the benefit to the serving members, whereas, it has extended such benefit to the serving members from 01.01.2022 and discriminated the petitioners and extended such benefit only after 10 months. In fact, the board has denied such benefits for a period of 10 months to the pensioners citing the financial crisis. Despite the so-called financial crisis exists, the Board has extended the benefit to the regular employees. Thus, this Court is of the view that there cannot be any discrimination in respect of the pensioners also citing financial crisis. The Hon'ble Supreme Court in the case of *Haryana State Minor Irrigation Tubewells Corporation and Others Vs. G.S.Uppal and others* reported in 2008 7 SCC 375 has held as follows:

33. The plea of the appellants that the Corporation is running under losses and it cannot meet the financial burden on account of revision of scales of pay has been rejected by the High Court and, in our view, rightly so.



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Whatever may be the factual position, there appears to be no basis for the action of the appellants in denying the claim of revision of pay scales to the respondents. If the Government feels that the Corporation is running into losses, measures of economy, avoidance of frequent writing off of dues, reduction of posts or repatriating deputationists may provide the possible solution to the problem. Be that as it may, such a contention may not be available to the appellants in the light of the principle enunciated by this Court in M.M.R. Khan v. Union of India and Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union. However, so long as the posts do exist and are manned, there appears to be no justification for granting the respondents a scale of pay lower than that sanctioned for those employees who are brought on deputation. In fact, the sequence of events, discussed above, clearly shows that the employees of the Corporation have been treated at par with those in Government at the time of revision of scales of pay on every occasion.

34.It is an admitted position that the scales of pay were initially revised w.e.f. April 1, 1979 and thereafter on January 1, 1986. On both these occasions, the pay scales of the employees of the Corporation were treated and equated at par with those in Government. It is thus an established fact that both were similarly situated. Thereafter, nothing appears to have happened which may justify the differential treatment. Thus, the Corporation cannot put forth financial loss as a ground only with regard to a limited category of employees. It cannot be said that the Corporation is financially sound insofar granting of revised pay scales to other employees, but finds financial constraints only when it comes to dealing with the respondents, who are similarly placed in the same category. Having regard to the well reasoned judgment of the Division Bench upholding the judgment and order of the learned Single Judge, we are



of the view that the impugned judgment warrants no interference inasmuch as no illegality, infirmity or error of jurisdiction could be shown before us.

15. Similarly, in the case of *State of Jharkhand and others Vs. Jitendra Kumar Srivatsava and another* reported in (2013) 12 SCC 210, the Hon'ble Supreme Court held as follows:

14. Right to receive pension was recognized as right to property by the Constitution Bench Judgment of this Court in Deokindandan Prasad vs. State of Bihar; (1971) 2 SCC 330, as is apparent from the following discussion:(SCC pp.342-43, paras 27-33)

“27. The last question to be considered, is, whether the right to receive pension by a Government servant is property, so as to attract Articles 19(1)(f) and 31(1) of the Constitution. This question falls to be decided in order to consider whether the writ petition is maintainable under Article 32. To this aspect, we have already adverted to earlier and we now proceed to consider the same.

28. According to the petitioner the right to receive pension is property and the respondents by an executive order dated June 12, 1968 have wrongfully withheld his pension. That order affects his fundamental rights under Articles 19(1)(f) and 31(1) of the Constitution. The respondents, as we have already indicated, do not dispute the right of the petitioner to get pension, but for the order passed on August 5, 1966. There is only a bald averment in the counter-affidavit that no question of any fundamental right arises for consideration. Mr. Jha, learned counsel for the respondents, was not prepared to take up the position that the right to receive



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pension cannot be considered to be property under any circumstances. According to him, in this case, no order has been passed by the State granting pension. We understood the learned counsel to urge that if the State had passed an order granting pension and later on resiles from that order, the latter order may be considered to affect the petitioner's right regarding property so as to attract Articles 19(1)(f) and 31(1) of the Constitution.

29. We are not inclined to accept the contention of the learned counsel for the respondents. By a reference to the material provisions in the Pension Rules, we have already indicated that the grant of pension does not depend upon an order being passed by the authorities to that effect. It may be that for the purposes of quantifying the amount having regard to the period of service and other allied matters, it may be necessary for the authorities to pass an order to that effect, but the right to receive pension flows to an officer not because of the said order but by virtue of the Rules. The Rules, we have already pointed out, clearly recognise the right of persons like the petitioner to receive pension under the circumstances mentioned therein.

30. The question whether the pension granted to a public servant is property attracting Article 31(1) came up for consideration before the Punjab High Court in Bhagwant Singh v. Union of India. It was held that such a right constitutes "property" and any interference will be a breach of Article 31(1) of the Constitution. It was further held that the State cannot by an executive order curtail or abolish altogether the right of the public servant to receive pension. This decision was given by a learned Single Judge. This decision was taken up in Letters Patent Appeal by the Union of India. The Letters Patent Bench in its decision in Union of India v. Bhagwant Singh approved the decision of the learned Single Judge. The Letters Patent



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Bench held that the pension granted to a public servant on his retirement is "property" within the meaning of Article 31(1) of the Constitution and he could be deprived of the same only by an authority of law and that pension does not cease to be property on the mere denial or cancellation of it. It was further held that the character of pension as "property" cannot possibly undergo such mutation at the whim of a particular person or authority.

31. The matter again came up before a Full Bench of the Punjab and Haryana High Court in K.R. Erry v. The State of Punjab. The High Court had to consider the nature of the right of an officer to get pension. The majority quoted with approval the principles laid down in the two earlier decisions of the same High Court, referred to above, and held that the pension is not to be treated as a bounty payable on the sweet will and pleasure of the Government and that the right to superannuation pension including its amount is a valuable right vesting in a Government servant. It was further held by the majority that even though an opportunity had already been afforded to the officer on an earlier occasion for showing cause against the imposition of penalty for lapse or misconduct on his part and he has been found guilty, nevertheless, when a cut is sought to be imposed in the quantum of pension payable to an officer on the basis of misconduct already proved against him, a further opportunity to show cause in that regard must be given to the officer. This view regarding the giving of further opportunity was expressed by the learned Judges on the basis of the relevant Punjab Civil Service Rules. But the learned Chief Justice in his dissenting judgment was not prepared to agree with the majority that under such circumstances a further opportunity should be given to an officer when a reduction in the amount of pension payable is made by



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the State. It is not necessary for us in the case on hand, to consider the question whether before taking action by way of reducing or denying the pension on the basis of disciplinary action already taken, a further notice to show cause should be given to an officer. That question does not arise for consideration before us. Nor are we concerned with the further question regarding the procedure, if any, to be adopted by the authorities before reducing or withholding the pension for the first time after the retirement of an officer. Hence we express no opinion regarding the views expressed by the majority and the minority Judges in the above Punjab High Court decision, on this aspect. But we agree with the view of the majority when it has approved its earlier decision that pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant.

32. This Court in State of Madhya Pradesh v. Ranojirao Shinde and Anr had to consider the question whether a "cash grant" is "property" within the meaning of that expression in Articles 19(1)(f) and 31(1) of the Constitution. This Court held that it was property, observing "it is obvious that a right to sum of money is property".

33. Having due regard to the above decisions, we are of the opinion that the right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under Article 19(1)(f) and it is not saved by clause (5) of Article 19. Therefore, it follows that the order dated 12-6-1968 denying the petitioner right to receive pension affects the fundamental right of the petitioner under Articles 19(1)(f) and 31(1) of the Constitution, and as such the writ petition under Article 32 is



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maintainable. It may be that under the Pension Act (Act 23 of 1871) there is a bar against a civil court entertaining any suit relating to the matters mentioned therein. That does not stand in the way of a Writ of Mandamus being issued to the State to properly consider the claim of the petitioner for payment of pension according to law”.

15. In State of West Bengal Vs. Haresh C. Banerjee and Ors. (2006) 7 SCC 651, this Court recognized that even when, after the repeal of a Article 19(1)(f) and Article 31(1) of the Constitution vide Constitution (Forty-Fourth Amendment) Act, 1978 w.e.f. 20th June, 1979, the right to property was no longer remained a fundamental right, it was still a Constitutional right, as provided in Article 300A of the Constitution. Right to receive pension was treated as right to property. Otherwise, challenge in that case was to the vires of Rule 10(1) of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 which conferred the right upon the Governor to withhold or withdraw a pension or any part thereof under certain circumstances and the said challenge was repelled by this Court.

16. Fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognized as a right in “property”. Article 300-A of the Constitution of India reads as under:

“300A Persons not to be deprived of property save by authority of law. - No person shall be deprived of his property save by authority of law.” Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300A of the Constitution. It follows that attempt of the



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appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.

17. It hardly needs to be emphasized that the executive instructions are not having statutory character and, therefore, cannot be termed as “law” within the meaning of aforesaid Article 300A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold even a part of pension or gratuity. As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different.

16. Such view of the matter, when the benefits have been extended to the serving employees, restricting the same to the particular section of the employees namely the pensioners, the action of the Government as well as the Respondent restricting such benefits cannot be sustained in the eye of law on the ground of violation of equality clause.

17. Accordingly, the impugned orders as well as the Government Order in G.O.Ms.No.27, Finance (BPE) Department dated 21.01.2022, stands quashed and the respondents are directed to pay the benefit as per the G.O.Ms.No.6, Finance (Pension) Department dated 01.01.2022 to the pensioners.



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10.10.2023

dhk

Internet : Yes/No

Neutral Citation : Yes/No

To

1.The Additional Chief Secretary to Government
The State of Tamilnadu
Finance (Pension) Department
Fort St.George, Secretariat, Chennai – 600 009

2.The Principal Secretary to Government
The State of Tamilnadu
Municipal Administration and Water Supply Department
Fort St.George, Chennai – 600 009

3.The Principal Secretary to Government
The State of Tamilnadu
Finance Department
Fort St.George, Chennai – 600 009

4.The Additional Chief Secretary to Government
The State of Tamilnadu
Municipal Administration and Water Supply Department
Fort St.George, Chennai – 600 009



5. The Additional Chief Secretary to Government
The State of Tamilnadu
Finance Department
Fort St.George, Chennai – 600 009

6. The Managing Director
Tamil Nadu Water Supply and Drainage Board (TWAD)
31, Kamarajar Salai
Chepauk, Chennai – 600 005

N.SATHISH KUMAR, J.

dhk

W.P.Nos.29274 & 26702 of 2022
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10.10.2023

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