BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.08.2023

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

CONT P(MD)No.871 of 2022
in
W.P(MD)No.23379 of 2018
and
REV.APLW(MD)No. 152 of 2023
and
W.M.P(MD)No.11238 of 2022

CONT P(MD)No.871 of 2022

B.Viswanathan ... Petitioner/Petitioner

vs.

1. Dr.K. Gopal, I.A.S.,
The Government of Tamil Nadu,
Represented by its Special Commissioner and
Secretary to Government, (Transports) Department,
Fort. St. George, Chennai.

2. Mr.Venkatesan,
The Director of Treasuries and Accounts,
Panagal Building, Jennis Road,
Saidapet, Chennai.

3. Chithra John,
The Administrator,
TNSTC Employees Pension Fund Trust,
Thiruvalluvar Illam,
Chennai - 600 002. ... Respondents/Contemnors

PRAYER: Petition filed under Section 11 of the Contempt of Court Act, 1971, to punish the respondents herein, for committing grave contempt and gross disobedience of the order passed by this Court in W.P(MD)No.23379 of 2018, order, dated 11.03.2022.

For Petitioner : Mr.R.Saravanan
For R-1 & R-2 : Mr.S.Kameswaran
Government Advocate
For R-3 : Mr.S.C.Herold Singh
For Amicus Curiae: Mr.D.Sivaraman

REV.APLW(MD)No. 152 of 2023

1. The Managing Director,
SETC, Thiruvalluvar House,
Anna Salai,
Chennai 600 002.

2. The Assistant Manager,
TNSTC Employees Pension Fund Trust,
SETC (TN) Limited,
Corporative Office,
Thiruvalluvar Illam,
Chennai 600 002. ... Petitioners/3rd and 5th Respondents

Vs.

1. B.Viswanahan ...Writ petitioner/R-1

2. The Government of Tamil Nadu,
Represented by its Special Commissioner
and Secretary to Government, (Transports) Department,
Fort Saint George, Chennai.

3. The Director of Treasuries & Accounts,
Panagal Building, Jennis Road,
Saidapet, Chennai

4. The Administrator,
TNSTC, Employees' Pension Fund Trust,
Thiruvalluvar House,
Pallavan Salai, Chennai.

5. The Account General,
O/o. Account General,
Thenampet, Chennai. ... Respondents/R-1, 2, 4 & 6

PRAYER: Review Application filed under Order 47 Rule 1 r/w 114 of the Civil Procedure Code, to review the order, dated 11.03.2022 passed in W.P.(MD). No.23379 of 2018 and allow the review application.

For Petitioners : Mr.K.Sathiya Singh
For R-1 : Mr.D.Saravanan
For R-2 & R-3 : Mr.S.Kameswaran, Government Advocate
For R-4 : Mr.S.C.Herold Singh
For R-5 : Mr.P.Gunasekaran
For Amicus Curiae: Mr.D.Sivaraman

COMMON ORDER

Both the contempt petition and review application arise from the order passed in W.P.(MD)No.23379 of 2018, hence both taken together and common order is passed.

2.(i) The ***CONT.P.(MD)No.871 of 2022*** has been filed alleging willful disobedience of the order dated 11.03.2022 passed in W.P.(MD)No.23379 of 2018.

2(ii). The ***REV.APLW(MD)No.152 of 2023*** has been filed to review the order, dated 11.03.2022 passed in W.P.(MD)No.23379 of 2018.

3. The writ petition in W.P(MD)No.23379 of 2018 was filed to quash the order passed by the 1st respondent, dated 26.09.2017 and the consequential order passed by the 2nd respondent, dated 03.01.2018, whereby through the order the respondents had withheld the amount from 01.07.2006 to 28.05.2015 and direct the respondents to pay the withheld amount for the said period, with interest of arrears of pension at the rate of 9% as per the G.O.Ms.No.96 dated 31.07.2015.

4. This Court after perusing all the records filed along with W.P.(MD)No.23379 of 2018 and passed order, dated 11.03.2022. The relevant paragraph No.5 is extracted hereunder:

> *"5. Therefore, this Court is of the considered opinion since the litigation had ended in favour of the writ petitioner, the first respondent shall direct the second respondent to release the amount who in turn, shall direct the fourth respondent to disburse the amount to the petitioner. The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order."*

5. Alleging willful disobedience of this order, the petitioner had filed CONT.P.(MD)No.871 of 2022. The contention of the petitioner is that the respondents failed to implement the order thereby failed to disburse the amount. However, the respondents vehemently objected and submitted that the order is complied with and the amount was already disbursed as early as 2008 itself. But the petitioner still maintained that the said amount was not paid. Therefore, this Court directed the authorities and the petitioner to exchange the calculation memo and resolve the issue among themselves. But the petitioner submitted that the respondents are not ready to resolve the issue. Hence this Court perused the calculation memo submitted by both the parties. It is seen that the rival claims are from 29.01.1969, the date of appointment until retirement dated 30.06.2006. Further it has to be resolved whether the government ought to pay the department pension or whether the same is already paid by the Transport Corporation. Hence, this Court thought it fit to appoint Amicus Curiae and has appointed Mr.D.Sivaraman as Amicus Curiae. The Amicus Curiae was directed to assist the Court to resolve the issue, after going through the papers submitted by the respondents as well as the petitioner.

6. The Learned Amicus Curiae after verifying the records had submitted a report, wherein it is stated that the amount is paid and there is no contempt as alleged. The petitioner and the respondents were directed to submit their arguments based on the report submitted by Amicus Curiae. The Learned

Counsel appearing for the petitioner, the Learned Counsel appearing for the respondents and the Learned Amicus Curiae had submitted their arguments. After hearing the arguments and after perusing the records this Court had considered the case of the petitioner.

7. It is seen that the petitioner’s father was appointed in the erstwhile Transport Department on 29.01.1969, his service was regularized from 01.02.1970, then the Transport Department was wound up with effect from 03.04.1975, its employees were absorbed permanently in various Transport Corporations, the petitioner's father was absorbed in State Express Transport Corporation. Since the State Express Transport Corporation was formed on 15.09.1975, the petitioner’s father was treated as joined from 15.09.1975. The terminal benefits for the service in Transport Department was sanction vide G.O.Ms.No.1038 Transport Department, dated 23.09.1985. The persons who have “ten years of service” were granted pension by fixing the cutoff date as 01.05.1075 (for State Express Transport Corporation SETC as 15.09.1975). The petitioner’s father had less than 10 years of service. However, the persons who have less than ten years, had filed writ petitions. Ultimately the Hon'ble Supreme Court vide its order dated 29.10.2003 had fixed the cutoff date for ten years of service as 01.04.1982 and the date of commencement of pension as 01.01.1988. In this extended date, the petitioner's father was also eligible for pension. Thereafter, G.O.Ms.No.42 dated 27.05.2005 was issued, wherein the employees who were absorbed from Transport Department and retired after 01.09.1998 shall receive pension as per the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules and they are not eligible for second pension for the service rendered in Transport Department. Again, litigation started for the said G.O.Ms.No.42, wherein the High Court set aside Clause 5(b) of the said G.O.Ms.No.42 and directed the Government to pay pension to employees who have 10 years of service as on 01.04.1982 and who had retired on or after 01.09.1998 for the Transport Department service with 9% rate of interest. Aggrieved over, the government preferred writ appeal and SLP and both were dismissed. Hence an amendment to G.O.Ms.No.42 was issued in G.O.Ms.No.96 Transport (RW1) Department dated 31.01.2015.

8. The petitioner's father was having 10 years of Department service as on the cutoff date of 01.04.1982 and he had retired from Corporation service on 30.06.2006 and hence he is entitled to both pensions. The petitioner's father died on 29.05.2012 and petitioner's mother died on 28.05.2015. The petitioner and his siblings are not entitled to pension since all are more than 25 years of age.

9.(i) The respondent had filed a memo dated 21.04.2023 wherein it is seen the Government pension of Rs.1,79,469/- for the period from 01.01.1988 to 30.06.2006 is already paid to the legal heirs and the interest for the pension arrears also paid on 06.09.2019 and the same is admitted by the petitioner. Hence the petitioner has no claim for the said period.

9.(ii) Based on G.O.Ms.No.96 the petitioner's father is entitled to two pensions i.e. Department pension and Corporation pension. The High Court vide orders dated 27.08.2006 in W.P.No.5856, 6891, 23181 of 2006 batch had directed the method of calculation. The total service in Department plus Corporation has to be taken for arriving "gross pension", the eligible government pension has to be calculated for the department service and the difference between the gross pension and Government pension or Corporation pension whichever is less is the pension payable by the Corporation.

10. The petitioner's father retired from service on 30.06.2006 after rendering 35 years 3 months services in both Department and Corporation put together. The respondents had taken 30 years of service (which is the maximum service permitted to be taken) and started paying pension from 01.07.2006 and the actual disbursement started from 01.02.2008 and the arrears of pension of Rs. 70,893/- for the period from 01.07.2006 to 30.01.2008 was separately settled. Hence as per High Court order and G.O.Ms.No.96 the 3rd respondent is liable to pay only difference in the gross pension, but the 3rd respondent had paid the gross pension itself from 01.06.2006. It is here the petitioner is not accepting the calculation. According to the petitioner the said pension is only Corporation pension and the government is liable to pay the Department pension separately. According to the respondents the Corporation itself had paid both the Department pension and Corporation pension. The Learned Amicus Curiae after scrutinizing the records had opined that the Corporation has paid both pension and had explained as under:

> "If the pension for the month February, 2008 is taken as illustration, the same was calculated for 30 years based on the pay last drawn and the gross pension was fixed as Rs.5079/-. Out of the same, the government pension for Transport Department service works out to Rs. 3050/- and the actual liability of the 3rd respondent was only Rs.1199/-, whereas the 3rd respondent had paid the entire pension of Rs.5079/-…"

From the aforesaid example it is evident that both the department pension and the corporation pension was already paid by the Corporation. It can be put it this way, the department pension payable by government is paid by the corporation itself and in turn the government would pay the said amount to the corporation, thereby compensate the corporation. At the most it is an adjustment between the department and the corporation. When the petitioner was paid both the pensions by the Corporation itself, then a separate claim from the government is erroneous, besides being excessive claim. Hence the claim of the petitioner that the government had to pay department pension is incorrect, since the department pension was already paid by the corporation itself.

11. In the order dated 11.03.2022 passed in W.P(MD)No.23379 of 2016 this Court had directed the Government to disburse the "Department Pension" amount to Corporation Pension Trust and in turn the pension for both the services shall be disbursed to the petitioner. This direction was already carried on by the respondents as early as 2008 itself. Therefore, there is no error apparent on the face of the record and the review application is liable to be dismissed and accordingly dismissed. Further, the direction issued by this Court is already complied with, hence there is no contempt as alleged by the petitioner.

12. For the reasons stated supra, the REV.APLW.(MD)No.152 of 2023 is dismissed. The contempt petition in CONT.P(MD)No. 871 of 2022 is closed. No costs. Consequently, connected miscellaneous petition is closed.

09.08.2023

Index : Yes / No
Internet : Yes

KSA

To

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S.SRIMATHY, J

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Common Order made in
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