IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.21348 of 2021
and
W.M.P.Nos.22592 & 22593 of 2021

S.Lakshmiraj ... Petitioner

Vs.

1.The Agricultural Production Commissioner and
Secretary to Government
Agricultural Department
Fort St. George
Chennai 600 009.

2.The Director of Agriculture,
Ezhilagam, Chepauk
Chennai 600 005.

3.The Accountant General (A&E),
361, Anna Salai,
Teynampet, Chennai – 18.

4.The Sub-Treasury Officer,
Sub-Treasury, Pollachi Taluk,
Coimbatore District. …Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the 3rd respondent in Gratuity payment order No.AG(A&E)

PENP07/3/REV 10720136/GPO, dated 22.10.2018 and quash the same and forbear the respondents 1 to 5 herein from withholding or effecting any recovery from the petitioner's pension account No.C266952 and to consequently refund the excess amounts so deducted from the petitioner's pension account with interests.

For Petitioner	:	Mr.G.Ponnambala Thiyagarajan
For R1, R2 & R4	:	Mr.M.Murali Government Advocate.
For R3	:	Mr.V.Vijay Shankar

ORDER

The petitioner herein worked as Joint Director of Agriculture and retired from service on attaining the age of superannuation on 28.02.2014. By the date of retirement of the petitioner, certain disciplinary proceedings were pending against him and in view of the same, the petitioner was paid provisional pension and the said disciplinary proceedings came to an end by passing the order vide G.O.(3D).No.100, Agriculture (AA7) Department, dated 25.05.2016 and G.O.(3D).No.233, Agriculture (AA7) Department, dated 04.10.2016 imposing a punishment. Through G.O.(3D).No.100 dated 25.05.2016, a punishment of deduction of Rs.3,30,000/- from DCRG was imposed besides cut in pension of Rs.2,000/- per month for five consecutive years. Similarly, under G.O.(3D).No.233, dated 04.10.2016 cut in pension to the tune of Rs.50/- per month for a period of two years was imposed.

2. The petitioner has not chosen to challenge the above said two punishment imposed upon him and the said punishment have become final. Therefore, the pensionary benefits of the petitioner were settled and the pension payment order No.AG(A&E) PENP07/3/REV10720136/GPO, dated 22.10.2018 was issued. Accordingly, the petitioner is being paid pension after implementing the punishment of cut in pension imposed under the above referred two Government orders. It is aggrieved by the said pension payment order dated 22.10.2018, the petitioner approached this Court by filing the present writ petition contending that he is entitled for commutation value of Rs.8,02,200/- but he was paid only Rs.7,11,010/- and thus Rs.91,200/- being a balance commutation value is withheld by the respondents.

3. The learned counsel for the petitioner contended that the petitioner is entitled for payment of Dearness Allowance on the actual amount of pension for which he is entitled to after implementing the punishment of cut in pension. It is also further contended that the petitioner though retired on 28.02.2014, the disciplinary proceedings were concluded in the year 2016

and the petitioner was paid terminal benefits only in the year 2018. Therefore, he is entitled for payment of interest in terms of Tamil Nadu Pension Rules, 1978 on the amount of gratuity that was payable by the petitioner.

4. In response to the notice issued by this Court, the 3rd respondent filed counter affidavit contending that the punishment of cut in pension imposed under two Government orders at the rate of Rs.2,000/- and Rs.50/- respectively is required to be given effect before extending the benefit of commutation of pension to the petitioner in terms of clarification issued by the Government in Letter No.113767/Pension/92-1, dated 07.10.1992 of the Finance (Pension) Department and accordingly, the said cut in pension was given effect to and thereafter, the commutation value of pension payable to the petitioner was calculated. Thus, according to the 3rd respondent, the petitioner was entitled for original pension of Rs.23,745/- and after deducting the cut in pension to the tune of Rs.2,000/- and Rs.50/- the pension that is payable to the petitioner is Rs.21,695/- and out of that pension, 1/3rd of said amount i.e., Rs.7231/- is permitted to be commuted and accordingly the commutation value of pension was calculated and an amount of Rs.7,11,010/-

was paid to the petitioner.

5. This Court has carefully considered the contents of the counter affidavit filed by the 3rd respondent as well as the clarification dated 07.10.1992 said to have been issued by the government which is the basis for calculating the commutation value of pension paid to the petitioner.

6. As already noted above, the punishment of cut in pension imposed against the petitioner under the above referred two Government orders of Rs.2,000/- and Rs.50/- is only for a period of five 5 and 2 years respectively, but not of permanent in nature. If that be the case, the cut in pension imposed under the two Government orders can be implemented only for a period of five years and two years respectively. Therefore, the petitioner is entitled for restoring original pension admissible to him. By following the clarification issued by the Government, the cut in pension is given effect at the initial stage, the same would result in depriving the petitioner from having the benefit of commuted value of pension in respect of amount of cut in pension i.e., Rs.2000/- and Rs.50/- permanently.

7. If the cut in pension imposed against the petitioner is of permanent in nature, the calculation that is made by the 3rd respondent basing upon the clarificated letter dated 07.10.1992 may be correct. But the punishment of cut in pension imposed against the petitioner is for limited period of five years and two years for an amount of Rs.2,000/- and Rs.50/- respectively. Therefore, the clarification that was issued by the Government through letter dated 07.10.1992 cannot be applied to the case of the petitioner straight away.

8. In other words, though the punishment of cut in pension imposed on the petitioner is only for a limited period of five years and two years, under the above two referred Government orders, by depriving the petitioner of commutated value of pension in respect of pension amount of Rs.2,000/- and Rs.50/- the same is being implemented permanently insofar as commutation of pension is concerned. This situation is not dealt with or clarified in the letter dated 07.10.1992 issued by the Government. But the 3rd respondent applied the said clarification to the case of the petitioner, without taking into consideration the above aspect.

9. In the considered view of this Court, applying the said clarification in the fact situation is totally impermissible. In the light of the above, this Court is of the considered view that it would be appropriate to require the 3rd respondent to take note of the above observations made and re-calculate the commutation value of the pension payable to the petitioner and other benefits in accordance with law, if necessary by seeking appropriate clarification from the Government once again in the present fact situation.

10. Then coming to the claim for payment of interest, it is not in dispute that the petitioner retired from service on 28.02.2014 and the disciplinary proceedings that were pending as on the date of retirement were concluded by passing final orders on 25.05.2016 and 04.10.2016. But the petitioner was paid pensionary and other benefits only through proceedings dated 22.10.2018 that is almost after a period of two years since the date of conclusion of the disciplinary proceedings.

11. As seen from the counter affidavit filed by the 1st , 2nd and 3rd respondents, there is nothing to show that the petitioner is in any way responsible for the delay in releasing the pensionary retirement benefits of the

petitioner for more than two years. Therefore, it is a case where the respondents should also consider the claim of the petitioner for payment of interest on delayed release of terminal and retirement benefits.

12. In the light of the above, this writ petition is disposed of directing the 3rd respondent to re-consider and review the pension payment order, dated 22.10.2018 in the light of the observations made above and also consider the claim of the petitioner for payment of interest on the delayed payment of pensionary and retirement benefits and pass appropriate orders thereon as expeditiously as possible at any rate within a period of four (4) months from the date of receipt of a copy of this order. The connected miscellaneous petitions, if any, shall stand closed. No costs.

26.06.2024

Index : Yes/No
Speaking Order : Yes/No
dpa

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