IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.04.2024

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.173 of 2017
and
W.M.P.Nos.167 and 168 of 2017

P.Sellamuthu ... Petitioner

Vs.

1. The Secretary to Government,
   Revenue (Service-8(2)) Department,
   Fort St.George, Chennai – 600 009.

2. The Special Commissioner,
   Revenue Administration, Chepauk,
   Chennai – 600 005.

3. The District Collector,
   Cuddalore District, Cuddalore.

4. The Revenue Divisional Officer,
   Virudhachalam, Cuddalore District. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned G.O. issued by the 1st respondent in G.O.Ms.No.158, Revenue (Service -8(2)) Department, dated 08.04.2015 in so far relates to sanction the minimum pension from date of G.O. and quash the same and consequently directing the respondents to disburse the arrears of the minimum pension by calculating the minimum pension by taking note from the date of the petitioners retirement till 30.04.2010.

For Petitioner : Mr.S.S.Jothivani

For Respondent : Mr.S.Balamurugan,
Government Advocate

ORDER

The Writ Petition has been filed for calling the entire records relating to the impugned Government Order issued by the first respondent in G.O.Ms.No.158, Revenue (Service -8(2)) Department, dated 08.04.2015 insofar as it relates to sanction of the minimum pension from date of Government Order and quash the same and sought for a further direction, directing the respondents to disburse the arrears of the minimum pension by calculating the minimum pension by taking note from the date of the petitioners retirement i.e., 30.04.2010.

2. The petitioner herein worked as “Village Maniam” during the years 1977-78 and according to the petitioner, he was relieved in the year 1978 and thereafter, pursuant to a policy decision of the Government, he was appointed as "Village Administrative Officer" on 03.11.2000 and subsequently, on attaining the age of superannuation, the petitioner retired from service on 30.04.2010. Thereafter, the petitioner and other similarly situated persons claimed for payment of pension on par with other similarly

situated persons, who were extended similar benefit by issuing G.O (Ms) No.756, Revenue Department dated 17.08.1993 and G.O (Ms) No.148, Revenue Department dated 20.04.2011. The claim of the petitioner and several others were considered by the Government and issued G.O.Ms.No.158, Revenue (Service -8(2)) Department, dated 08.04.2015 granting minimum pension by duly relaxing Rule 43 of the Tamil Nadu Pension Rules, 1978 from the date of the said Government order. Aggrieved by the same, awarding minimum pension only from the date of the said order i.e., 08.04.2015 instead of the date of retirement of the petitioner i.e., 30.04.2010, the petitioner approached this Court by filing the present Writ Petition.

3. The respondents filed counter-affidavit stating that services of the petitioner was retrenched on 14.11.1980 consequent upon promulgation of ordinance abolishing the posts of village officers and admitting the date of appointment of the petitioner as Village Administrative Officer and also about the date of his superannuation. However, the respondents are trying to justify their action in awarding minimum pension only from the date of the Government order instead of the date of retirement on the ground that Rule 43 of the Tamil Nadu Pension Rules, 1978 was relaxed only by issuing the

impugned G.O.Ms.No.158, Revenue (Service-8(2)) Department, dated 08.04.2015 and hence, the question of granting minimum pension prior to the date of such relaxation is not permissible. They also further contended that even the arrears of pension that were paid under G.O (Ms) No.148, Revenue Department dated 20.04.2011 are also being recovered, as the said payments were made mistakenly. Thus, the respondents are trying to justify their action in awarding pension only from the date of the Government order.

4. The learned counsel for the petitioner brought to the notice of this Court that under similar circumstances, the learned Single Judge of this Court had disposed of W.P.No.37535 of 2015 by order dated 22.11.2022 and a copy of the same is also placed before this Court. This Court has thoroughly gone through the said order and is convinced that the issue raised in the present Writ Petition also squarely covered by the said order, wherein the learned Single Judge held as follows:-

> *" 14.As a sequel, there shall be a direction to the respondents to consider the request of the petitioners and treat them as a person who lost the job as on 14.11.1980 and accordingly by taking into account their service with effect from 25.10.2000,*

31.10.2000, 21.11.2001 and 20.12.2000 as Village Administrative Officer and till their respective date of superannuation, along with the services which notionally be treated from 14.11.1980 for the purpose of calculating the minimum pensionable service of 10 years by extending the benefit under G.O.Ms.No.158 Revenue Department dated 08.04.2015 and calculate the minimum pension payable to the petitioners from the respective date of their superannuation, till 08.04.2015 and pay the same with arrears to them. The said exercise shall be completed within a period of three months from the date of receipt of a copy of this order."

5. In addition to the above order of the learned Single Judge, once Rule 43 of the Tamil Nadu Pension Rules, 1978 is relaxed and the Government takes a policy decision to award minimum pension in favour of the petitioner and other similarly situated persons, their entitlement to draw such minimum pension would automatically relates back to the date of retirement. Ultimately, it is the pension consequent upon their retirement from service is sought to be awarded by the Government by relaxing Rule 43 of the Tamil

Nadu Pension Rules, 1978. Once such relaxation takes place, such relaxation would relate back to the date of the retirement and the petitioner would become automatically entitled for drawing the pension from the date of superannuation. Thus, the action of the Government having relaxed Rule 43 of the Tamil Nadu Pension Rules, 1978, granting minimum pension only from the date of Government Order is irrational and arbitrary. The claim of the petitioner and other similarly situated persons for pension on attaining the age of superannuation was positively considered and the relief was granted by relaxing Rule 43 of the Tamil Nadu Pension Rules, 1978. But unfortunately, the relief is granted from the date of passing of the Government order.

6. In the considered view of this Court, once the Government takes a policy decision to relax Rule 43 of the Tamil Nadu Pension Rules, 1978, the same would automatically relates back to the date of superannuation of the petitioner. Hence, the petitioner is entitled for drawing pension from the date of his retirement from the service on attaining the age of superannuation.

7. For the above reasons and also in the light of the decision of the learned Single Judge of this Court referred to above, this Court is of the considered view that the petitioner is entitled for grant of relief, as sought for

in the present Writ Petition.

8. Accordingly, the Writ Petition is allowed directing the respondents to calculate and pay the arrears of pension from the date of superannuation of the petitioner till the date of issuance of the impugned order in G.O.Ms.No.158, Revenue (Service -8(2)) Department, dated 08.04.2015, as expeditiously as possible at any rate within a period of three months from the date of receipt of a copy of this order. No costs. Connected Miscellaneous Petitions, if any, shall stand closed.

02.04.2024

skr
Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No

To

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MUMMINENI SUDHEER KUMAR, J.

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