IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.03.2024

PRONOUNCED ON : 04.07.2024

CORAM :

THE HONOURABLE **DR. JUSTICE D.NAGARJUN**

W.P.No.9474 of 2014

K.Padmanaban ...Petitioner

Vs.

The Managing Director,
Tamil Nadu Text Book and Educational Services Corporation,
No.67, College Road, Chennai – 60006.
...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus, calling for the records issued by the respondent in Na.Ka.No.7658/A-1/2012 dated 05.02.2013 and quash the same with a consequential direction to disburse the retirement benefits *viz.,* Gratuity, Commutation of Pension, Monthly Pension, Encashment of Earned Leave etc.,on the basis of the last drawn scale of pay certificate dated 31.05.2004 issued to the petitioner with interest as fixed by this Court after adjusting the payments already made to the petitioner.

For petitioner : Mr.P.Gopalan

For respondent : Mr.V.Manoharan
Additional Government Pleader

ORDER

This writ petition has been filed seeking for issuance of writ of certiorarified mandamus to quash the proceedings of the respondent in Na.Ka.No.7658/A-1/2012 dated 05.02.2013 and to direct the respondent to disburse retirement benefits *viz.,*Gratuity, Commutation of Pension, Monthly Pension, Encashment of Earned Leave etc., on the basis of last drawn scale of pay certificate dated 31.05.2004 issued to the petitioner.

2. The facts in brief as per the affidavit enclosed in this writ petition are as follows:

2.1. The petitioner was appointed as a Junior Assistant on 07.10.1971 in the Tamil Nadu Text Book Society which was later named as Tamil Nadu Text Book and Educational Services Corporation, the respondent herein. The petitioner was promoted as Assistant with a condition that he must pass the Account Test for Subordinate Officers and also the Government technical examination lower grade in book keeping and accountancy.

2.2. The petitioner has passed the Accounts Test within the stipulated time and he sought for exemption from passing of book keeping or accountancy on the ground that he had completed the same during his pre university studies . But no orders were passed giving him exception. In the meanwhile, seniority list was prepared in the year 1978 in the cadre of Assistant and his name was not included in the said list. In year 1979, requirement for passing lower grade examination in book keeping or Accountancy was dispensed with, even then the seniority list in the cadre of Junior Assistant was not revised. Without revising the seniority list promotions were given and his juniors were promoted to the post of Superintendent in the year 1980. Similarly, while preparing the seniority list in the cadre of Superintendent also the petitioner's name was placed below his juniors. The petitioner was not granted Selection Grade in the cadre of Superintendent though, he has completed more than 10 years of service from the year 1980 in the cadre of Superintendent.

2.3. Aggrieved by the seniority list in the cadre of Superintendent W.P.No.12099 of 1991 was filed before this Court challenging the seniority list. The said writ petition was allowed on 18.04.2001. However, the said orders were not implemented. The petitioner has filed another W.P.No.35771 of 2002 for issuance of mandamus to direct the respondent to grant promotion. In the meanwhile, aggrieved over the order dated 18.04.2001, the respondent and others filed W.A.Nos.1047 of 2001 and 1749 of 2002 before this Court and during the pendency of the writ appeal the petitioner retired from service on attaining the age of superannuation on 31.05.2004.

2.4. Retirement benefits of the petitioner have been disbursed based on the last drawn scale of pay certificate dated 31.05.2004. The retirement benefits were not paid even after six months of his retirement. Inspite of the order passed in W.P.M.P.No.38117 of 2004 in W.P.No.24387 of 2004 dated 23.12.2024, the respondent did not comply with the interim direction passed by this Court. The petitioner filed Contempt Petition in No.346 of 2006. When the matter was taken up for hearing, some payments were made to the petitioner on which the Contempt Petition was closed. In the meanwhile, W.A.Nos.1047 of 2001 and 1749 of 2002 filed by the respondent were allowed by order dated 04.11.2009 by dismissing the writ petition thereby, he was not given any monetary benefits on the basis of the order dated 18.04.2001 passed in W.P.No.12099 of 1991. His retirement his benefits were not settled based on the last drawn scale of pay certificate dated 31.05.2004. Without adverting to the last drawn scale of pay certificate dated 31.05.2004, reply was sent by the respondent dated 05.02.2013 as if the petitioner has been claiming for benefits in the W.P.No.12099 of 1991 and rejected the claim. The petitioner issued a legal notice to the respondent dated 31.05.2013 seeking for retirement benefits on the basis of last drawn scale of pay certificate dated 31.05.2004. However, there was no reply. The petitioner has sent letter dated 26.09.2013 to the respondent under Right to Information Act and sought for information. The respondent has sent a reply to the petitioner counsel re iterating the same old contention contending that the amounts withheld cannot be disbursed due to dismissal of the writ petition by the Division Bench ignoring that the petitioner was claiming only the benefits based on the last drawn scale of pay certificate dated 31.05.2004.

2.5. On the basis of the reply sent by the respondent dated 07.10.2013 it is realized that at the time of retirement the petitioner was drawing a scale of pay at Rs.9,995/- and his last pay certificate was also issued on the said basis. However, his pay was revised to Rs.9,150/- forgetting the fact that the petitioner has already retired from service. The respondent did not sanction the retirement benefits basing on the last drawn scale of pay though it is obligatory on the part of the respondent to disburse the retirement benefits based on the last drawn scale of pay thereby, communication dated 05.02.2013 is challenged in this writ petition.

2.6. It is submitted by the learned counsel for the petitioner that last drawn scale of pay certificate dated 31.05.2004 was issued by the respondent shows that the last drawn pay as Rs.9,995/- and thereby, retirement benefits should have been based on the pay scale shown in the certificate. However, as per the impugned letter dated 05.02.2013 it was realized that the petitioner pay was revised form Rs.9,995/- to Rs.9,150/. After the retirement, without even intimating and basing on the revised scale of pay Rs.9,150/- only pension and other benefits were given to the petitioner.

2.7. It is submitted that the pay of the petitioner should not have been altered or revised without explaining the reasons, without giving any notice to the petitioner. Therefore, sought for suitable directions as stated in the opening paragraph.

3. The respondent has filed counter affidavit and details are as

under:

3.1. The petitioner has writ petitions similar to that of the same relief seeking to disburse the retirement benefits based on the last drawn pay and the said W.P.No.24387 of 2004 was disposed of by order dated 11.07.2017 and the present writ petition if filed for the same relief is not maintainable.

3.2. The services of the petitioner were regularized in the post of Assistant on 27.1.1979 and were also regularized in the post of Superintendent from 31.07.1980. The respondent filed W.A.No.1047 of 2001 and during the pendency of the writ appeal the petitioner's seniority was revised and accordingly regularization orders in the post of Assistant and Superintendent were fixed by following the orders in the writ petition.

3.3. In the meanwhile, the petitioner has attained the age of superannuation on 31.05.2004 and filed one more writ petition in W.P.No.24387 of 2004 seeking to disburse the retirement benefits basing on his last drawn scale of pay certificate. The petitioner has filed W.P.M.P.38117 of 2004 seeking to disburse benefits and this Court has passed impugned orders to disburse undisputed amount to the petitioner. In compliance of the interim directions, the respondent Corporation has paid undisputed amounts of pension arrear to the a tune of Rs.45,523/- and Rs.1,44,928/- balance towards DCRG. In the meanwhile, writ appeal was allowed in favour of the Corporation by order dated 04.11.2009 and orders of W.P.No.12099 of 1991 were set aside. Therefore, seniority list of the petitioner was to be restored to its original fixation. The same was duly communicated to the petitioner by letter dated 31.01.2011 and the orders of the writ appeal were challenged by the petitioner and hereby have attained finality.

3.4. Without challenging the orders dated 04.11.2009 the petitioner has made representation to the Chief Minister's cell on 10.10.20012 seeking same relief which was pending in W.P.No.24387 of 2004. The respondent issued reply dated 05.02.2013 and the said communication is being challenged in this writ petition. In the said reply, the respondent has mentioned that on account of the fact that the writ appeal were decided against the petitioner, the original seniority list will be restored. Ultimately, by order dated 11.07.2017 the writ petition is disposed of recording the undisputed payments already made to the petitioner and closed the same.

3.5. As per Rule 64 of the Tamil Nadu Pension Rules 1978, necessary papers for the purpose of retirement benefits were forwarded to the audit officer concern and he inturn has pointed out that the pay of the petitioner has to be re fixed as the petitioner was to be regularized in the post of Assistant only from 27.11.19979 as against 06.08.1976 and that it was erroneously fixed and similarly the revision of the petitioner in the cadre of Superintendent was only from 31.07.1980 as against 27.11.1979 thereby the said mistake was identified that occurred while re fixing the seniority of the petitioner after basing of W.P.No.12099 of 1991 dated 25.09.2021. On account of the said mistake the salary of the petitioner was re fixed and the last drawn pay scale of the petitioner was fixed as Rs.9,150/- and that the petitioner was bound to refund excess salary paid.

3.6. The relevant provisions of Tamil Nadu Pension Rules, 1978 the audit officer shall authorize payment of balance of gratuity after adjusting the amount,if any,outstanding against the retired Government servant as per Rule 68 (8), if there is excess payment of provisional pension the same can be recovered and similarly excess gratuity also can be recovered under Rule 68 (9) of the said Rules. As per Rule 70 of the said Rules, it is the duty of the Government servant to clear all his Government dues before his date of retirement. It is mentioned that on account of wrong fixation of pay to the petitioner, the arrears to be recovered from him is Rs.62,718/- therefore, prayed for dismissal of the writ petition.

4. Heard both sides and perused the materials available on record.

5. On hearing both sides and on perusal of the affidavit filed along with the petition and the counter affidavit filed by the respondent, it is clear that the petitioner has been filing number of writ petitions asserting his claim at several level of his service. Though, the petitioner raised many issues about preparation of seniority list, ignoring his seniority, delaying payment of retirement benefits etc. The core issue that the petitioner has raised in this writ petitioner ultimately is that the petitioner was given last drawn pay certificated dated 31.05.2004 stating that his salary was Rs.9,995/- and the same was revised to Rs.9,150/- without giving any information to the petitioner and other retirement benefits were paid basing

on the revised last drawn pay i.e.,Rs.9150/-.

6. Accordingly, to the petitioner he does not know why his pay was revised he was not given any notice, he was not asked for any explanation and suddenly his last drawn scale of pay was revised from Rs.9,995/- to Rs.9,150/-. The respondent on the other hand submits that as per Rule 64 of Tamil Nadu Pension Rules, 1978 necessary papers in respect of the petitioner's retirement benefits were forwarded to the audit office who has during the course of scrutiny has found out that a mistake was crepted in fixation while re-fixing the seniority of the petitioner which was done as per the orders dated 18.04.2001. On account of the said mistake in the grade of Assistant the scale of pay of the petitioner was revised w.e.f. 27.11.1979 as against 06.08.1976 and similarly his services were regularized in the cadre of Superintendent is erroneous. At the time of regularization in the cadre of Assistant and at the time of regularization in the cadre of Superintendent mistake was committed. The audit officer at the time of processing the pension papers of the petitioner has identified a mistake and thereby the respondent has corrected the same and accordingly, last drawn pay certificate dated 31.05.2004 was issued for Rs.9,150/-.

7. On perusal of the Tamil Nadu Pension Rules, 1978 excess payment of any made, can be recovered and the audit officer will have the right to scrutinize the pension papers before its approval and basing on the right conferred under the relevant pension rules, the last drawn pay scale of the petitioner was revised from Rs.9,995/- to Rs.9,150/- and corrected the mistake. As per the counter affidavit the petitioner has drawn Rs.62,780/- in excess as his retirement benefits on account of wrong fixation.

8. Though as of now, the respondent has not issued any notice as to why they have altered the last drawn scale of pay of the petitioner from Rs.9,995/- to Rs.9,150/-, the action of the respondent in revising the last drawn scale of pay of the petitioner from Rs.9,995/- to Rs.9,150/- without giving intimation is not in good taste. However, the respondent have only corrected the mistake committed in while fixing the seniority of the petitioner in the cadre of Assistant and cadre of Superintendent on account of which the petitioner was benefited by the excess of pay. As

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already observed, the respondent are not asking for any refund of the said amount of Rs.62,780/-.

9. In fact on careful perusal of the relief sought for in this writ petition the petitioner basically sought for setting aside of the impugned letter dated 05.02.2013 in respect of revising of last drawn scale of pay from Rs.9,995/- to Rs.9,150/-. The petitioner sought for a direction to the respondent to pay the retirement benefits *viz.,* Gratuity, Commutation of Pension, Monthly Pension, Encashment of Earned Leave etc. The retirement benefits have already been paid to the petitioner according to the counter affidavit.

10. It is to be noted that after filing of the counter affidavit on 07.02.2024 only the petitioner must have realized the reasons for revision of last drawn scale of pay. But the petitioner has not challenged the said revision either by amended prayer or by filing the fresh writ petition.

11. In view of the above discussions, the petitioner has failed to

make out any case and hence, this writ petition is dismissed. No costs.

04.07.2024

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Internet : Yes/No
Index : Yes/No
Citation : Yes/No
To,

The Managing Director,
Tamil Nadu Text Book and Educational Services Corporation,
No.67, College Road, Chennai – 60006

Pre-Delivery order made in

W.P.No.9474 of 2014