(2015) 01 MAD CK 0170

In the Madras High Court

Case No : Writ Petition No. 11560 of 2008

B.K. Govindan APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 23-01-2015

Acts Referred:
Constitution of India, 1950 — Article 14, 16

Citation : (2015) 01 MAD CK 0170

Hon'ble Judges : P.R. Shivakumar, J.;N. Paul Vasantha Kumar, J.

Bench : Division Bench

Advocate : V. Bharathidasan, for the Appellant; A. Sri Jayanthi, Spl. Govt. Pleader, Advocates for the Respondent

Final Decision : Disposed off

Judgement

P.R. Shivakumar, J.—This writ petition has been filed by the petitioner for issue of a Writ of Mandamus to call for the records of the respondent relating to G.O. Ms.No.579 Finance (Pension) Department dated 15.09.2006 and quash the same and for a direction to fix the pension due to the petitioner at 60% increase along with Dearness Allowance at 608 points with effect from 15.09.2006 with a further direction to pay the arrears with an interest at the rate of 12% per annum.

2. The petitioner B.K. Govindan, is a pensioner having retired from service after completing 34 years of his service in Tamil Nadu Judicial Ministerial service. At the time of his retirement in 1987, he was functioning as a Sheristadar of Sub-Court, Erode. He was granted pension and was in receipt of the same as determined in accordance with the then prevailing rule, namely Rule 42 or 43 of Tamil Nadu Pension Rules, 1978. Pursuant to the acceptance of the recommendation of the Tamil Nadu V Pay Commission recommending revised pay scales for the serving employees of the Government and revised pension/ family pension to the pensioners/family pensioners, the Government issued an order in G.O. Ms.No.810 Finance (Pay Commission) Department dated

09.08.1989. In the said Government Order revised pension came to be fixed by classifying the pensioners into two categories: 1) Those who were drawing the sum total amount (pension basic + dearness allowance at 608 points) upto Rs.500/- and 2) those who were drawing more than Rs.500/-. Again those two categories were further classified into five sub categories and the revised basic pension was directed to be fixed as found in the following chart:

The said Government Order was challenged before the then Tamil Nadu Administrative Tribunal in O.A. No.1919/1991 by Ambasamudram Taluk Pensioners Association. Similar applications were also filed by other Associations and individuals challenging the said Government Order as well as the earlier Government Orders based on their contention that they were discriminatory and offending equality and equal protection clause provided under Article 14 of the Constitution of India. By a common order dated 06.05.1996, the Tamil Nadu Administrative Tribunal allowed the said original applications holding that the classification based on the date of retirement was unreasonable and set aside the said Government Order insofar as it affected the applicant''s Association and the Tribunal directed the extension of 60% increase in the pre-revised pension plus dearness allowance at 608 points available to those who retired prior to 01.06.1960 to these pensioners and family pensioners of cases of retirement or death occurring after 01.06.1960.

4. The said order of the Tribunal dated 06.05.1996 made in O.A. No. 1919/1991 was taken on appeal before the Supreme Court in S.L.P.(Civil) No. 2364/1997 and the same was dismissed by the Supreme Court on 01.12.1997. The Review Petition filed by the Government was also dismissed. Thereafter, giving effect to the said order of the Tribunal, G.O. Ms.No. 271 Finance (Pension) Department dated 15.06.1998 came to be passed implementing the direction of the Tribunal in respect of the pensioners/family pensioners, who were the members of the Association which filed the Original Application. As the members of Ambasamudram Taluk Pensioners Association alone were extended the benefit of equal treatment by providing an increase in the pension at 60% plus dearness allowance at 608 points, a writ petition came to be filed in W.P. No. 15473/1999 on the file of this court by a number of persons praying for a writ of mandamus directing the respondent to extend the benefit of 60% increase in the pre-revised pension. Some of the petitioners therein were retirees and some of them were spouses of the retirees. They prayed for a direction against the respondent to provide 60% increase in the pre-revised pension plus dearness allowance at 608 points and recompute their pension, family pension with effect from 01.06.1988, the date from which the pay commission recommendations were given effect to in line with the orders of the Tamil Nadu Administrative Tribunal dated 06.05.1996 made in O.A. No. 1919/1991. The First Bench (Division Bench) of this court by order dated 25.03.2004 allowed the writ petitions and directed that the benefits conferred on the petitioners in O.A. No. 1919/1991 should be extended to the petitioners in that writ petition also.

5. Once again a batch of applications in O.A. Nos. 925/1999 (batch) came to be filed by the Tamil Nadu Retired Government Officers Union and others before the Tamil Nadu Administrative Tribunal. By order dated 02.06.2004, the Tribunal directing conferment of benefits extended to Ambasamudram Taluk Pensioners Association to all the living pensioners and family pensioners holding that the said order was applicable to all. The following are the observations made in the said order of the Tribunal:

8. In fact, the Government passed G.O. Ms.No. 810 making a distinction among the pensioners, depending upon the amount of pension they were drawing. Sixty percent dearness allowance was allowed to persons whose pension does not exceed Rs.500/-, whereas 50% of the dearness allowance alone was eligible to pensioners who are drawing more than Rs.500/-. The challenge was made by the Ambasamudram Taluk Pensioners Association for this distinction which has no nexus with the object of order and contending that it is offending Article 14 and 16 of the Indian Constitution. The challenge was upheld and the Government was directed not to make any distinction with regard to the pensioners who are drawing Rs.500/- and pensioners who are drawing more than Rs.500/- as pension. The order of the Tribunal was also upheld by the Supreme Court which has dismissed the Special Leave Petition filed by the Government against the order of this Tribunal and subsequently by dismissing the Review petition filed by the Government. Therefore, there cannot be any distinction for awarding different rates of dearness allowance depending upon the quantum of pension drawn by the pensioners, who all constitute one and the same class and category. The benefits cannot be confined to the members of the Ambasamudram Taluk Pensioners'' Association alone. A distinction cannot be made among the pensioners drawing Rs.500/- more and less than Rs.500/-. No distinction can be made to the pensioners residing within Ambasamudram Taluk and pensioners who are residing in other parts of Tamil Nadu.

9. The Government has tried to deny the benefits to persons who are residing outside the Ambasamudram Taluk, whereas the Tribunal and the Supreme Court has held that irrespective of the amount of pension, 60% of dearness allowance have to be allowed for pensioners and family pensioners and this cannot be restricted to members of the applicants association alone. Even if the litigation was originally filed by the Applicants Association, when the benefits are conferred and are decided in favour of the members of the Association, the benefit must be extended to all the members of the homogenous group and the Government cannot refuse granting the benefit to other pensioners also, who belong to the same category and class and they are entitled to the same benefits. Denying the benefits to these applicants by the Government is only unnecessary. So, the principle on which the benefits are conferred in the petition filed by the Ambasamudram Taluk Pensioners Association, is applicable to all the pensioners living and family pensioners. Therefore, the impugned G.O. is liable to be set aside to the extent that it seeks to confine the benefits to the members of the Ambasamudram Taluk Pensioners Association only. The benefits of the impugned

G.O. cannot be restricted to that geographical area and the benefits shall be given to all the applicants and the pensioners, family pensioners is general, who have retired or died after 01.06.1960.

6. Similar orders made in O.A. No. 7224/1998 and other OAs were also challenged in a batch of writ petitions in W.P. Nos. 18751/2003 (batch) and a Division Bench of this court, by a common order dated 15.12.2005, confirmed the order of the Tribunal. In the course of the order, it has been observed as follows:

We have already referred to the order of the Tribunal in O.A. No. 1919 of 91 dated 6.5.96, which was upheld by the Supreme Court and the Review petition filed by the State was also dismissed. It is also not in dispute that the Government of Tamil Nadu implemented the said order in favour of the Ambasamudram pensioners Association. We have also referred to the decision of the Division Bench of this Court in Writ petition No. 15473 of 1999 dated 25.3.2004, passed in the case of Pensioners who had served in the Judicial Department and the said order was also implemented by the Government. We have also referred to the various individual orders passed by this Court, and the acceptance by the government by implementing the same. Considering the peculiar circumstances of these cases, the various orders passed by the Tribunal, and this Court as well as the Apex Court and the implementation of the same by the Government in having accepted the same, we are inclined to confirm the order of the Tribunal.

7. Pursuant to the said order G.O. Ms.No. 579 Finance (Pension) Department dated 15.09.2006 has been passed, which is impugned in this writ petition. The said order was passed after the order passed by the Tribunal in O.A. No. 1919/1991 came to be confirmed by the Supreme Court.

8. In Kallakurichi Taluk Retired Officers Association, Tamil Nadu and others and the connected writ petitions, fixation of different percentage of dearness pay for persons retired in different periods by making sub-classification of the pensioners who are in a heterogeneous group was held to be offending the equality clause. The order of the learned single judge in that case holding that the classification would result in discrimination and such a discrimination was not permissible was set aside by a Division Bench by allowing the writ appeals filed by the Government. The petitioners in the said writ petition and similar group of persons who lost their case in the writ appeals, took the cases on appeal to the Supreme Court and the Hon''ble Supreme Court in Civil Appeal Nos. 8848-49 of 2012 (batch), set aside the order of the Division Bench and upheld the order of the learned single judge. In the course of discussions the following observations were made by the Supreme Court:-

34. In the context of the instant appeals, it is necessary to understand the overall objective of treating "dearness allowance" (or a part of it) as "dearness pay". There can be no doubt, that "dearness allowance" is extended to

employees to balance the effects of ongoing inflation, so as to ensure that inflation does not interfere with the enjoyment of life to which an employee is accustomed. Likewise, the objective of "dearness pay" is to balance the effects of ongoing inflation, so that a pensioner can adequately sustain the means of livelihood to which he is accustomed. Having understood the reason why the Government extends the benefit of "dearness allowance" and "dearness pay" to its employees and pensioners respectively, we would venture to search for answers to the twin tests which must be satisfied for making a valid classification (or a valid discrimination) in the present fact situation.

35. In the present context it needs to be kept in mind that "dearness allowance" is paid to government employees keeping in mind the All India Consumer Price Index. Inflation in the market place is sought to be balanced by paying "dearness allowance" to government employees. When a State Government chooses to treat "dearness allowance" as "dearness pay", the objective remains the same i.e. inflation in the market place is sought to be balanced for retired employees by giving them the benefit of "dearness pay". Since the component of inflation similarly affects all employees and all pensioners (irrespective of the date of their entry into service or retirement), it is not per se possible to accept different levels of "dearness pay" to remedy the malady of inflation. Just like the date of entry into service (for serving employees) would be wholly irrelevant to determine the "dearness allowance" to be extended to serving employees, because the same has no relevance to the object sought to be achieved. Likewise, the date of retirement (for pensioners) would be wholly irrelevant to determine the "dearness pay" to be extended to retired employees.

The Hon''ble Supreme court also made the following observations in the said judgment:-

37. The issue in hand needs to be examined from another perspective as well. It must be clearly understood that no employee has a right to draw "dearness allowance" as "dearness pay" till such time as the State Government decides to treat "dearness allowance" as "dearness pay". And therefore, the State Government has the right to choose whether or not "dearness allowance" should be treated as "dearness pay". As such, it is open to the State Government not to treat any part of "dearness allowance" as "dearness pay". In case of financial constraints, this would be the most appropriate course to be adopted. Likewise, the State Government has the right to choose how much of "dearness allowance" should be treated as "dearness pay". As such, it is open to the State Government to treat a fraction, or even the whole of "dearness allowance" as "dearness pay". Based on Rule 30 of the Pension Rules, it is clear that the component of "dearness pay" would be added to emoluments of an employee for calculating pension. In a situation where the State Government has chosen, that a particular component of "dearness allowance" would be treated as "dearness pay", it cannot discriminate between one set of pensioners and another, while calculating the pension payable to them (for the reasons expressed in the preceding

paragraphs). Of course, a valid classification may justify such an action. In this case, the State Government has not come out with any justification/basis for the classification whereby one set of pensioners has been distinguished from others for differential treatment.

38. The instant controversy should not be misunderstood as a determination of the total carry- home pension of an employee. All the government orders referred to above, deal with the quantum of "dearness allowance" to be treated as "dearness pay" for the calculation of pension. "Dearness pay" is one of the many components, which go into the eventual determination of pension. Therefore, the focus in the adjudication of the present controversy must be on "dearness pay", rather than on the eventual carry-home pension. The relevance and purpose of treating "dearness allowance" as "dearness pay", has been brought out in the foregoing paragraphs. Therefore, clearly, the object sought to be achieved by adding "dearness pay" to the wage of a retiree, while determining pension payable to him, is to remedy the adverse effects of inflation. The aforesaid object has to be necessarily kept in mind, while examining the present controversy. Any classification without reference to the object sought to be achieved, would be arbitrary and violative of the protection afforded under Article 14 of the Constitution of India, it would also be discriminatory and violative of the protection afforded under Article 16 of the Constitution of India.

9. In a catena of decisions rendered by Administrative Tribunal, High Court and the Supreme Court, it has been held that classification of pensioners and family pensioners into two categories on the basis of their date of retirement or artificial cut-off date for re-fixation of pension based on pay commission recommendations is irrational and arbitrary. Similarly, now it has been established that when certain percentage of increase is sought to be made in the pension payable to the pensioners or in the family pension by merging certain percentage of dearness pay/dearness allowance in a general revision based on pay commission recommendation, the same should be done uniformly irrespective of the date of retirement and without prescribing an artificial cut-off date for classification of the pensioners/family pensioners and that such benefit should be conferred uniformly without conferring more percentage of benefit on one set of people and a lesser percentage of benefit on the other set of people based on the quantum of pension they were drawing prior to the general revision.

10. In this regard, the learned Special Government Pleader arguing on behalf of the respondent, has made an attempt to contend that in the order of the Tamil Nadu Administrative Tribunal dated 06.05.1996 made in O.A. No. 1919/1991 (batch) (Ambasamudram Taluk Pensioners Association''s case), extension of 60% of increase in the pre- revised pension plus dearness allowance at 608 points to pensioners and family pensioners, who retired before 01.06.1960 and fixing a lesser percentage of increase in respect of pensioners/family pensioners in case of retirement/death after 01.06.1960 alone was held to be discriminatory and that the classification on the basis of quantum of pre-revised pension into those

who were getting up to Rs.500/- and those who were getting more than Rs.500/- and granting 60% increase to the first category and 50% increase to the second category was not held to be unreasonable classification or discriminatory.

11. It has been brought to our notice that the order dated 06.05.1996 of the Tribunal made in O.A. No. 1919/1991 (Ambasamudram Taluk Pensioners Association case) was challenged before the Hon''ble Supreme Court in S.L.P. (Civil) Appeal No. 2364/1997 and the same was dismissed by the Supreme Court on 01.12.1997 and that a Review Petition filed by the Government for the review of the said order also came to be dismissed by the Supreme Court on 31.03.1998. Only after the dismissal of the Special Leave Petition and the Review Petition, G.O. Ms.No. 271 Finance (Pension) Department dated 15.10.1998 came to be passed. The said Government Order was challenged in O.A. No. 925/1999.

12. In Kallakurichi Taluk Retired Officials Association Vs State of Tamil Nadu reported in (2013) 2 SCC 772 referred to supra, it has been held in clear terms that when a particular component of Dearness Allowance would be treated as Dearness Pay for the purpose of calculation or re-fixation of pension on revision, the State Government should not discriminate between one set of pensioners and another. While dealing with the meaning of "dearness allowance" and "dearness pay", the Hon''ble Supreme Court has made it clear that treating dearness allowance as part of dearness pay is extended to employees to balance the effects of on going inflation so as to ensure that inflation does not interfere with the enjoyment of life to which an employee is accustomed. It has been further observed that the object of the dearness pay is to balance the effect of on going inflation so that the pensioner can adequately sustain the means of livelihood to which he is accustomed. In the said judgment, it has also been observed that dearness allowance is paid to Government employees keeping in mind the All India Consumer Price Index; that inflation in the market place is sought to balanced by paying dearness allowance to the Government employees; that when a State Government chooses to treat dearness allowance as dearness pay, the objective remains the same i.e. inflation in the market place is sought to be balanced for retired employees by giving them the benefit of dearness pay; that since the component of the inflation similarly affects all employees and all pensioners (irrespective of the date of their entry into service or retirement) it is not per se possible to accept different levels of dearness pay to remedy the malady of inflation; that just like the date of entry into service for serving employees would be wholly irrelevant to determine the dearness allowance to be extended to the serving employees, because the same has no relevance to the object sought to be achieved, the date of retirement for pensioners would be wholly irrelevant to determine the dearness pay to be extended to the retired employees and that it would be difficult to imagine a valid basis of classification for remedying the malaise of inflation.

13. It has also been observed in the said judgment that the controversy should not be misunderstood as a determination of the total carry-home pension of an

employee; that all the Government orders referred to above, deal with the quantum of dearness allowance to be treated as dearness pay for calculation of pension; that dearness pay is one of the many components, which go into the eventual determination of pension; that therefore, the focus in the adjudication of the controversy must be on dearness pay, rather than on the eventual carry-home pension. The further observation made therein is to the effect that the objective sought to be achieved by adding dearness pay to the wage of a retiree while determining pension payable to him is to remedy the adverse effect of inflation.

14. A reading of the judgment of the Hon''ble Supreme Court cited supra will make it clear that, while merging a part of (particular percentage of) dearness allowance/dearness pay for re-fixation of the pension/family pension, classification of the pensioners/family pensioners on the basis of carry-home pension or sum total of the pension amount shall be per se discriminatory. It is pertinent to note that the dearness allowance or dearness pay is given to the employees/pensioners/family pensioners to balance the on going inflation so as to ensure that the inflation does not interfere with the enjoyment of life to which an employee/pensioner/family pensioner is accustomed. Inflation affects all irrespective of the wages drawn by them. The amount needed by such persons to balance the effect of inflation, which is calculated at the All India Consumer Price Index shall vary proportionately according to their income. The persons with higher income would have been accustomed to a way of life which needed more money in comparison with the person having lower income. If this aspect is taken into consideration, the classification sought to be made on the basis of the quantum of pre-revised pension and allowing merger of a higher percentage of dearness pay for the low income group and a lesser percentage of dearness for the persons in the higher income group taking an artificial cut-off figure shall be discriminatory. It should be borne in mind that "dearness pay" is part of or whole of the "dearness allowance" declared by the Government to the Government employees which shall be treated as a component of emoluments for the purpose of determining the basic pension. Similarly, the "dearness allowance" for the pensioners is governed by Rule 50A of the Tamil Nadu Pension Rules, 1978 and it is intended to alleviate the varying Consumer Price Index.

15. Further it is not denied that the members of Kallakurichi Taluk Retired Officials Association were extended the benefit of 60% increase in the pre-revised pension plus dearness allowance at 608 points without reference to their quantum of the pre-revised pension and that the petitioner was denied such benefit on the sole ground that he was not a member of the said Association. It should also be noticed that in W.P. No.15473/1999, a Division Bench of this court, by order dated 25.03.2004, made it clear that the petitioners therein, who were retirees from Judicial service should also be extended the benefit of 60% increase in the pre-revised pension plus dearness allowance at 608 points, as they were similarly placed as that of the members of the Ambasamudram Taluk Pensioners Association, whose claim had been upheld in O.A. No.1919/1991 and

confirmed by the Supreme Court. In the order the Tamil Nadu Administrative Tribunal dated 02.06.2004 made in O.A. No.925/1999 batch, it was made clear that when the benefits of 60% increased in pre-revised pension plus dearness allowance at 608 points was allowed to the pensioners/family pensioners, who were the members of the Ambasamudram Taluk Pensioners Association, denying the benefit to others was improper and that the principle on which the benefits were conferred on the members of the Ambasamudram Taluk Pensioners Association was applicable to all pensioners living and family pensioners. The said order has not been either shown to be challenged or reversed or set aside.

16. In light of the foregoing discussions, we do hereby come to the conclusion that there is no reasonableness in the classification of the pensioners/family pensioners on the basis of their pre-revised pension not exceeding Rs.500/- and exceeding Rs.500/-; that allowing 60% increase of the pre-revised pension plus dearness allowance at 608 points to the first group and conferring a lesser benefit at 50% increase of pre-revised pension plus dearness allowance at 608 points to the second group is discriminatory and violative of Articles 14 and 16 of the Constitution of India. Though the impugned Government Order relates to re-fixation of pension on the basis of the V Pay Commission recommendation, which was given effect with effect from 01.06.1988, in the writ petition, it has been wrongly indicated that such re-fixation should be made with effect from 15.09.2006 instead of 01.06.1988. Hence we are of the considered view that the relief sought for in the writ petition shall be moulded by declaring that the petitioner is entitled to re-fixation of his pension with effect from 01.06.1988 by providing an increase of 60% of the pre-revised pension plus dearness allowance (dearness pay) at 608 points and consequently directing the respondent to re-fix the revised pension with effect from 01.06.1988 as indicated supra and pay the arrears of differential pension within a period of 8 weeks.

With the above direction, the writ petition is disposed of. However, there shall be no order as to cost.