

(2010) 10 MAD CK 0150
In the Madras High Court
Case No : Writ Petition No. 22455 of 2009

K. Balakrishnan

APPELLANT

Vs

The Accountant General and The Assistant Elementary
Educational Officer

RESPONDENT

Date of Decision : 27-10-2010

Acts Referred:

Citation : (2010) 10 MAD CK 0150

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : A.R. Nixon, for the Appellant; V. Vijayshankar, for Respondent 1 and P. Gurunathan, for Respondent 2, for the Respondent

Final Decision : Allowed

Judgement

P. Jyothimani, J.—The writ petition is directed against the order of the first respondent dated 10.7.2009, by which the first respondent, while directing the second respondent to refund the amount of Rs. 1,051/- recovered from the petitioner, has revised the pay of the petitioner as Secondary Grade Assistant at Rs. 495/- with effect from 1.10.1981, as per his option, and accordingly, treated the last drawn pay as Rs. 525/- as on 1.10.1983, and rejected the claim of fixing the pay at Rs. 540/-.

2.1. The petitioner, who is a pensioner, has retired from service as a Secondary Grade Teacher in Nemili Panchayat Union, Palayakara Kandigai on 31.37.1984. It is the case of the petitioner that due to non sanctioning of the increment on 1.7.1984, there is a reduction of pensionary benefit. At the time of retirement, the petitioner was drawing the basic scale of Rs. 495/- and the second respondent has granted increment on 31.7.1984 and fixed the basic pay at Rs. 495/-.

2.2. Since there was an anomaly in respect of pay compared to his junior, the petitioner has filed O.A. No. 1235 of 1991 before the Tamil Nadu Administrative

Tribunal challenging the order of the District Educational Officer dated 13.12.1990 and seeking to revise and re-fix the scale of pay. The original application was allowed on 3.5.1996 and thereafter, it is stated that the second respondent has re-fixed the pensionary benefits of the petitioner on par with his junior-K.R. Subramaniam from 1.9.1981. The second respondent re-fixed the pensionary benefits in the scale of pay of Rs. 525/- as on 1.10.1983.

2.3. It has been the case of the petitioner that the second respondent should have given increment on 1.7.1984 and ought to have fixed the pensionary benefits in the basic scale of Rs. 540/- and since the same has not been done, the fixation of pay as on 1.10.1983 is wrong. Therefore, the petitioner has made a representation to the second respondent on 22.1.2009 to refund the DCRG amount and requested to sanction one increment on 1.7.1984. Since no order was passed on the said representation, the petitioner filed W.P. No. 3204 of 2009 for a direction to the respondents to dispose of the said representation and to thereby direct the respondents to pay the DCRG amount with interest and to sanction increment to the petitioner as on 1.7.1984 and to re-fix the pensionary benefits on the basic scale of Rs. 540/-.

2.4. This Court, by an order dated 25.2.2009, has directed the respondents to consider the said representation and pass orders. Thereafter, the second respondent has passed an order on 8.5.2009 agreeing to pay DCRG amount of Rs. 1,051/- with interest. However, it is stated that the claim of the petitioner was rejected by the first respondent on 10.7.2009, against which the present writ petition is filed on various grounds, including that the impugned order is against the order of the Tribunal; that the second respondent has given wrong information to the first respondent stating as if the petitioner has given option to fix revision from 1.10.1981; that the impugned order has been passed by the first respondent without following the procedure; and that when the second respondent has given promotion and revision of pension from 1.7.1984, it is the duty of the respondents to pay the next increment on 1.7.1984 fixing the basic scale at Rs. 540/-.

3. I have heard the learned Counsel for the petitioner and respondents, perused the records and given my anxious thought to the issue involved.

4. The petitioner filed O.A. No. 1235 of 1991 before the Tamil Nadu Administrative Tribunal challenging the fixation of pay effected by the District Educational Officer on 13.12.1990 and praying for a direction to revise and re-fix the scale of pay for Special Grade Teachers to the petitioner with effect from 1.1.1981. The said original application was filed by the petitioner on the basis of the benefit stated to have been given to his junior-K.R. Subramaniam.

5. The Tribunal, by order dated 3.5.1996, having found that the petitioner was not given opportunity to undergo the training which is a precondition for promotion and the strict seniority has not been followed and also having ascertained that there has been arbitrariness in deciding against the petitioner,

quashed the order dated 13.12.1990 and directed the respondents to revise and re-fix the scale of pay for Special Grade Teachers to the petitioner with effect from 1.9.1981, viz., on the day when his immediate junior-K.R. Subramaniam got revision, and to consequently revise the pension and other terminal benefits payable to the petitioner within two months and also stated that if necessary, the Rules must be relaxed. Admittedly, this order of the Tribunal has become final.

6. However, it is seen that the second respondent has sent proposal to the first respondent as if the Tribunal has directed the re-fixation of scale to be made from 1.10.1981, which is, on fact, incorrect, since, as stated above, the order of the Tribunal was only to fix the Special Grade Teachers pay to the petitioner from 1.9.1981. Moreover, the second respondent has stated as if re-fixation of pay as on 1.10.1981 is as per the option of the petitioner, which is again incorrect. There is nothing on record to show that the petitioner has given up his right of re-fixation of pay as per the order of Tribunal with effect from 1.9.1981. In such circumstances, it is clear that the proposal sent by the second respondent by fixing the date of re-fixation of pay as per the order of the Tribunal as 1.10.1981 is basically wrong. If it is the case of the petitioner that the date of re-fixation should be from 1.9.1981, based on which he is entitled to the next re-fixation as on 1.7.1984 at Rs. 540/-, certainly the petitioner is entitled to the said relief.

7. It is in that view of the matter, taking note of the fact that the proposal of the second respondent is totally against the order of the Tribunal and the first respondent, while passing the impugned order dated 10.7.2009, has also overlooked the same, the impugned order of the first respondent dated 10.7.2009 insofar as it relates to the re-fixation of pay of the petitioner stands set aside and the second respondent is directed to send proper proposal as per the order of the Tribunal to the first respondent within a period of four weeks and thereafter, the first respondent shall pass appropriate orders granting necessary relief to the petitioner within two weeks.

This writ petition is allowed. No costs.