(2011) 02 MAD CK 0193

In the Madras High Court

Case No : Writ Petition No. 1938 of 2009 and M.P. No. 1 of 2009

M.A. Manickam APPELLANT

Vs

The Chairman Chennai Port Trust RESPONDENT

Date of Decision : 03-02-2011

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2011) 02 MAD CK 0193

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : P. Manikannan, for the Appellant; R. Dharani chander, for the Respondent

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—The Petitioner by invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India, has

prayed for issuance of a writ in the nature of mandamus, directing the Respondents to revise the Pension payable to the Petitioner at Rs. 9750/-

per month being 50% of the minimum of the scale of pay of Rs. 19500 - 500 - 25500/- (applicable to the post of FA & CAO - HOD post held

by the Petitioner at the time of his retirement from service), and to pay other attendant reliefs and benefits based on the revision of pension, with

effect from 1.2.2001 to till date, and further to pay the difference in amount to the Petitioner up to date.

2. The pleaded case of the Petitioner in the affidavit to the writ petition, is that the Petitioner was working as Additional Chief Accounts Officer in

Chennai Port Trust and retired from service on 31.01.2001. While the Petitioner was working as Additional Chief Accounts Officer, the Financial

Advisor cum Chief Accounts Officer was placed under suspension in the month of October 2000. The Chairman, Chennai Port Trust, passed an

order directing the Petitioner to hold full additional charge of the post of the Financial Advisor cum Chief Accounts Officer, i.e. H.O.D. Post, in

addition to his own duty of Additional Chief Accounts Officer.

3. The case of the Petitioner is that he was not only given full additional charge of the post, but was also granted pay, attached to the post, which

he drew till the date of his retirement.

4. It is pleaded in the affidavit that the Respondent while fixing Pension of the Petitioner, did not taken into consideration the pay last drawn by the

Petitioner on the post of Financial Advisor cum Chief Accounts Officer, but calculated the pension on the basis of pay applicable to the post of

Additional Chief Accounts Officer, i.e. the substantive post held by the Petitioner.

5. The Petitioner made representations for grant of pension by taking into consideration of pay last drawn by him, on the post of ""Financial Advisor

cum Chief Accounts Officer.

6. The Office of the Principal Accountant General (Civil Audit), Tamil Nadu & Pondicherry, vide letter dated 14.09.2005 clarified that the

Petitioner was entitled to pension on the basis of pay last drawn under the Pension Rules applicable to the Petitioner. The order passed by the

Office of the Principal Accountant General (Civil Audit), Tamil Nadu & Pondicherry reads as under:

E II/Pen/05-06/101 Dated 14.9.2005

To

Sri. M.A. Manickam

Retd. Addl. Chief Accounts Officer,

Chennai Port Trust, Chennai 600 001.

Sir,

Sub: Pension-Reckoning of Addl. Charge

allowance for calculation of average

Emoluments for pension - reg.

The pay actually drawn by a Govt.Servant for the post held by him substantively or in an officiating capacity immediately before his retirement is treated as Emoluments for the purpose of calculation of pensionary benefits as per Rule 33 of CCS Pension Rules read with FR 9(21) of FRSR

General Rules. So (1) if a Govt.

Servant is formally appointed to hold full charge of the duties of a higher post in the same office and in the same line of promotion in addition to his

ordinary duties and (2) is allowed the pay admissible to him if he is appointed to officiate in the higher post, the pay actually drawn by him can be

taken for calculation of pensionary benefits.

But if the Govt. servant is being paid a charge allowance as one lumpsum (separate element) for holding charge of the duties of a higher post in

addition to his ordinary duties, the allowance so paid cannot be considered as part of pay for calculation of pensionary benefits.

This is for your information.

7. The Petitioner in view of clarification submits that as per Pension Rules, the pension of the Petitioner is required to be fixed on the pay last

drawn by the Petitioner.

8. The writ petition is opposed by the learned Counsel for the Respondent, on the ground that the Petitioner claims pension on the basis of pay

drawn as Financial Advisor cum Chief Accounts Officer, the post which was held by the Petitioner, by way of current duty charge and not on

substantive basis.

9. The contention of the learned Counsel for the Respondent is that the Office of the Principal Accountant General, (Civil Audit) Tamilnadu, raised

an audit objection, with regard to the pensionary benefit granted to the Petitioner, on the ground that the appointment of the Petitioner to post of

Financial Advisor cum Chief Accounts Officer was not made in accordance with the Port Trust (Pay and Allowance etc.) Regulations, 2001 as

prior approval was not obtained from the Central Government. Therefore, the benefit of said post would not be available to the Petitioner.

10. On consideration, I find that the writ petition deserves to be allowed. The definition of pay as per Regulation governing Service condition is

given under Regulation 21(a), which includes the pay drawn in officiating capacity also.

11. Therefore, in view of the Pension Rules governing Central Government employees, the pension is required to be calculated on the basis of pay

last drawn. The Office of the Principal Accountant General, (Accounts & Entitlement) Tamilnadu, was right in directing the fixation of pension of

the Petitioner by keeping in view of the pay last drawn, on the basis of post held by the Petitioner as additional charge.

12. It was not open for the Office of the Principal Accountant General (Civil Audit)Tamilnadu to question the appointment of Petitioner as

admittedly, the Petitioner was not only given full additional charge of the post, but he also performed duties of the post till his retirement, and was

also given salary attached to the post.

13. In view of the Rules and Regulations governing payment of pension, the pension of the Petitioner is required to be fixed by taking salary last

drawn, which would include the salary attached to the post, which was held additionally by the Petitioner.

14. For the reasons stated, the writ petition is allowed. A writ in the nature of mandamus is issued to the Respondents directing it to refix the

pension of the Petitioner, by taking into account pay last drawn by him while holding the additional post of Financial Advisor cum Chief Accounts

Officer on current duty basis.

15. The needful be done within three months from the date of receipt of certified copy of this order. The Petitioner would also entitled to

consequential benefits. No costs. Connected miscellaneous petition is closed.

