(2011) 10 MAD CK 0055

In the Madras High Court

Case No : Writ Petition No. 4549 of 2007

Varadhan Duraisamy APPELLANT

Vs

Accountant General, Chennai and Another RESPONDENT

Date of Decision : 18-10-2011

Acts Referred:

Tamil Nadu Pension Rules, 1978 — Rule 31

Citation : (2012) 1 MLJ 286

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : R. Muthukannu, for the Appellant; V. Vijay Shankar, V. Subbiah, Special Government Pleader for Respondents, for the Respondent

Judgement

D. Hariparanthaman, J.—The petitioner was appointed as Primary School Headmaster in Kadayampatti Panchayat Union School, Salem District, in the year 1964. On 1.6.1971, he was promoted as Middle School Headmaster. Since the Middle School was upgraded as High School, the petitioner was absorbed and posted as Secondary Grade Teacher on 22.8.1975. Upto 31.5.1988, the scale of pay of Middle School Headmaster in a Panchayat Union School and the scale of pay of Secondary Grade Teacher were one and the same. Pursuant to the recommendations of the V Pay Commission, different scales of pay were prescribed. The scale of pay of Middle School Headmaster was fixed at Rs. 2,200-4,000.

2. Since on up gradation of Middle School as High School, the petitioner was posted as Secondary Grade Teacher in the High School and hence, he could not seek the scale of pay of Middle School Headmaster.

3. By the proceedings dated 15.6.1988 of the Director of Elementary Education, the pay of Middle School Headmaster was protected, if the Middle Schools were upgraded as High Schools. The petitioner sought benefits as per the aforesaid proceedings, but however, he was not granted the same.

4. In these circumstances-the petitioner filed Original Application in O.A. No. 7086 of 1993 before the Tribunal claiming the pay of Middle School Headmaster as prescribed in the recommendations of the V Pay Commission. The said Original Application was disposed on 1.12.1993 directing the authorities to grant the pay of the Middle School Headmaster. As the same was not complied with, the petitioner filed a Contempt Application in C.A. No. 582 of 1994.

5. In these circumstances, the District Educational Officer, Sankagiri, Salem District, issued a proceedings dated 30.1.1995 appointing the petitioner as Middle School Headmaster at K.N. Pudur Middle School, that is, he was appointed as Middle School Headmaster from High School.

6. On appointment to the post of Middle School Headmaster, the petitioner was granted the scale of Middle School Headmaster, that is, he was given the scale of pay of Middle School Headmaster of Rs. 2,200-4,000 as on 1.6.1988.

7. Later, the District Educational Officer, Salem, issued a proceedings dated 28.2.1995 cancelling the earlier order dated 30.1.1995 appointing the petitioner as Headmaster, of Middle School and posting him as Primary School Headmaster. However, the petitioner was granted pay protection and the pay of Middle School Headmaster was protected. The petitioner retired from service on 31.8.1998 as Elementary School Headmaster on reaching the age of superannuation.

8. In March 1999, the second respondent sent pension proposals to the first respondent regulating the pay of the petitioner in the scale of Middle School Headmaster at Rs. 2,200-4,000 and the subsequent revision in the scale of pay of Rs. 9,100-14,050.

9. Though the petitioner received the pay of Middle School Headmaster at the time of retirement, pension was not paid based on the pay which he received at the time of retirement and on the other hand, pension was fixed based on the post which he held at the time of retirement. That is, the petitioner was granted pension at a lesser rate.

10. The petitioner made a representation to fix his pension correctly by taking into account the pay which he received at the time of retirement, since he was not paid the pay of Middle School Headmaster as pension. But the same was rejected by the first respondent by an order dated 14.3.2000 on the ground that the petitioner did not hold the post of Middle School Headmaster as on 2.10.1970 and therefore, he could not seek the pay of Middle School Headmaster as basis for payment of pension.

11. The petitioner filed Original Application in O.A. No. 2630 of 2001 (W.P. No. 4549 of 2007) seeking to challenge the order dated 14.3.2000 of the first respondent and for a consequential direction to fix his pension based on the pay which he received at the time of retirement and not based on the post which he held at the time of retirement.

12. The first respondent filed counter affidavit refuting the allegations made by

the petitioner. The crux of the counter affidavit is that pension was fixed based on the post which the petitioner held at the time of retirement and therefore, there is no infirmity in the order impugned in this writ petition.

13. Heard both sides.

14. The issue that arises for consideration is as to whether the pension has to be fixed based on the pay which the petitioner received at the time of retirement or the post which he held at the time of retirement.

15. It is well settled by a Division Bench of this Court in The Accountant General of Tamil Nadu v. G. Arumugam and Others in W.A. Nos. 487 and 1234 of 2009 (decided on 16.11.2010) that pension should be paid based on the pay that was received by the employee at the time of retirement and not based on the post which he held at the time of retirement.

16. The petitioner received the scale of pay applicable to Middle School Headmaster until his retirement, though he held the post of Elementary School Headmaster. The same is not in dispute. Furthermore, the claim of the petitioner for pension on the basis of Middle School Headmaster pay is based on Rule 31 of the Tamil Nadu Pension Rules, 1978, which is extracted hereunder:

31. Average emoluments.- Average emoluments shall be determined with reference to the emoluments drawn by a Government servant during the last 12 months of his service in the cases of retirement during the period from 26.2.1970 to 31.12.1973 and 10 months in the cases of retirement in or after 1.1.1974.

17. Hence, I have no hesitation to quash the impugned order and accordingly, the impugned order is quashed and a direction is issued to the first respondent to re-fix the pension of the petitioner based on the pay which he received at the time of retirement and pay the revised pension with arrears, within a period of eight weeks from the date of receipt of a copy of this order. The writ petition is disposed of with the above observation and direction. No costs.