2022 INSC 132

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 835 OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (C) NO. 29384 OF 2018)

STATE OF KERALA & ANOTHER ….APPELLANT(S)

VERSUS

ANIE LUKOSE . …. RESPONDENT(S)

J U D G E M E N T

J.K. MAHESHWARI, J.

Leave granted.

2. This appeal arises out of the judgment dated 30.7.2018 passed in Writ Appeal No. 1513 of 2018 confirming the judgment dated 19.2.2018 passed by the learned Single Judge allowing the Writ Petition (C) No. 2573 of 2016.

3. The facts giving rise to the present appeal are that the respondent had retired as selection grade Lecturer on availing voluntary retirement w.e.f. 31.7.2006. His basic pension was fixed in the pre-revised scale at Rs. 8907/- p.m.. Inadvertently,

in the verification report, the basic pension was erroneously shown as Rs. 7138/- p.m. (pre-revised). Thereafter, on revision in the scale of pay, it was enhanced to Rs. 11,127/- and made effective from 1.1.2006. The fixation of the said basic pension was challenged in the earlier round of litigation in W.P. (C) No. 30847 of 2012. The High Court vide judgment dated 28.02.2013 held that the fixation of pension at Rs. 7138/- was erroneous and his pension of Rs. 8907/- (pre-revised) ought to have been taken into account at the time of revision of the pay and pension w.e.f. 1.1.2006. The said judgment has not been challenged and therefore became final. In view of the said fact, prayer was made in WP(C) No. 2573 of 2016 to fix the pension @ Rs. 8907/- in pre-revised and Rs. 19333/- as per revision of pay and pension of the appellant.

4. Learned Single Judge of the High Court has taken note of the fact that the last pay drawn by the appellant was Rs. 46,400/- and according to the same, his pension in the revised scale has rightly been fixed at Rs. 19,333/- on account of completing the qualifying service by her. In the previous round of litigation, the fixation made @ Rs. 7138/- in pre-revised scale and Rs. 11,127/- in revised scale was found erroneous by the High Court. However, as per the direction

made by the High Court, fixation had rightly been proposed by the office of the Accountant General on completion of the qualifying service by her. The appellants filed a Writ Appeal and by the order impugned, the Division Bench of the High Court held that the Accountant General had correctly prepared the pension paper, fixing the pension at Rs. 19,334/- in the revised scale. The Division Bench declined to interfere with the order of the learned Single Judge.

5. Learned counsel for the appellant would contend that as per the Circular being G.O.(P) No. 230/2012/Fin. dated 19.04.2012, it is clarified that for computing the 10 months' emoluments for the purpose of average emoluments in respect of employees who retired from service on or after 1.1.2006, the average emoluments are required to be counted. The average emoluments have been clarified in Clause 63 of Annexure P-18 regarding Kerala Service Rules. It is contended that the respondent had retired after one month of re-joining from the leave for about two years without allowances, therefore, the order impugned, confirming the order of the learned Single Judge, is wholly unjustified.

6. On the other hand, learned counsel for the respondent has argued with vehemence and contended that the Accountant

General has rightly made the fixation of the pension in the pre-revised and revised scales of pay, relying upon the circulars and the order of the High Court passed earlier. Therefore, the order impugned has rightly been passed by the High Court, which does not warrant interference.

7. After having heard learned counsel for the parties at length and on perusal of the fixation made by the office of the Accountant General, sent to the Principal Secretary (Finance), Finance (Pension B) Department, Thiruvananthapuram, it is clear that the pension of the respondent was fixed at @ Rs. 19334/- w.e.f. 1.3.2010. The said fact has not been controverted in the counter-affidavit, as apparent from the order of the learned Single Judge. For reverting the arguments of the appellants with reference to the revised Circular dated 19.4.2012, it is necessary to refer to the original Circular G.O. (P) No. 211/2011/Fin dated 7.5.2011, specially Clause 2(2) relevant to the facts of the present case, which is reproduced as thus:

> "For computing 10 months' emolument for the purpose of average emoluments, in respect of employees who retired from service on or after 1.1.2006 and who , during part of the said period of 10 months, drawn pay in the pre-revised scale, their pay in the pre-revised scale may be enhanced notionally by adding DA at 74%".

8. The said clause has been modified vide Circular G.O.(P) No. 230/2012/Fin dated 19.4.2012 , which is reproduced as thus:

> "For computing 10 months' emoluments for the purpose of average emoluments in respect of employees who retired from service on or after 1.1.2006 and who, during the part of 10 months, drew pay in the pre-revised scale, their pay in the pre-revised scale may be enhanced notionally to the initial pay drawn in the revised scale which came into force with effect from 1.2.2006. Para 2.2 of GO read above and modified to this extent. Para 2.1 of the GO read above shall not be applicable to the above category."

9. On perusal of the aforesaid, it is clear that for computing 10 months emoluments for the purpose of average emoluments in respect of an employee, who retired from service on or after 1.1.2006 and who during part 10 months draws pay in the pre-revised scale, their pay in the pre-revised scale may be enhanced notionally to the initial pay drawn in the revised scale, which came into force w.e.f. 1.1.2006. Average emolument, as specified in the Rules, is required to be calculated as per Note 1 Clause 63 of Annexure P-18, from which it is clear that if during this period, an employee had been absent from duty, on leave

with or without allowances, which qualified for pension or having been suspended, but re-instated in service, without forfeiture of service, his emoluments for the purpose of ascertaining the average would be taken, at what they would have been, had he not been absent from duty or suspended provided that the benefit of pay in any officiating post would be admissible only if it is certified that he would have continued to hold that officiating post but for leave or suspension. Therefore, it is clear that part of 10 months would not mean the past 10 months and if the employee had remained on leave without allowances, even their calculation as per the last pay drawn had rightly been made by the office of Accountant General as referred by learned Single Judge as well as the Division Bench in the orders impugned.

10. In view of the foregoing discussion, we do not find any error in the order impugned, warranting interference in this appeal. Accordingly, this appeal is dismissed. No order as to costs.

.....J.
[INDIRA BANERJEE]

.....J.
[J.K. MAHESHWARI]

NEW DELHI;
FEBRUARY 1, 2022.