

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS**

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

WP(AFT).No. 4 of 2015 ()

**AGAINST THE ORDER/JUDGMENT IN TA 129/2010 of ARMED FORCES
TRIBUNAL,REGIONAL BENCH,KOCHI DATED 16-07-2013**

PETITIONER(S)/APPLICANTS:

- 1. MARIA ZACHARIA AGED 49 YEARS
W/O.K.M.THOMS, KOORUMULLUMTHADATHIL HOUSE
KANAKKARY P.O., KOTTAYAM
REPRESENTED BY 2ND APPLICANT MR.K.M.THOMAS.**
- 2. K.M.THOMAS AGED 50 YEARS
S/O.K.T.MAHTEW, KOORUMULLUMTHADATHIL HOUSE
KANAKKARY P.O., KOTTAYAM.**

**BY ADVS.SRI.C.C.PADMAKUMAR
P.SUMOD**

RESPONDENT(S)/RESPONDENTS:

- 1. UNION OF INDIA
REPRESENTED BY THE DEFENCE SECRETARY
MINISTRY OF DEFENCE, GOVERNMENT OF INDIA
NEW DELHI-100 001.**
- 2. THE DIRECTOR
PAY AND SERVICES, MINISTRY OF DEFENCE, 216A
SENA BHAVAN, NEW DELHI 110 001.**
- 3. THE DIRECTOR GENERAL OF MEDICAL SERVICES (ARMY)
ADJUTANT GENERAL'S BRANCH, ARMY HEAD QUARTERS
NEW DELHI-110 001.**
- 4. THE DEPUTY DIRECTOR
AUDIT DTE.GEN.PERSONNEL SERVICES
ADJUTANT GENERAL'S BRANCH
INTEGRATED HQ OF MOD (ARMY), NEW DELHI-110 011.**
- 5. THE DEPUTY DIRECTOR
ADDITIONAL DIRECTORATE, GENERAL PERSONNEL SERVICES
ADJUTANT GENERAL BRANCH, INTEGRATED HQ OF MOD (ARMY)
DHO P.O., NEW DELHI-110 011.**

6. THE OFFICE OF PRINCIPAL
CDA (PENSIONS), ALLAHABAD-211 001.

7. THE OFFICE OF CONTROL (C) OF DEFENCE
GOLLYVARMAIDAN, PUNE-411 010.

R BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS WP (ARMED FORCES TRIBUNAL - Art.226) HAVING COME UP FOR
ADMISSION ON 19-03-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE 1. COPY OF THE T.A.NO.129/2010 FILED BY THE PETITIONERS BEFORE THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI.

EXT.P1.TRUE COPY OF THE LETTER DATED 13/12/2007 ISSUED BY THE 4TH RESPONDENT TO THE 1ST PETITIONER

EXT.P2.TRUE COPY OF THE JUDGMENT DATED 6/3/2006 IN WPC NO.37772/2004.

EXT.P3.TRUE COPY OF THE SPEAKING ORDER DATED 8/8/2006 ISSUED BY THE 3RD RESPONDENT

EXT.P4.TRUE COPY OF THE ABSTRACT OF RECORDS OF APMSE 16/17 THE IMB PROCEEDINGS

EXT.P5.TRUE COPY OF THE OPINION OF THE SENIOR ADVISOR

EXT.P6.TRUE COPY OF THE REGULARIZATION OF HOSPITALIZED PERIOD OF PETITIONER'S WIFE.

EXT.P7.TRUE COPY OF THE ARMY SERVICE CERTIFICATE DATED 27/11/2007.

EXT.8.TRUE COPY OF THE NOTIFICATION DATED 5/7/2007 ISSUED BY THE 6TH RESPONDENT

EXT.P9.TRUE COPY OF THE PENSION PAYMENT ORDER ISSUED BY THE 6TH RESPONDENT

EXT.P10.TRUE COPY OF THE AMENDED PENSION PAYMENT ORDER DATED 10/12/2007.

EXT.P11.TRUE COPY OF THE STATEMENT OF ACCOUNTS DURING NOVEMBER 2007 ISSUED BY THE 6TH RESPONDENT

ANNEXURE II COPY OF THE I.A.NO.9570/2005 FILED BEFORE THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI.

EXT.P12.TRUE COPY OF THE RESOLUTION DATED 30/8/2008 ISSUED BY THE 1ST RESPONDENT

ANNEXURE III. COPY OF THE REPLY STATEMENT FILED BY THE RESPONDENTS BEFORE THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI.

ANNEXURE IV. COPY OF THE REJOINDER DTD.14.3.2011 FILED BY THE PETITIONERS BEFORE THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI.

EXT.P13.TRUE COPY OF THE LETTER DATED 30./7/2010 ISSUED BY THE RESPONDENT TO THE 1ST PETITIONER

EXT.P14.TRUE COPY OF THE LETTER DATED 10/8/2010 ISSUED BY THE RESPONDENT TO THE 1ST PETITIONER

ANNEXURE V. COPY OF THE AMENDMENT APPLICATION DTD.7.6.2013 FILED BY THE PETITIONERS BEFORE THE ARMED FORCES TRIBUNAL, KOCHI.

ANNEXURE VI. COPY OF THE ORDER DTD.16.7.2014 IN T.A.NO.129/2010 PASSED BY THE ARMED FORCES TRIBUNA, KOCHI.

RESPONDENT(S)' EXHIBITS

NIL.

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///True copy///

P.S. to Judge

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

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W.P.(AFT).No. 4 of 2015

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Dated this the 19th day of March, 2015

J U D G M E N T

ANTONY DOMINIC, J.:

This Writ Petition is filed challenging the order passed by the Armed Forces Tribunal in T.A.N.129/2010. When the Writ Petition came up for admission, the learned Assistant Solicitor General brought to our notice the judgment of the Apex Court in Civil Appeal No.7400/2013 and connected cases, rendered on March 11 2015, holding that such Writ Petitions are not maintainable before this Court. Our attention was drawn to paragraphs 37, 38 and 39 of the said judgment, which are extracted below for reference.

“37. Likelihood of anomalous situation

If the High Court entertains a petition under Article 226 of the Constitution of India against order passed by Armed Forces Tribunal under Section 14 or Section 15 of the Act bypassing the machinery of statute i.e. Sections 30 and 31 of the Act, there is likelihood of anomalous situation for the aggrieved person in praying for relief from this Court.

Section 30 provides for an appeal to this Court subject to leave granted under Section 31 of the Act. By clause (2) of Article 136 of the Constitution of India, the appellate jurisdiction of this Court under Article 136 has been excluded in relation to any judgment, determination, sentence or order passed or made by any court or Tribunal constituted by or under any law relating to the Armed Forces. If any person aggrieved by the order of the Tribunal, moves before the High Court under Article 226 and the High Court

entertains the petition and passes a judgment or order, the person who may be aggrieved against both the orders passed by the Armed Forces Tribunal and the High Court, cannot challenge both the orders in one joint appeal. The aggrieved person may file leave to appeal under Article 136 of the Constitution against the judgment passed by the High Court but in view of the bar of jurisdiction by clause (2) of Article 136, this Court cannot entertain appeal against the order of the Armed Forces Tribunal. Once, the High Court entertains a petition under Article 226 of the Constitution against the order of Armed Forces Tribunal and decides the matter, the person who thus approached the High Court, will also be precluded from filing an appeal under Section 30 with leave to appeal under Section 31 of the Act against the order of the Armed Forces Tribunal as he cannot challenge the order passed by the High Court under Article 226 of the Constitution under Section 30 read with Section 31 of the Act. Thereby, there is a chance of anomalous situation. Therefore, it is always desirable for the High Court to act in terms of the law laid down by this Court as referred to above, which is binding on the High Court under Article 141 of the Constitution of India, allowing the aggrieved person to avail the remedy under Section 30 read with Section 31 Armed Forces Act.

38. The High Court (Delhi High Court) while entertaining the writ petition under Article 226 of the Constitution bypassed the machinery created under Sections 30 and 31 of Act. However, we find that Andhra Pradesh High Court and the Allahabad High Court had not entertained the petitions under Article 226 and directed the writ petitioners to seek resort under Sections 30 and 31 of the Act. Further, the law laid down by this Court, as referred to above, being binding on the High Court, we are of the view that Delhi High Court was not justified in entertaining the petition under Article 226 of the Constitution of India.

39. For the reasons aforesaid, we set aside the impugned judgments passed by the Delhi High Court and upheld the judgments and orders passed by the Andhra Pradesh High Court and Allahabad High Court. Aggrieved persons are given liberty to avail the remedy under Section 30 with leave to appeal under Section 31 of the Act, and if so necessary may file petition for condonation of delay to avail remedy before this Court."

In the light of the above principles, this Writ Petition filed under Art.226 of the Constitution of India is not maintainable and is

disposed of with liberty to the petitioner to seek her remedies under
Secs.30 and 31 of the Armed Forces Act, before the Apex Court.

Sd/-

ANTONY DOMINIC, JUDGE

Sd/-

ALEXANDER THOMAS, JUDGE

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P.S. to Judge