

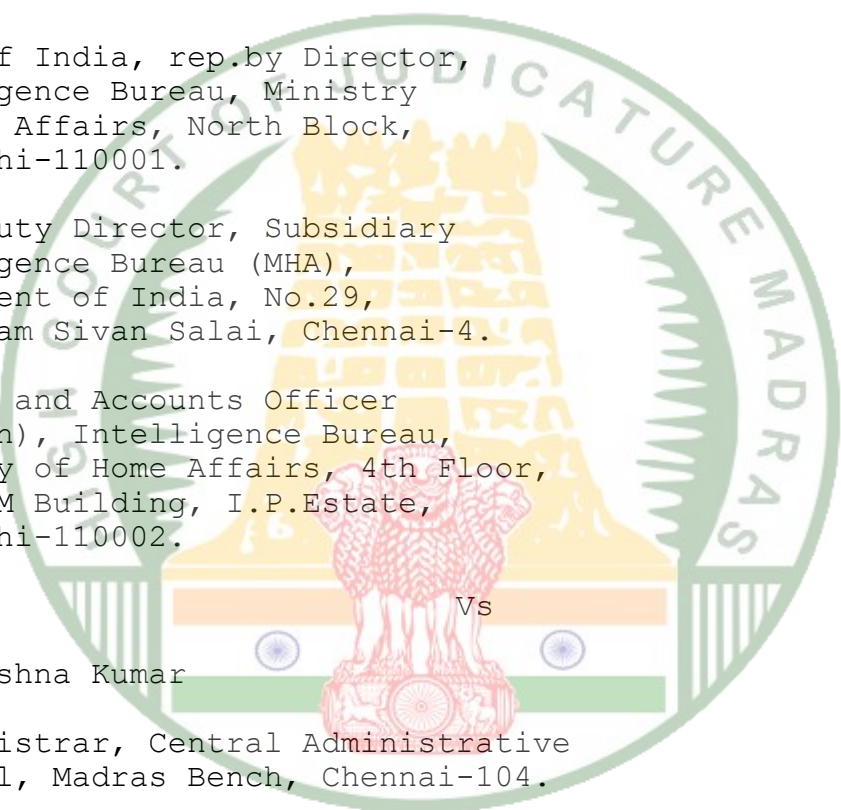
In the High Court of Judicature at Madras

Dated : 13.3.2015

CORAM :

The Honourable Mr.Justice V.RAMASUBRAMANIAN
and
The Honourable Mr.Justice P.R.SHIVAKUMAR

Writ Petition No.34163 of 2012 and MP.No.1 of 2012

- 
1. Union of India, rep.by Director,
Intelligence Bureau, Ministry
of Home Affairs, North Block,
New Delhi-110001.
2. The Deputy Director, Subsidiary
Intelligence Bureau (MHA),
Government of India, No.29,
Papanasam Sivan Salai, Chennai-4.
3. The Pay and Accounts Officer
(Pension), Intelligence Bureau,
Ministry of Home Affairs, 4th Floor,
AGCW & M Building, I.P.Estate,
New Delhi-110002. ... Petitioners
- Vs
1. V.V.Krishna Kumar
2. The Registrar, Central Administrative
Tribunal, Madras Bench, Chennai-104. ... Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records relating to the impugned order dated 23.8.2012 of the Central Administrative Tribunal, Madras Bench, Chennai passed in O.A.No.1505 of 2010 on the file of the 2nd respondent herein and quash the same being devoid of merits

For Petitioners : Mr.A.S.Chakravarthy, SCGSC
For Respondent-1 : Mr.M.Sivavarthan

Order of the Court was made by V.Ramasubramanian,J

The Union of India has come up with the above writ petition challenging an order of the Central Administrative Tribunal, allowing an application filed by the first respondent and directing the petitioners to release the regular pension as well as gratuity together with simple interest at 9%.

2. Heard Mr.A.S.Chakravarthy, learned Senior Central Government Standing Counsel for the petitioners and Mr.M.Sivavarthan, learned counsel appearing for the first respondent.

3. The first respondent herein was employed as a Deputy Director (Technical) in the office of the Subsidiary Intelligence Bureau of the Ministry of Home Affairs, Government of India. He attained superannuation on 30.11.2009.

4. Before he reached superannuation, he was issued with a letter dated 21.10.2009 to the effect that judicial proceedings are pending against the first respondent herein pursuant to a charge sheet filed before the Metropolitan Magistrate's Court, Chennai. Therefore, the petitioners relied upon Rule 69 of the Central Civil Services (Pension) Rules, 1972 to order sanction of provisional pension.

5. Aggrieved by the action of the petitioners in sanctioning only provisional pension and not regular pension, the first respondent filed an application in O.A.No.1505 of 2010 on the file of the Central Administrative Tribunal seeking a direction to the petitioners to provide all terminal benefits including regular pension. The said application was allowed by the Central Administrative Tribunal by an order dated 23.8.2012. Challenging the said order, the Union of India has come up with the above writ petition.

6. The primary contention of the learned Senior Central Government Standing Counsel is that under Rule 69 of the Central Civil Services (Pension) Rules, a Government servant is entitled only to provisional pension, if departmental proceedings or judicial proceedings are pending against him on the date of retirement. Since there is no dispute about the fact that judicial proceedings are pending against the first respondent, the petitioners submit that the first respondent cannot claim regular pension.

7. The right of a Government servant to seek pension arises out of the Statutory Rules issued in exercise of the power conferred by the Proviso to Article 309 of The Constitution. There are two rules

in the Statutory Rules. The first is Rule 9. Rule 9 entitles the President to order withholding of the whole or part of the pension or gratuity, if, in any departmental or judicial proceedings, the Government servant is found guilty of grave misconduct or negligence during the period of service including the service rendered upon re-employment after retirement. The right of the President to withhold or withdraw pension under Rule 9 is actually of permanent nature, in view of the fact that the same has to be invoked, only after a pensioner is found guilty of grave misconduct or negligence in any departmental or judicial proceedings.

8. The second rule that we should take note of is Rule 69. Under Rule 69(1), the Accounts Officer is obliged to authorise provisional pension equivalent to the maximum pension, if the Government servant was under suspension on the date of retirement. The provisional pension is payable for the period commencing from the date of retirement upto and including the date on which final orders are passed by the Competent Authority after the conclusion of the departmental or judicial proceedings. Under Rule 69(1)(c), no gratuity can be paid to the Government servant until the conclusion of the departmental or judicial proceedings and the issue of final orders thereon.

9. Therefore, fundamentally, the right to receive pension arises out of Rule 69 and any order passed under Rule 69 is of a temporary nature, till the conclusion of the departmental or judicial proceedings.

10. Keeping the above fundamental difference in mind, between Rule 9 and Rule 69, if we get back to the facts of the present case, it is seen that the daughter-in-law of the first respondent filed a criminal complaint against the first respondent and his family members alleging the commission of an offence under Section 498A of the Indian Penal Code. It appears that a charge sheet was filed on the file of XXIII Metropolitan Magistrate, Saidapet, Chennai in C.C.No.11033 of 2009. The said criminal case is still pending. Hence, the petitioners have taken recourse to Rule 69 to grant only provisional pension and also deprived gratuity of the first respondent.

11. However, it appears from the order of the Central Administrative Tribunal that the Tribunal took note of a judgment of the Principal Bench of the Central Administrative Tribunal, under identical circumstances, which was also confirmed by a Division Bench of the Delhi High Court in W.P.(C).No. 383 of 2010 dated 25.1.2010. In the said case, the Division Bench of the Delhi High Court went into the provisions of the Pension Rules, took note of the decisions

of the Apex Court and came to the conclusion that while exercising power under Rule 69 or 9 of the Pension Rules, the President had to be satisfied that the pensioner committed grave misconduct in the discharge of his duties.

12. Paragraph 13 of the said order of the Delhi High Court in Union of India Vs. Prabhu Lal reads as follows :

"We are satisfied that while exercising power under Rule 69/9 of the CCS Pension Rules, the President has to be satisfied that the pensioner committed grave misconduct in discharge of his duties. In absence of any such finding, the President cannot hold the pension or withhold gratuity. In the present case also, there is no finding against the respondent warranting withholding of any part of pension or gratuity by the President as the respondent was neither facing any departmental proceedings nor the judicial proceedings having anything to do with his official functions. There is nothing on record that any loss has been caused to the Government by any act/ omission of the respondent."

13. In State of Jharkhand Vs. Jitendra Kumar Srivatsava [2013 (12) SCC 210], the Supreme Court was concerned with a similar provision in Rule 43(b) of the Bihar Pension Rules, 1950. After considering the scope of the said rule with reference to the right of a pensioner in terms of Article 300A of The Constitution, the Supreme Court held in the said case that the right to receive pension is in the nature of a property right and that the same cannot be taken away except by due process of law. In paragraph 11(ii) of the said decision, the Supreme Court pointed out that Rule 43(b) of the Bihar Pension Rules did not empower the State to invoke the power to withhold or withdraw pension while the departmental or judicial proceedings are pending.

14. Therefore, we do not find any infirmity in the order of the Tribunal, warranting interference. The criminal case, in which, the first respondent is implicated, is in the nature of a family dispute and it has nothing to do with the discharge of official duties of the first respondent.

15. Accordingly, the writ petition is dismissed. No costs. Consequently, the above MP is also dismissed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

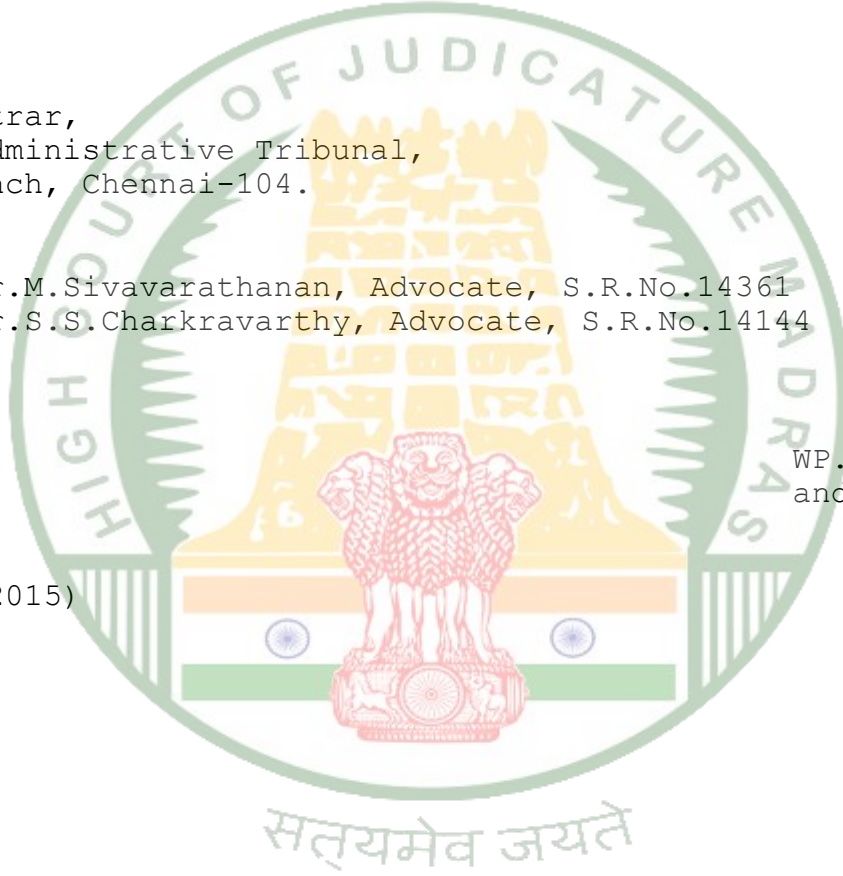
To

The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai-104.

+1cc to Mr.M.Sivavarathanan, Advocate, S.R.No.14361
+1cc to Mr.S.S.Charkravarthy, Advocate, S.R.No.14144

WP.No.34163 of 2012
and MP.No.1 of 2012

AD(CO)
CA(20/03/2015)



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