

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2017

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THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.14105 of 1997 and
W.P.No.2468 of 1998

W.P.No.14105 of 1997

G.M.Arumugam

... Petitioner

Vs.

1. The Ministry of Personnel
Public Grievances and Pensions,
Government of India,
Department of Pension &
Pensioner's Welfare,
3rd Floor, Lok Nayak Bhavan,
Khan Market,
New Delhi - 110 003.
2. The Officer of the Chief CDA
(Pensions)
Allahabad,
Uttar Pradesh - 211 016.
3. The Records Officer (NA Group)
Air Defence Artillery,
Nasik Road Camp,
Nasik District,
Maharashtra - 422 102.
4. The Branch Manager,
State Bank of India,
Gobichettipalayam Taluk
Erode District,
Tamilnadu - 638 452
5. The Tamilnadu Government
Transport Corporation Ltd.,
(Kovai Division - II)
Head Office Erode,
Erode District,
Tamilnadu - 638 002
(Old Name "Jeeva Transport
Corporation Ltd., Erode)

...Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus called for the records pertaining to letter No.AT/5/III/TN Periyar dated 02.07.1997 of the Office of the C.C.D.A.(P) Allahabad issued by the first respondent quash the same and directing the respondents to release dearness relief on the pension payable by the first respondent to the petitioner.

For Petitioner : No Appearance

For Respondents

For R1 & R3 : Mr.J.Madanagopal Rao
Senior Central Government
Standing Counsel

For R4 : Mr.P.Sukumar
Standing Counsel for SBI

For R5 : Mr. V.R.Kamalanathan

W.P.No.2468 of 1998

S.Nagarajan ... Petitioner

Vs.

1. The Ministry of Personnel
Public Grievances and Pensions,
Government of India,
Department of Pension &
Pensioner's Welfare,
3rd Floor, Lok Nayak Bhavan,
Khan Market,
New Delhi - 210 003.

2. The Officer of the Chief CDA
(Pensions), Allahabad,
Uttar Pradesh - 211 016.

3. The Records Officer,
Madras Engineering Group,
(N.E.G.P.) Bangalore - 42.

4. The Sub-Treasury Officer,
Thenkarai,
Periakulam - 625 601.

5. The Managing Director,
Tamil Nadu State Transport
Corporation Ltd., (RMTC)
Madurai Division - IV,
Head Office,
Dindigul District - 624 004.

... Respondents.

Prayer :- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents 1 to 3 to pay dearness relief on pension to the petitioner.

For Petitioner : No Appearance

For Respondents

For R1 & R3 : Mr.J.Madanagopal Rao
Senior Central Government
Standing Counsel

For R4 : Mr.Akil Abkar Ali
Government Advocate

For R5 : Mr.S.Jayaraman

COMMON ORDER

These two writ petitions are listed today, under the caption "Entire bundle not available cases", for the purpose of reconstruction of case bundle and for hearing.

2. Today, none is representing for the petitioner in both cases. However, learned respective counsel for the respondents in both cases appeared. The learned counsel for the respondents also supplied the available case papers to the Court for the purpose of reconstruction and hearing. Since these two writ petitions are of the year 1997 and 1998 and have been pending for about 20 years, this Court is inclined to dispose these two writ petitions on merits based on the available case papers and of course, after hearing the learned counsel appearing for the parties before this Court.

3. In the first writ petition i.e., W.P.No.14105 of 1997, the prayer sought for is for a Writ of Certiorarified Mandamus calling for the records pertaining to letter No.AT/5/III/TN Periyar dated 02.07.1997 of the Office of the C.C.D.A.(P) Allahabad issued by the first respondent quash the same and directing the respondents to release dearness relief on the pension payable by the first respondent to the petitioner.

4. In the second writ petition i.e., W.P.No.2468 of 1998 the prayer sought for is for a Writ of Mandamus directing the respondents 1 to 3 to pay dearness relief on pension to the petitioner.

5. I have heard Mr.J.Madanagopal, learned Senior Central Government Standing Counsel appearing for the respondents 1 to 3 in both writ petitions and Mr.P.Sukumar, learned Standing Counsel appearing for the fourth respondent Bank in W.P.No.14105 of 1997 and Mr.V.R.Kamalanathan, learned Standing Counsel appearing for the fifth respondent transport corporation in W.P.No.14105 of 1997 and Mr.S.Jayaraman, learned Standing Counsel appearing for the fifth respondent transport corporation in W.P.No.2468 of 1998 and Mr.Akil Akbar Ali, learned Government Advocate appearing for the fourth respondent in W.P.No.2468 of 1998.

6. The challenge made in the first writ petition i.e., W.P.No. 14105 of 1997 is against the order passed by the first respondent in letter No.AT/5/III/TN Periyar dated 02.07.1997. It is the case of the petitioner that he is an ex-service man, therefore, he is entitled to get defence pension from the Central Government and for the said pension he would also be entitled to claim dearness benefits.

7. However, it is the case of the Central Government, especially the first respondent that, those who have retired from defence service and subsequently re-employed in the Central Government or the State Government Office or department or Company or Corporation or Autonomous Body or local fund or public sector undertakings, those retired defence personnel would not be entitled to claim dearness benefits on pension. It is the further case of the first respondent that the said issue had already been decided by the Hon'ble Apex Court vide judgment dated 08.12.1994. Therefore, the claim made by the petitioner of dearness benefits on pension would not be made available to him, as the petitioner had admittedly re-employed in the fifth respondent transport corporation, which is a public sector undertaking or State Government undertaking of the State Government of Tamil Nadu. The said position that the fifth respondent transport corporation is the Tamilnadu State Government undertaking is not in dispute. It is also not in dispute that the petitioner had re-employed in the said fifth respondent corporation and had been working there and getting salary for the job he had been undertaking there.

8. When that being the position, as per the rules, which are in vogue, since the petitioner is not entitled to claim dearness benefits on defence pension, because of the reasons that he has re-employed in undertaking of either State Government or Central Government, the prayer sought for in this

writ petition, challenging the very order dated 02.07.1997 cannot be sustained. If the petitioner has not been re-employed in the Government or Government undertaking of Central Government or State Government, certainly he would have been in a position to receive such benefits. Only in order to avoid double payment from the government to the ex-service man by way of pension on defence service as well as the salary for the job for undertaking by way of re-employment, the rule has been framed and the scheme has been followed by the Central Government and the said rule as well as the Scheme since had been upheld, as claimed by the Central Government in the impugned order itself, by order of the Hon'ble Apex Court dated 08.12.1994, this Court is of the view that the impugned order cannot be assailed for any plausible reasons and the said impugned order is upheld and is sustainable. In view of above, the writ petition in W.P.No.14105 of 1997 is deserved to be dismissed and accordingly is dismissed.

9. In the second writ petition ie., W.P.No.2468 of 1998, the petitioner sought for only a Writ of Mandamus directing the respondents to pay the dearness benefits on defence pension. Since the first writ petition itself is dismissed, where the order of denial of such benefits to the petitioner has been upheld, the consequential relief of Mandamus seeking for benefit for the subsequent period, by way of mandamus, can also be dismissed, accordingly the said writ petition is also dismissed.

10. In view of the above, both the writ petitions are dismissed. However there shall be no order as to costs.

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

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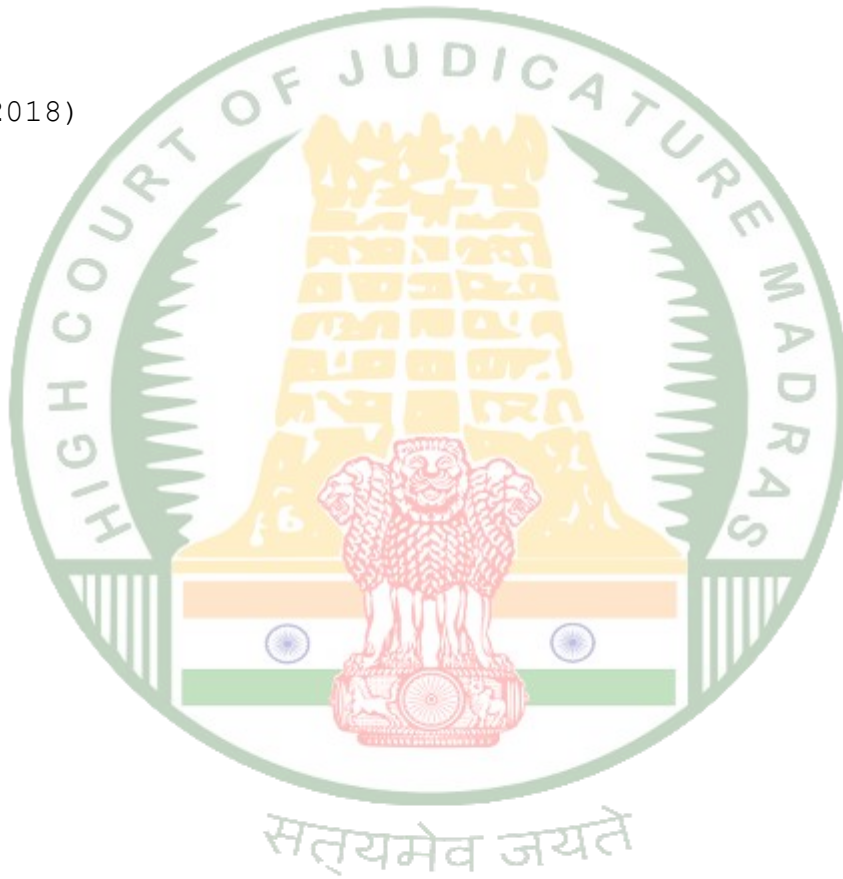
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Madurai Division - IV,
Head Office,
Dindigul District - 624 004.
9. The Public Prosecutor,
High Court, Madras.
10. The Section officer
Writ Section, High Court, Madras.

+1 CC to Mr.P. Sukumar, Advocate sr 89779.
+1 CC to Mr.J. Madanagopal Rao, Advocate sr 88979.
+1 CC to Mr.S. Jayaraman, Advocate sr 88652.
+1 CC to Mr.V.R. Kamalanathan, Advocate sr 88656.

W.P.No.14105 of 1997
and W.P.No.2468 of 1998

NMI (CO)
SP (07/02/2018)



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