

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.01.2017
Delivered on: 13.02.2017

Coram

The Honourable Mr.Justice K.K.SASIDHARAN
and
The Honourable Mr.Justice V.PARTHIBAN

W.P.No.4424 of 2012

1. Union of India,
rep. by the Secretary,
Railway Board,
New Delhi-110 001.
2. The Deputy Director,
Pay Commission-V,
Railway Board,
New Delhi-110 001.
3. The Chief Personnel Officer,
Southern Railway,
Headquarters Office,
Chennai-600 003. ... Petitioners

Versus

1. Shri S.Ramanchandran
2. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai. .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, to call for the records relating to the order dated 25.3.2010 made in O.A.No.439 of 2008 on the file of the Central Administrative Tribunal, Madras Bench, 2nd respondent and to quash the same as unsustainable.

For Petitioners : Mr.M.Vellaisamy
For Respondents : Mr.R.Subramanian for R1
R2-Tribunal

ORDER

V.PARTHIBAN, J.

This Writ Petition has been filed against the order passed by the learned Central Administrative Tribunal (in short, 'the Tribunal'), Madras Bench, dated 25.3.2010 in O.A.No.439 of 2008 allowing the application filed by the first respondent herein.

2. The first respondent herein, who was the applicant before the Tribunal, has filed the above said Original Application, seeking the following relief:

"To call for the records relating to (i) No.PC.V/206/AMed/1 dated 6.2.2008 of the second respondent; (2) No.P(G) Fixed Medical Allowance dated 23.3.2005 of the third respondent; and (3) S.No.PC.V/167-V/98/1/71/1 (RBE No.65/99) dated 21.4.1999 of the first respondent (to the limited extent of condition in Para 3 thereof to the effect that the benefit for Medical Allowance shall not be admissible to those who have retired under the contributory Provident Fund Scheme, quash the same and issue consequential directions to the respondents to sanction and disburse fixed medical allowance of Rs.100/- p.m. to the applicant herein with effect from 01.02.1997 with 18% interest per annum."

3. For the sake of clarity, the first respondent employee will be referred to as 'the applicant' while the petitioners as 'the respondent-Railways'.

4. The applicant was an employee of the respondent Railways. He voluntarily retired from service on 30.09.1983. He was a member of the Contributory Provident Fund Scheme (CPF Scheme). During 1997, the respondent Railways introduced Retired Employees Liberalized Health Scheme (in short, 'RELHS, 1997) enabling all serving employees to join the scheme for the purpose of grant of certain medical benefits.

5. In pursuance of the implementation of V Pay Commission recommendation, the Ministry of Railways issued a letter dated 21.4.1999 granting a fixed medical allowance of Rs.100/- per month to Railway pensioners/family pensioners residing outside the city/town/municipal limits of places where a railway hospital/health unit is situated subject to fulfillment of certain conditions. While granting such medical allowance to the railway pensioners, vide para 3 of the letter dated 21.4.1999, it restricted such benefit of allowance to those who have retired under the CPF Scheme stating that they are not eligible for such allowance. Aggrieved by the exclusion of certain category of personnel who were covered under the CPF Scheme, the

applicant made representations to the Railway Administration and the same were rejected on 23.3.2005 and 6.2.2008. The rejection orders on the exclusion of the benefit of fixed medical allowance in respect of employees like the applicant herein was the subject matter before the Tribunal.

6. Before the Tribunal, it was contended that the exclusion of the employees like the applicant was per se discriminatory since there was no intelligible differentia which formed the basis of such exclusion. According to the applicant, there were no justifiable reasons forth coming for dis-allowance of such claim to the employees who retired under CPF scheme, more so, when the applicant was a member of the RELHS, 1997 and as per such scheme, there was no discrimination between the retired employees and also the employees who retired under CPF scheme.

7. On behalf of the respondent-Railways, it was contended that the employees covered under CPF scheme were different and therefore, they were rightly excluded from the benefit of grant of fixed medical allowance. Except stating that they were different, there was no other explanation forth coming from the Railway Administration as to what were the distinguishing factors for treating the employees of CPF scheme differently in the matter of granting fixed medical allowance. In the circumstances, the Tribunal has rightly allowed the Original Application by setting aside para 3 of the letter dated 21.4.1999.

8. From the order passed by the Tribunal, it could be seen that no serious efforts were made on behalf of the respondent-Railways to convince the Tribunal as to the basis of exclusion of certain category of personnel like the applicant in the matter of grant of fixed medical allowance. In the absence of any justifiable and acceptable reasons forth coming, the Tribunal had no other option except to set aside the offending portion of para 3 of the letter dated 21.4.1999 as the same was per se arbitrary, unreasonable and discriminatory. As against the said order, the present Writ Petition has been filed by the Railway Administration.

9. Even before this Court, the learned counsel appearing for the respondent-Railways was unable to produce any acceptable material for such differential treatment meted out to the employees covered under the CPF scheme. But the learned counsel merely submitted that the persons covered under the CPF Scheme on different footing and therefore, they were excluded from the ambit of grant of fixed medical allowance. Needless to mention that when the exclusion without any intelligible differentia is put to challenge, it is incumbent on the Railway Administration to justify its action with all the factors and materials which

would stand the test of constitutional parameters of equality before law. In the absence of such submissions, it can be safely inferred that the Railway Administration has no justifiable cause/reason for making such exclusion. Therefore, the learned Tribunal has rightly allowed the application filed by the applicant.

10. On behalf of the applicant, it was contended by the learned counsel that while dealing with similar issue, the Madras Bench of the Railway Administrative Tribunal, has held against the Railways and drawn our attention to the contents of the order rendered in OA 1132 of 1999 dated 19.1.2001. The said decision of the Tribunal has also been confirmed by a Division Bench of this Court in W.P.No.4729 of 2001 dated 12.2.2002.

11. In the case cited by the learned counsel for the applicant, the issue was, whether ex-gratia payment was admissible to the person who retired voluntarily before attaining the age of superannuation on consent of the employer or only it could be restricted to the employees who retired on attaining the age of superannuation. The learned Tribunal held it in favour of the employee therein stating that there cannot be any discrimination while bestowing such benefit.

12. As stated supra, the above decision of the Tribunal, was also upheld by the Division Bench of this Court. Even otherwise, the facts and circumstances of the case would emphasize the fact that the exclusion of applicant without any valid reasons, is arbitrary, unreasonable, irrational and the same is constitutionally impermissible.

13. In such view of the matter, we do not find any infirmity in the order passed by the learned Tribunal warranting our interference.

For the foregoing reasons, the Writ Petition fails and it is dismissed as devoid of merits. No costs.

sd/

Assistant Registrar(CO)

/true copy/

Sub Assistant Registrar

To

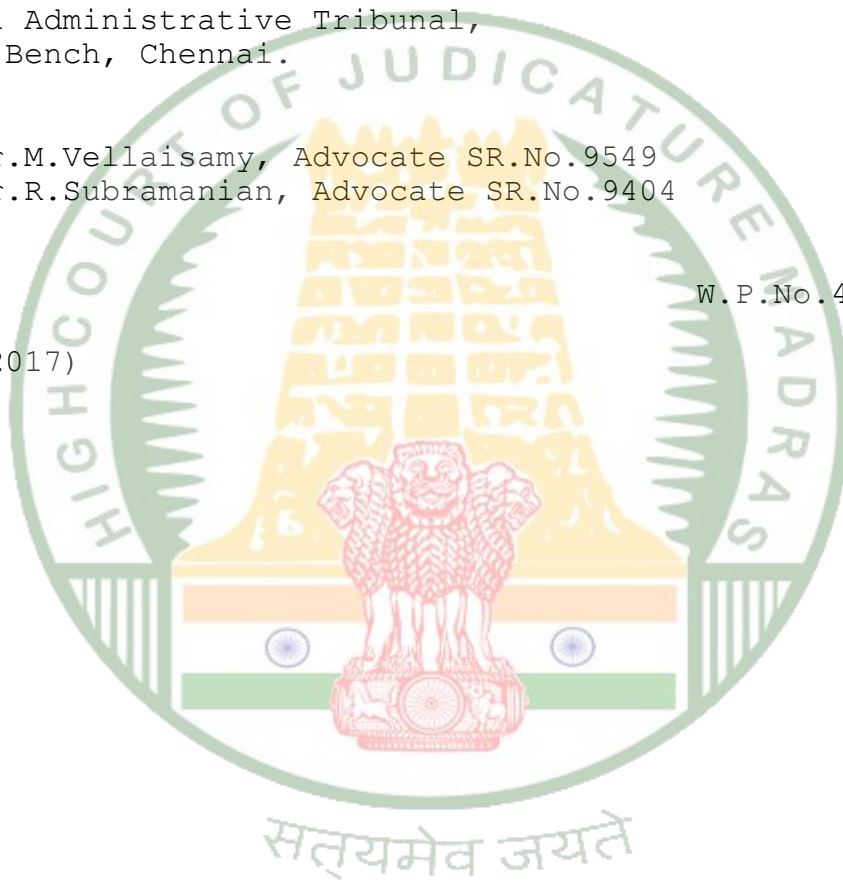
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+1cc to Mr.M.Vellaisamy, Advocate SR.No.9549
+1cc to Mr.R.Subramanian, Advocate SR.No.9404

W.P.No.4424 of 2012

SR(CO)
GN(02/03/2017)



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