

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.12.2016

Delivered on : 06.01.2017

Coram

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

W.P.No.30328 of 2016

M.Vadivelu ... Petitioner

Versus

1. Regional Provident Fund Commissioner,  
Regional Office, Bhavishya Nidhi Bhavan,  
Post Box No.3875, Dr.Balasundram Road,  
Coimbatore-641 018.
2. The Regional Provident Fund Commissioner,  
Sub Regional Office,  
Trichy-621 008.
3. The Registrar,  
Central Administrative Tribunal,  
Chennai Bench,  
Chennai-600 104. ... Respondents

Prayer: This Writ Petition is filed under Article 227 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records in O.A.938 of 2010 dated 16.09.2015 on the file of the 3rd respondent, quash the same and consequently, direct the respondents 1 and 2 to fix the petitioners basic pay as Rs.950/- instead of 791/- on 20.08.1991, and not to after he original fixation of basic pay as 1200/-, 22.6.1994 and revise all subsequent fixation of pay accordingly till his date of retirement on 30.11.2008 and all consequential benefits within a stipulated time.

For Petitioner : Mr. S.C.Vishwanth

For Respondents: Mr.V.Vijayshankar-R1&R2

## ORDER

The present Writ Petition has been filed against the order passed by the Central Administrative Tribunal, dated 16.9.2015, dismissing the Original Application (O.A.No.938 of 2010) filed by the petitioner herein.

2. The writ petitioner has filed the above mentioned Original Application before the Tribunal, seeking to challenge re-fixation of his pay vide proceedings dated 15.4.2010 and for consequential relief to fix his pay as per the proceedings dated 29.3.1995 with a direction for payment of arrears etc., along with interest.

3. The facts which gave rise to the filing of the O.A. and the present Writ Petition, are stated hereunder:

4. The petitioner was originally employed as Combatant Clerk in Defence Force from 20.09.1972 till 30.09.1988. On being discharged from the Defence service, the petitioner came to be employed in the Provident Fund Organization as Lower Division Clerk on 20.08.1991. On being employed in the said organization, his pay came to be fixed in terms of the provisions of Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986 (in short, 'the Orders'). On 22.6.1994, the petitioner was promoted as Upper Division Clerk in the pay scale of Rs.1200-30-1560-EB-40-2040. Subsequently, the post of Upper Division Clerk came to be known as Social Security Assistant. According to the petitioner, his pay was not properly fixed in the post of Upper Division Clerk and he represented to the authorities for rectification of the same. Since no action was forthcoming, he approached the learned Tribunal, assailing the action of the respondent Organization in fixing his pay improperly, by filing O.A. 768 of 2006. The said O.A. came to be dismissed on 09.04.2008 and the same was challenged by the petitioner in W.P.No.29205 of 2008. The said Writ Petition came to be allowed on 03.09.2009 and the order of the Tribunal was set aside and the respondent Organization was directed to afford an opportunity to the petitioner before re-fixing his pay.

5. In pursuant to the direction of this Court in the above said Writ Petition, a show cause notice was issued on 9.11.2009 to the petitioner, proposing to re-fix his pay right from the date of his entry into service till his date of retirement, his retirement being 1.7.2008. Along with the show cause notice, a work sheet was also enclosed explaining the fixation of pay at every stage of his career with reference to the extant Rules. On consideration of the representation of the petitioner against the show cause notice, a final order was passed by the

respondent Organization on 15.4.2010, re-fixing the pay of the petitioner.

6. It appears that the petitioner, having aggrieved by the re-fixation, once again approached the learned Tribunal by filing O.A.No.938 of 2010, seeking re-fixation of his pay. The said O.A. was again dismissed by the learned Tribunal vide order dated 4.10.2013. The petitioner again challenged the order passed by the Tribunal by filing a writ petition in W.P.No.3451 of 2014 before this Court. The said Writ Petition came to be allowed on 12.12.2014 by this Court, setting aside the order passed by the learned Tribunal and the matter was remanded to the Tribunal for fresh consideration of the claim of the petitioner on merits.

7. Pursuant to the remand of the O.A.No.938 of 2010, the Tribunal took up the O.A. and on consideration of the issue involved therein, the Tribunal dismissed the O.A. vide order dated 16.9.2014, which is impugned in the present Writ Petition.

8. Before the learned Tribunal, several contentions were raised on behalf of the parties and to put in nutshell, the case of the petitioner was that the benefit of defence service rendered by him ought to have been applied at every stage of his service/promotion and therefore, on consideration of defence service for the purpose of fixation of his pay after the petitioner was promoted to the post of UDC, was improper and incorrect. In view of improper fixation of his pay, the petitioner suffered recurring monetary loss and also loss of pensionary benefits payable every month.

9. Resisting the claim of the petitioner, it was contended on behalf of the respondent Organization that the pay of the petitioner has been rightly fixed in terms of Rule 16(2) of the Orders and also in terms of the option exercised by the petitioner in terms of Rule 4 of the Orders.

10. During the course of submissions before the learned Tribunal, on behalf of the petitioner and respondent Organization, work sheets were produced as per the calculation of pay fixation and from the production of the documents, it emerged that no provision was brought out to the notice of the learned Tribunal that the petitioner was entitled to defence service benefit at every stage of his promotion. The learned Tribunal, in para 14 of the order, clearly held that even the defence service benefit is ignored, which was rightly done, there was no difference between the work sheets placed on record by the petitioner as well as respondents. It was also admitted case that the past service rendered by the petitioner in the Defence was taken into consideration and for the 15 years of defence service, 15 advance increments were granted and the pay had been fixed accordingly at the time of the petitioner's entry

into the respondent Organization as LDC.

11. In view of the clear finding of the learned Tribunal both in terms of the calculation and in terms of the relevant provisions, the impugned order came to be passed against the petitioner.

12. The learned counsel appearing for the petitioner, strenuously contended that the learned Tribunal misdirected itself by not appreciating the Rule position in proper perspective and he relied upon Rule 16(2) (iv) of the Orders, stating that the petitioner was entitled to re-fixation of his pay as per his claim.

13. From a perusal of the materials on record and Rule position, it could be seen that the contention of the learned counsel appearing for the petitioner cannot be countenanced both on law and on facts since admittedly, his pay had been fixed as per sub clause (2) of Rule 16 of the Orders at the time of his entry into respondent Organization. In fact, along with the show cause notice, a detailed worksheet has been enclosed, calling upon the petitioner to explain as to how the basis of the calculation was wrong, according to him. In response to the show cause notice, the petitioner had given a representation. But he was unable to point out as to how exactly the calculation and fixation of pay as mentioned in the show cause notice was wrong and incorrect. Even in the proceedings before this Court, the petitioner counsel was afforded an opportunity to explain the basis of his claim in contrast to the calculation and fixation of his pay as per the impugned order dated 15.4.2010. The learned counsel appearing for the petitioner strenuously and painstakingly did attempt to explain that the impugned fixation of pay was wrong, we are unable to be persuaded by the learned counsel for the petitioner that the learned Tribunal was incorrect in passing the order against the petitioner.

14. It could be seen in the order passed by the learned Tribunal that very detailed reasons were given and all of the contentions raised by the rival parties were considered with reference to Rule governing the claim of the petitioner and the work sheets submitted by both parties had been appreciated in proper perspective on the basis of the Rules applicable.

15. In view of well considered decision of the learned Tribunal and the petitioner having failed to persuade this Court to take a contra view with reference to his claim vis-a-vis applicable Rules, we are unable to interfere with the order passed by the learned Tribunal. We, therefore, dismiss the Writ Petition as devoid of merits. No costs.

s/d-  
Assistant Registrar

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Sub-Assistant Registrar

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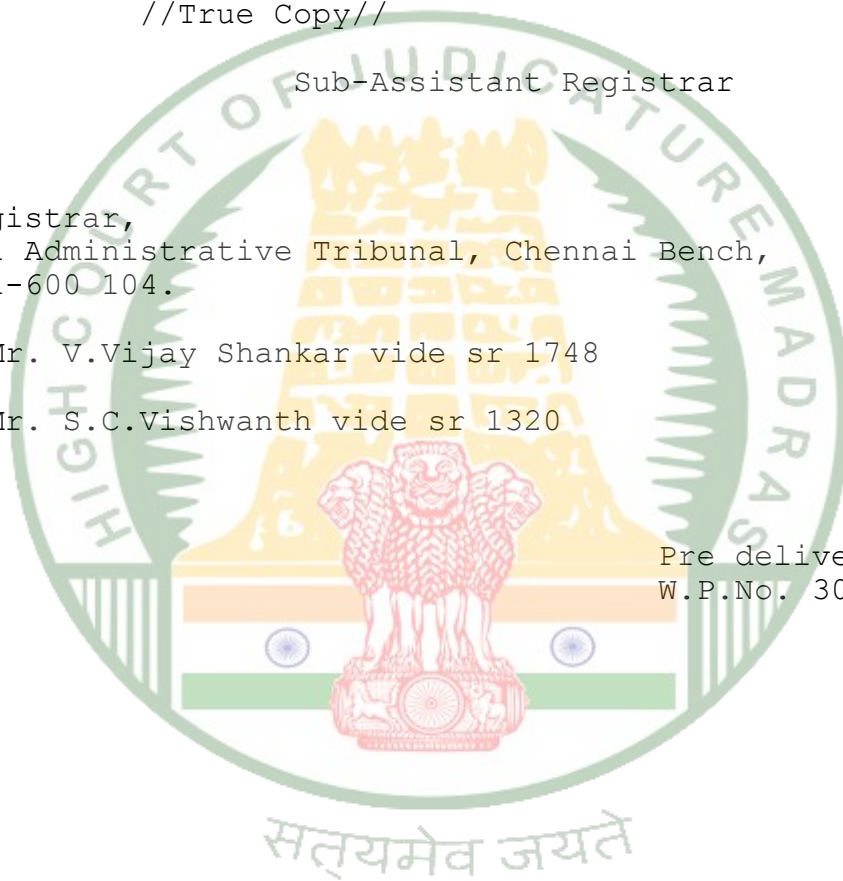
1. The Registrar,  
Central Administrative Tribunal, Chennai Bench,  
Chennai-600 104.

+1 CC to Mr. V.Vijay Shankar vide sr 1748

+1 CC to Mr. S.C.Vishwanth vide sr 1320

Pre delivery order in  
W.P.No. 30328 of 2016

SKV (CO)  
sp/27/1



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