



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.01.2018

C O R A M

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.19026 of 2014

M.S.Srinivasan

... Petitioner

Vs.

1. The Secretary to Government,
Tamil Nadu State Government,
Highways Department,
Secretariat, For St.George,
Chennai - 600 009.
2. The Secretary to Government,
Finance (Pension Department),
Secretariat, Fort St.George,
Chennai - 600 009.
3. The Accountant General (A and E),
Tamil Nadu State Government,
No.361, Anna Salai,
Chennai - 600 018.
4. The District Treasury Officer,
O/o.The District Treasury Officer,
Madurai District Collectorate Buildings,
Madurai - 625 020.

... Respondents

Prayer: Writ Petition filed under Article 226 of the constitution of India, to issue a Writ of Mandamus, directing the 1st and 3rd respondents to restore the Original Pension to the petitioner after communication with effect from 01.07.2008 to till date and direct the 4th respondent to refund the excess amount so far recovered from the petitioner's pension subsequent deduction recovered from the petitioner's pension.

For Petitioner : Mr.S.Govindan

For R-1, R-2 & R.4 : S.Kumar
Additional Government Pleader

O R D E R

The Writ Petitioner is a retired Junior Engineer, who worked in the Highways Department. He reached the age of superannuation on 30.06.1993. He was placed under suspension. The disciplinary proceedings was pending against him. The departmental proceedings concluded only in the year 2003. The pensionary benefits payable to the writ petitioner were settled only on 12.02.2004. A sum of Rs.35,783/- was paid to the writ petitioner by way of commutation of one third of his pension amount. An order to this effect was passed on 01.01.2004. The said commutation order reads that the commuted portion shall stand restored subject to the pensioner been alive on that date 15 years after the date of commutation. The writ petitioner had obviously accepted the said order and took the commutation value. He is therefore, estopped from questioning the same at this point of time. The prayer in the writ petition is that his original pension must be restored with effect from 01.07.2008 and that the respondent must be directed to pay the arrears from the said date.

2. The learned counsel appearing for the writ petitioner would place reliance on G.O(Ms).No.242, Finance Department, dated 1.4.1981. In the said Government order it has been mentioned that the commuted portion of all pensioners, who as on 01.04.1981 have completed fifteen years from the date of their retirement shall be restored in full irrespective of their date of commutation. In case of other petitioners, restoration shall be allowed as and when they complete fifteen years from the date of their retirement. The contention put forth by the writ petitioner is that the writ petitioner's date of retirement was 30.06.1993 and that therefore 15 years stood completed on 30.06.2008. Applying the above said Government Order, his case is that his full pension should be restored with effect from 30.06.2008. I am unable to accept the said contention.

3. As rightly pointed out by P.Gunasekaran, learned counsel appearing for the third respondent, the question of commuting the portion of the pension would not arise so long as the departmental proceedings was pending against the writ petitioner. Section 3 of Rule 9 of the Tamil Nadu Civil Pensioners (Commutation) Rules, 1944 reads as under:

"The lumpsum amount payable to the retiring Government Servant shall be calculated with reference to the table of values applicable to him on the date on which commutation become absolute."

4. In this case the action against the writ petitioner had concluded only in the year 2003. Therefore, he could not have been entitled to any commutation prior to 2003. Only question is whether the writ petitioner would be entitled for restoration of his original pension. When the commutation order itself categorically



stated that for a period of 15 years there won't be restoration of the original pension and the same was also accepted by the writ petitioner, the question of going back to the same at this point of time would not arise. He would also draw this Court's attention to Rule 11 which reads as under:

WEB COPY

"A cummutation once given effect to cannot be rescinded, that is, the portion of a pension commuted cannot be restored on refund of its capitalised value."

5. In view of the statutory mandates set out in Rule 11 and Clause 5 of Part 3 of the Commutation Order, this Court is of the view that the writ petitioner has not made out his case for restoration of his original pension with effect from 2008. The Writ petition therefore stands dismissed. No costs.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
Tamil Nadu State Government,
Highways Department,
Secretariat, For St.George,
Chennai - 600 009.
 2. The Secretary to Government,
Finance (Pension Department),
Secretariat, Fort St.George,
Chennai - 600 009.
 3. The District Treasury Officer,
O/o.The District Treasury Officer,
Madurai District Collectorate Buildings,
Madurai - 625 020.
- + 1 cc TO Mr.P.Gunasekaran , Advocate in SR No. 40299
+ 1 cc TO The Special Government Pleader in SR No. 40535

kmi

AE/JC/SAR2/12.03.2018/3P/6C

W.P. (MD) No.19026 of 2014
04.01.2018