

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. No. 2798 of 2018
and

C.M.P. Nos. 23136 of 2018 and 89 of 2019

1. Union of India,
Represented by its Secretary to Government of India,
Ministry of Defence,
South Block,
New Delhi - 110 011.
 2. Directorate General of Signals/Signal-4,
GS Branch,
Integrated Head Quarters of Ministry of Defence (Army),
Defence Head Quarters Post Office,
New Delhi - 110 011.
 3. The Officer i/c Record Signals,
Record Signals,
PIN - 908770, C/O 56 APO.
 4. The Commanding Officer,
No. 8, Mountain Signal Regiment,
PIN - 917808, C/O 56 APO.
 5. Commanding Officer,
Dakshan Bharat Area,
Signal Company,
Fort St. George,
Chennai - 600 009.
- ... Appellants/Respondents

Hav. B. Sakthivel

-vs-

... Respondent/Petitioner

PRAYER:- Writ Appeal filed under Clause 15 of Letter Patent,
praying to set aside the order dated 10.12.2018 in W.P. No.
30698 of 2018.

W.P.30698/2018:

This Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of certiorarified Mandamus to call for all the connected records pertaining to the passing of the order dated 20/08/2018 in the proceedings No.No.1807214 POM on the file of the 3rd Respondent and quash the same. Consequently direct the 3rd respondent to continue the petitioner at chennai.

For Appellants : Mr. G. Rajagopalan,
Additional Solicitor General for
M/s.K.Srinivasamurthy

For Respondent: Mr. M. Selvaraj

J U D G M E N T

(Judgment of the Court was delivered by P.D. AUDIKESAVALU, J.)

The Respondent, who is serving in the Indian Army was issued an order of transfer from Dakshin Bharat Area, Signal Company, PIN-900 432, C/O 56 APO in Tamil Nadu to 8, Mountain Division Signal Regiment, PIN-917808, C/O 56 APO in West Bengal by posting order PO No. 1807214/PO/M dated 20.08.2018, which he challenged in W.P.No. 30698 of 2018 in this Court.

2. The Learned Judge, who heard the Writ Petition, by order dated 10.12.2018, held as follows:-

"13. Considering the peculiar facts and circumstances of this case, the impugned order dated 20.08.2018 passed by the 3rd respondent is hereby set aside and the writ petition is allowed accordingly. The respondents are directed to permit the petitioner to remain at Chennai for the remaining period, i.e. till his superannuation.

....

15. The Registry is directed to send a copy of this Judgment to the Ministry of Defence, for the purpose of issuing further guidelines, in respect of last leg posting."

Aggrieved thereby, the Appellants have preferred this intra-court appeal.

3. During the earlier hearing on 27.03.2019, we had passed the following self-explanatory order:-

"We have permitted the respondent to submit application for retirement. The respondent, pursuant to such liberty, submitted the application for retirement. The application was processed by the

appellants. The matter is posted today for passing further orders.

2. When the appeal is taken up for hearing, the learned counsel for the respondent, on instructions, submitted that in case, the application for retirement is construed to be a premature retirement, Serial No.4 of the circular dated 7 November, 2015 would come into play and the respondent would not be given the benefit of one rank one pension.

3. The learned Additional Solicitor General submitted that in the normal course, the respondent would have retired in June, 2018. He has been given two years extension of service taking into account the option given by him and as such he should opt for premature retirement.

4. The learned counsel for the respondent, on instructions from the respondent, who is present in Court, submitted that the respondent would opt for retirement taking into account his original date of retirement i.e, 30 June, 2018. We have pointed out to the respondent that in such a case, his pension would be calculated on the basis of his last drawn salary as on June, 2018 and the revised salary and increments during the extended period would not be counted for any purpose. The respondent submitted that he is agreeable for such a course.

6. The learned Additional Solicitor General seeks time to take instructions from the appellants as to whether the appellants would accept the application for retirement effective June, 2018 and permit the respondent to retire forthwith.

7. Post under the caption "For Orders" on 3 April, 2019."

4. When the matter is taken up for hearing today, the Learned Additional Solicitor General appearing for the Appellants submitted that it would require some more time to obtain written instructions from the concerned authorities, as the matter has to be formally routed through the hierarchy of officials, and in such circumstances, suggested that without being treated as a precedent, this Court may pass appropriate orders for accepting the application for retirement of the Respondent effective from 30.06.2018 on the same terms mentioned in para 4 of our order dated 27.03.2019, extracted supra.

5. In view of the aforesaid submissions made, we direct the concerned authority to pass necessary orders for accepting the retirement of the Respondent from service on 30.06.2018, which is his original date of retirement and communicate the decision taken to him. The pension of the Respondent shall be calculated on the basis of his last salary as on June 2018 and the revised salary and increments during the extended period shall not be counted for any purpose. The Respondent shall be entitled to receive the eligible amount of salary due to him in accordance with the Rules for the period from 01.07.2018 till he is issued relieving order and thereafter, the pension calculated in the aforesaid specified manner shall be paid to him. The terminal benefits due to the Respondent shall be expeditiously settled. We further direct that the Respondent shall extend his full co-operation and attend the office of the concerned authority for signing necessary papers whenever required by prior intimation. We record the assurance of the Learned Additional Solicitor General that the aforesaid process would be completed within a period of eight weeks from today. The concerned authority shall file a report of compliance in that regard before the Registrar (Judicial) of this Court by 30.06.2019.

6. In view of the subsequent developments referred supra, the question of transfer of the Respondent, which was the subject matter of the Writ Petition does not survive for consideration and hence, we allow this Writ Appeal and set aside the order dated 10.12.2018 in W.P. No. 30698 of 2018 in its entirety, and dispose the Writ Petition on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Vjt

03/04/2019

FOR BEING MENTIONED

This Matter having been posted pursuant to the mentioning made by the Learned Additional Solicitor General on 11.04.2019 pursuant to the order of this court dated 03.04.2019 and made herein and the court made the following Order:-

(Order of the Court was made by K.K.SASIDHARAN,J.)

The matter is posted today pursuant to the mentioning made by the learned Additional Solicitor General.

2. In Paragraph 4 of the order dated 03.04.2019, we have recorded the submission made by the learned Additional Solicitor General. The learned Additional Solicitor General

submitted that it is for the Court to pass appropriate orders taking into account the background facts. However, the order proceeds as if it was pursuant to the consent given by the learned Additional Solicitor General such an order was passed. We therefore clarify paragraph 4 of the order.

Para 4 of the order dated 03.04.2019 will now read thus:

When the matter is taken up for hearing today, the Learned Additional Solicitor General appearing for the Appellants submitted that it would require some more time to obtain written instructions from the concerned authorities, as the matter has to be formally routed through the hierarchy of officials, and in such circumstances, suggested that without making it a precedent, appropriate orders could be passed taking into account the earlier order dated 27.03.2018. We are of the view that the application for retirement of the respondent should be made effective from 30.06.2018 on the very same terms and conditions mentioned in para 4 of our order dated 27.03.2019.

vrn/pri

11.04.2019

-s/d-

Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

To

1. The Secretary to the Government of India,
Ministry of Defence,
South Block,
New Delhi - 110 011.
2. Directorate General of Signals/Signal-4,
GS Branch,
Integrated Head Quarters of Ministry of Defence (Army),
Defence Head Quarters Post Office,
New Delhi - 110 011.
3. The Officer i/c Record Signals,
Record Signals,
PIN - 908770, C/O 56 APO.

4. The Commanding Officer,
No. 8, Mountain Signal Regiment,
PIN - 908770, C/O 56 APO.

5. Commanding Officer,
Dakshan Bharat Area,
Signal Company,
Fort St. George,
Chennai - 600 009.

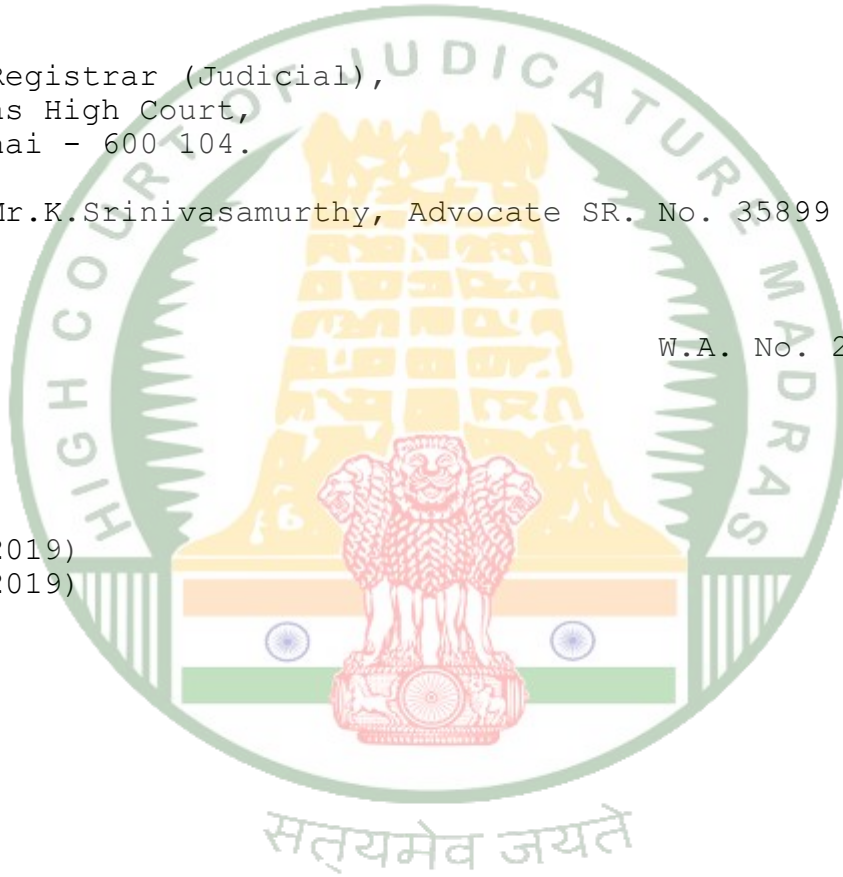
Copy to

The Registrar (Judicial),
Madras High Court,
Chennai - 600 104.

+1 CC to Mr.K.Srinivasamurthy, Advocate SR. No. 35899

W.A. No. 2798 of 2018

RGN(CO)
SP(09/04/2019)
GN(07/05/2019)



WEB COPY