



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.14117 of 2014

and

M.P.(MD) Nos.1, 2 & 3 of 2014

Mathan Kumar

... Petitioner

vs.

1.The Commandant (OIC) Records
AMC Records, AMC Centre and College
Lucknow-900 450
Uttarpradesh

2.The Lt.Colonol
OIC ER Gp (OIC Records)
AMC Records
Lucknow-900 450

3.The Pay & Account Officer (OR) AMC
PO-Dilkusha
Lucknow-2
Uttarpradesh

4.Lalitha

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for the records relating with the order in letter No.201930/542/A1 (DV-3), dated 27.05.2014 and its consequential order 4740071/ER/Maint/MMK/DC-59 dated 09.07.2014 passed by the 2nd respondent and quash the same as it is arbitrary and illegal.

For Petitioner : Mr.R.Suriyanarayanan

For Respondents : Maj.Steve Barreto
Office In-charge, Legal Cell,
Chennai for R1 to R3

No appearance for R4



O R D E R

The order granting of maintenance allowance to the wife and children of the writ petitioner, in proceedings dated 09.07.2014, passed by the second respondent, is under challenge in the present writ petition.

2. The writ petitioner joined in the Indian Army as Nursing Assistant on 07.07.2001 in the Army Hospital at AMC, Lucknow and now, promoted as Nursing Technician in NBS Subedar Rank. On account of certain family disputes, the writ petitioner deserted his wife and children. The wife of the writ petitioner / fourth respondent filed a petition before the competent authority for grant of maintenance as per the service rules in force. The authority competent conducted an enquiry and processed the application in Army order No.2 of 2001. The application processed in the said order was concluded and accordingly, the final order of grant of maintenance was issued in proceedings, dated 09.07.2014.

3. The service rules provide grant of maintenance amount to the spouse and children of the Army personnel. Under these circumstances, the writ petitioner has chosen to file the present writ petition challenging the said order, on the ground that in the absence of any Court order from the competent court of law, maintenance cannot be granted to the fourth respondent.

4. This Court is of the considered opinion that the writ petitioner has absolutely misconstrued the service rules regarding the grant of maintenance to the spouse by the competent authority upto certain limits prescribed in the rules. However, it is brought to the notice of this Court that the writ petitioner being an Army personnel, cannot approach the High Court and he has to approach the Armed Forces Tribunal constituted pursuant to the Central Act, namely, the Armed Forces Tribunal Act, 2007 (hereinafter, referred to as "the Act"). Section 3(o) of the Act defines service matters. Now, the order of recovery has been issued for the purpose of granting maintenance to the wife of the writ petitioner. Thus, the subject matter falls within the definition of Section 3(o) of the Act and accordingly, the jurisdiction of the High Court, under Article 226 of the Constitution of India, is ousted and the writ petitioner has to approach the Armed Forces Tribunal for redressal of his grievance, if any exists as of now.

5. In view of the fact that the writ petitioner has to approach the appropriate Forum, the present writ petition cannot be entertained. Accordingly, the writ petition stands dismissed with liberty to the writ petitioner to approach the appropriate Forum in the manner known to law. No costs. Consequently, connected



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miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar(CS)

+1 CC to M/s.R. SURIYANARAYANAN, Advocate (SR-82552[F] dated 20/08/2019)

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and
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