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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE S. VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE R. VIJAYAKUMAR

W.A.Nos. 585 & 586 of 2018

and

C.M.P. Nos. 5615 & 5616 of 2018

W.A.No.585 of 2021

1. The Chief Secretary,
Government of Puducherry,
No.1, Gourbert Avenue
Beach Road, Puducherry - 605 001.
2. The Secretary to Government,
Home Department,
Government of Puducherry,
No.1, Gourbert Avenue
Beach Road, Puducherry - 605 001.
3. The Director General of Police,
Puducherry Police,
No.4, Dumas Street, Puducherry.
4. The Commandant,
India Reserve Battalion (IRBN),
PAP Complex, Gorimedu, D Nagar,
Puducherry.

...Appellants

Vs.

1. R. Sudhakaran
2. D. Vijaykumar
3. P. Raguraman
4. R. Abdulla
5. The Secretary to Government,
Government of India,
Ministry of Home Affairs,
North Block, Central Secretariat,
New Delhi.

...Respondents



W.A.No.586 of 2018

1. The Chief Secretary,
Government of Puducherry,
No.1, Gourbert Avenue
Beach Road, Puducherry - 605 001.
2. The Secretary to Government,
Home Department,
Government of Puducherry,
No.1, Gourbert Avenue
Beach Road, Puducherry - 605 001.
3. The Director General of Police,
Puducherry Police,
No.4, Dumas Street, Puducherry.
4. The Commandant,
India Reserve Battalion (IRBN),
PAP Complex, Gorimedu, D Nagar,
Puducherry.

....Appellants

...Vs...

1. S. Anandaraj
2. R. Rajesh
3. R. Rajasegaran
4. P. Pushparaj
5. R. Paneerselvan
6. T.Rajarajasozhan
7. G. Janarthanan
8. N. Prasath
9. V.Tamilmaran
- 10.G.Pushparaj
- 11.The Secretary to Government,
Government of India,
Ministry of Home Affairs,
North Block, Central Secretariat,
New Delhi.

...Respondents

Prayer in both Appeals: Writ Appeals filed under Clause 15 of Letter Patent Act, to set aside the impugned order dated 14.09.2017 made in W.P.Nos. 9432 & 9433 of 2014 and allow the Writ Appeals.



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Prayer in W.P.No.9432 of 2014: Petition filed under Article 226 of the Constitution of India praying for issuance of writ of Mandamus to directing the respondents to pay the Fixed Travelling Allowance to the petitioners with retrospective effect from the date of their completion of basic training in India Reserve Battalion Puducherry i.e. from 17.4.2006 in the light of G.O.Ms.No. 46 Home Department Pondicherry dated 11.9.2006 Guidelines for setting up IR Battalions issued by the Ministry of Home Affairs Central Government New Delhi and Letter NO.II.27011/ 10/ 2003/PF.II (i)/PF IV Government of India Ministry of Home Affairs New Delhi dated 26.2.2004.

Prayer in W.P.No.9433 of 2014: Petition filed under Article 226 of the Constitution of India praying for issuance of writ of Mandamus to directing the respondents to pay the Fixed Travelling Allowance to the petitioners with retrospective effect from the date of their completion of basic training in India Reserve Battalion Puducherry i.e. from 17.4.2006 in the light of G.O.Ms.No.46 Home Department Pondicherry dated 11.9.2006 Guidelines for setting up IR Battalions issued by the Ministry of Home Affairs Central Government New Delhi and Letter NO.II.27011/ 10/ 2003/ PF.II (i)/PF IV Government of India Ministry of Home Affairs New Delhi dated 26.2.2004.

For Appellants : Mr. R. Syed Mustafa
(in both W.A.'s) Special Government Pleader
(Puducherry)

For Respondents : Ms. Dhakshayani Reddy
for Mr.P. Nethaji (R1 to R4 in
W.A.No.585/2018 and R1 to R10 in
W.A.No.586 of 2018)

Mr.Ramesh,
CGSSC(R5 in W.A.No.585/2018 and
R11 in W.A.No.586/2018)

J U D G M E N T

(Judgment of the Court was delivered by R.VIJAYAKUMAR,J)

These Writ Appeals are directed against the order dated 14.09.2017 made in W.P.Nos. 9432 & 9433 of 2014.

2. The Respondents 1 to 4 in W.P.Nos.9432 and 9433 of 2014 are the Appellants herein. The Respondents 1 to 4 and 1 to 10 in W.A.Nos.585 and 586 of 2018 respectively have filed the Writ Petitions seeking Mandamus to direct the Appellants to pay fixed Travel Allowance with retrospective effect from the date of their completion of basic training in India Reserve Battalion,



Home Department, Pondicherry from 17.04.2006.

3. The Writ Petitioners contended that they belong to India Reserve Battalion, Puducherry and that they have successfully completed training on 16.04.2006 and their pay and allowances would be determined by the State and it should be par with the personnel of State Armed Force. They also claimed that that they are entitled for Permanent Travelling Allowance, which is paid to the Police Personnels and others in the State Armed Force. The Writ petitioners further contended that denial of the Permanent Travelling Allowance to them is per se discriminatory, arbitrary, unreasonable and violative of Article 14 of the Constitution of India. Since the writ petitioners and the other police personnel attached to the State Armed Force are identically placed, there cannot be any difference in the matter of payment of allowance.

4. The learned counsel appearing for the Appellants/ Respondents 1 to 4 submitted before the learned Single Judge that the funds have to be allotted by the Union of India and in the absence of sanction from the Ministry of Home Affairs, the claim of the Writ Petitioners as such cannot be granted by the Union Territory of Puducherry.

5. During the pendency of the Writ Petitions, The Secretary to Government, Government of India, Ministry of Home Affairs has been impleaded as Fifth Respondent. The learned Additional Solicitor General of India, who appeared for the Home Minsitry in the Writ Petitions, submitted that the matters regarding pay and allowances, fall within the domain of the Union Territory and impressed upon the Court that the Union Territory of Puducherry is competent to take the call on behalf of the Union of India. In view of the divergent stand taken by the Union Territory of Puducherry and Ministry of Home Affairs, the learned Single Judge was pleased to pass an order directing the Appellants herein to grant Permanent Travelling Allowance as admissible, which is being paid to other police personnel attached to State Armed Force, with effect from the date when the writ petitioners became eligible for such allowance along with arrears to the writ petitioners, who are entitled to such allowances, which is revised fom time to time and Union Territory of Puducherry was directed to continue this payment.

6. As against the said order, the present Appeals have been filed by the Government of Puducherry on the sole ground that as per the Supplementary Rule 22 i.e., applicable to the Writ Petitioners herein, competent authority under Rule 2 (6) is President of India or any authority to which the power is delegated by or under these rules. Further, on 09.03.1993, the Ministry of Home Affairs have issued a communication to the Government of Puducherry, stating that Ministry of Finance and



Government of India had agreed to the amendment of Appendix under Supplementary Rule 2 (6).

7. The main contention of the learned Special Government Pleader appearing for the Appellants is that so far Supplementary Rule 22 or supplementary Rule 2 (6) have not been amended and the communication dated 09.03.1993 discloses only the agreement of the Ministry of Finance (Department of Expenditure) and Government of India to carry out the Amendment on a future date and so amendment has not been taken place.

8. We have heard the learned Special Government Pleader (Puducherry) appearing for the Appellants and the learned counsel for the appearing for the Respondents.

9. There is no dispute to the fact that the liability to pay the amount rests upon the Appellants herein, but the Appellants are attempting to contend that unless there is specific orders of sanction from the Ministry of Finance, Government of India, there would be Audit Objection for disbursal of the Permanent Travelling Allowance to the Writ Petitioners. The learned Special Government Pleader also cites that there was an Audit Objection, at the time when the Travelling Allowance was paid to the local Police Force and therefore the Appellants apprehend that similar Audit Objection would arise in future, in case the Permanent Travelling Allowance is paid to the Writ Petitioners herein.

10. We are not convinced by the said submissions. The liability to pay the amount rests on the Appellants herein and the Ministry of Home Affairs has already taken a specific stand that the Appellants viz., Union Territory of Puducherry is competent to take the call on behalf of the Union of India. Further, before the learned Single Judge, no specific ground has been raised with regard to amendment of S.R. 22 or S.R.2 (6) and the same is standing in the way for disbursal of the Permanent Travelling Allowance to the Writ petitioners. For the first time, such a ground has been raised in the Writ Appeal. The learned Single Judge in his order has also pointed out the submissions of the Additional Solicitor General in paragraph No.6 of the Impugned Order that Union Territory of Puducherry has not deputed any officials to Government of India to have consultation in the matter with the Ministry of Home Affairs. Before the learned Single Judge, the Additional Solicitor General also referred to the Official Memorandum dated 14.08.2017, which clearly stated that the matter is pending consideration with the Government of India.

11. In view of the stand taken by the Union Home Ministry, we find no ground to interfere with the order of the learned Single Judge. The question of amendment to S.R.22 or S.R. 2(6)



is within the domain of Union Home Ministry and Ministry of Finance. Infact, the Ministry of Finance, in principle has agreed to amend the said Rules and therefore the Writ Petitioners cannot be deprived of their benefits.

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12. In view of the above observations, we intend to pass the following order:

(i) The order of the learned Single Judge directing the Appellants to grant Permanent Travelling Allowance as admissible which is being paid to other police personnel attached to the State Armed Force, with effect from the date when the Writ Petitioners became eligible for such allowance and the same shall be paid along with arrears to the Writ Petitioners, who are entitled to such allowances, which is revised from time to time is confirmed.

(ii) We expect the Appellants to follow the observations of the learned Single Judge in paragraph 6 of the Impugned Order and co-ordinate with the Union Ministry of Finance and sort out the issue at the earliest, in order to bring out the amendment which was agreed in the year 1993 itself.

(iii) In case any amendment is brought in, the said amendment shall be implemented with retrospective effect, so that the Respondents/Writ Petitioners will be benefitted and will be treated on par with the police Personnels of Union Territory of Puducherry.

With the above directions, this Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

arr

To

1. The Secretary to Government,
Government of India,
Ministry of Home Affairs,
North Block, Central Secretariat,
New Delhi.



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No.4, Dumas Street, Puducherry.

5. The Commandant,
India Reserve Battalion (IRBN),
PAP Complex, Gorimedu, D Nagar,
Puducherry.

+2cc to M/s.P.Nethaji, Advocate, S.R.No.54877

+2cc to the Spl. Government Pleader for Puducherry, S.R.No.55928

W.A.Nos. 585 and 586 of 2018

KSM(CO)
RGA(03/12/2021)