



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MRS. JUSTICE S.ANANTHI

W.P. (MD)No.22700 of 2016

(Through Video Conferencing)

K.Nammalvar

: Petitioner

Vs.

1.The Principal Secretary to the Government
Home (Court I -A) Department
St. George Fort,
Chennai.

2.The Principal District Judge
Madurai District,
District Court Building,
Madurai.

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus to call for the records of the 1st respondent in G.O.Ms.No.739, Home (Courts-1-A) Department dated 03.08.2001 and the proceedings of the 2nd respondent dated 13.07.2015 and quash insofar as the contention made in Para No.5 of the above Government Order that "remuneration payable will be the salary last drawn minus the pension" and quash the proceedings of the 2nd respondent dated 13.07.2015 as illegal and consequently direct the 2nd respondent to disburse the arrears of pension which was deducted from the salary of the petitioner with effect from his date of re-employment and other monitory benefits. (prayer amended vide order dated 06.01.2017 in WMP(MD) No. 17456 of 2016 06.01.2017)

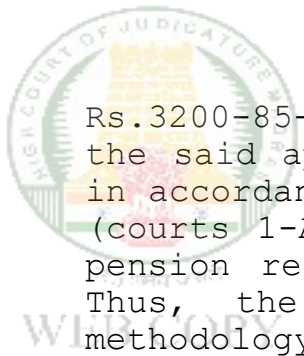
For Petitioner : Mr.D.Sasikumar

For Respondents : Mr.K.P.Krishnadoss for R1
Special Government Pleader
Mr.N.Tamilmani for R2

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

The petitioner was appointed as a Driver of the Additional District Court (FTC No.1), Coimbatore, in the scale of pay of
<https://hcservices.ecourts.gov.in/hcservices/>



Rs.3200-85-4900. The petitioner was working in the Army prior to the said appointment. The petitioner's payment of salary was made in accordance with the Government Order passed in G.O.Ms.No.739 Home (courts 1-A) Department, dated 03.08.2001. Pursuant to which, the pension received, while he was working in the Army was deducted. Thus, the salary was fixed on the basis of the aforesaid methodology.

2.The present writ petition has been filed challenging the order passed by the Principal District Judge, who would decline to review the salary fixed in tune with the Government order passed in G.O.Ms.No.739 Home (Courts 1-A) Department dated 03.08.2001. It was also observed that having accepted the said Government order along with the pay scale, it is not open to the petitioner to contend to the contrary.

3. The learned counsel for the petitioner has made reliance upon Sub Rule 4 of Rule 44 of the Tamil Nadu Pension Rules, 1978, wherein it has been stated that with the general principle with respect to fixation of pay of re-employee pensionary benefits will not apply to the post of a Driver.

4. We do not find any merit in this writ petition. The petitioner wilfully and knowingly accepted the appointment made. Rule 4(1) of the Tamil Nadu Pension Rules will not have any bearing to the case of the petitioner. He admittedly worked as a Nayak and the present posting is one of a Driver. Therefore, it can never be stated as a similar or same post. There is an object and rationale behind the pension, which gives an element of continuity facilitating the carrying forward of the benefits conferred. It is not the case here. Thus, looking from any perspective, we do not find any merit in this writ petition. Accordingly, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The Principal Secretary to the Government
Home (Court I -A) Department
St. George Fort,
Chennai.

2.The Principal District Judge
Madurai District,
District Court Building,
Madurai.

+1 CC to M/s.SPL GP (SR-8431[F] dated 03/03/2021)

Order made in
W.P. (MD) No.22700 of 2016
Dated: 02.03.2021

AS (25.05.2021) 3P 4C