



WP.No.17438 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

W.P. No.17438 of 2013

and

M.P.No.2 of 2013

1.M.Selvanathan
2.P.Jayaseelan
3.T.Duraian
4.K.Baskar
5.G.Thirunavukarasu
6.L.Selvadurai
7.N.Senthil Subramanian
8.A.Jagadeesan
9.K.Ramakrishnan

... Petitioners

Vs

Tamil Nadu Ex-Servicemen's
Corporation Limited
Rep.by its Chairman-Cum-Managing Director,
No.2, West Mada Street,
Srinagar Colony,
Saidapet, Chennai-600 115

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records from the respondent relating to the minutes of the 113th Board meeting dated 29.01.2013 and the consequential decision taken in 114th Board meeting on 29.04.2013 insofar it relates to the decision to stop medical allowance paid to petitioners @ 8% per month w.e.f. 01.11.2012



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and to recover the medical allowance already paid to the petitioners, quash the same as illegal, arbitrary, without jurisdiction, descriminatory and consequently direct the respondent to pay 8% of the basic and DA as medical allowance together with arrears from November 2012 with 18% interest per annum from November 2012 till the date of payment.

For Petitioners : Mr.K.Srinivasa Murthy

For Respondent : Mr.S.Siva Shanmugam

ORDER

This Writ Petition has been filed challenging the Minutes of the 113th Board meeting dated 29.01.2013 and its consequential decision taken in the 114th Board meeting dated 29.04.2013 in sofar it relates to the decision to stop medical allowance paid to the petitioners at the rate of 8% per month with effect from 01.11.2012 and also ordered to recover the same.

2. The petitioners were working in the respondent Corporation in various posts on permanent basis relating to the administration of the respondent. The respondent Corporation called the Tamil Nadu Ex-Servicemen's Corporation Limited which was formed by the Government of Tamil Nadu in order to verify that Ex-Servicemen are provided employment in various Government and Public Section organizations. As per the terms of their appointment, the respondent



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agreed to pay 8% of their basic and dearness allowance as medical allowance in lieu of ESI. Since, the respondent Corporation was exempted from ESI on condition that they will continue the existing benefits. From the date exemption under the ESI, they are paid 8% of the basic and dearness allowance as medical allowance. However, by the Minutes of the 113th Board meeting dated 29.01.2013, the respondent stopped paying them medical allowance of Rs.1344/- to Rs.3796/- per month instead they are started giving them only Rs.100/- per month as medical allowance, which is not 8% of the basic and dearness allowance.

3. The learned counsel appearing for the petitioners submitted that they were not given any notice before stoppage of medical allowance. At the time of their appointment to their respective posts it is categorically stated that the petitioners will be on the pay scale of their respective post plus other statutory benefits i.e., Bonus, PF, Gratuity, leave as per State Government Rules in force and medical allowance of 8% on basic pay and dearness allowance. Subsequently, Government orders were passed only in respect of pension, PF, gratuity and leave salary. The medical allowance of 8% basic and dearness allowance are separately agreed by the respondent and as such, it cannot be denied that



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too without any notice to the employees. That apart, they also ordered to recover the medical allowance paid to the petitioners by 60 monthly instalments.

4. The counter affidavit filed by the respondent revealed that the petitioners are not workmen and therefore, the plea unilateral alteration will not be applicable to them. The impugned decision is applicable only in respect of the regular employees of the respondent and the same does not apply to ex-servicemen, who have deputed by the respondent under contracts for security services. It was noticed during the 113th Board meeting of the respondent that in other Public Sector Undertakings, payment of medical allowance was limited to the rate of Rs.100/- per month as indicated in G.O.Ms.No.10 Finance (Pay Cell) Department, dated 13.01.2009. Accordingly, it was decided to stop the medical allowance being paid at 8% the medical allowance with effect from 01.11.2012 and restricted the benefit of medical allowance at the rate of Rs.100/- per month to the regular employees of the respondent. In the 114th meeting decided to recover the amounts paid till October 2012 from their inception into the respondent Corporation. He further submitted that now the petitioners 1 to 5 and 7 & 8 are already attained



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their age of superannuation and permitted to retire from service. The 6th petitioner alone is now working in the respondent Corporation. The 9th petitioner already died on 29.04.2016.

5. In pursuant to the interim order passed by this Court, all the petitioners were paid medical allowance till their attainment of superannuation. There was also no recovery from the petitioners. Admittedly, the petitioners were not issued with any notice before passing the impugned resolution in the 113th meeting, in respect of stoppage of medical allowance paid at 8% and also recovered the excess amount paid to them.

6. On perusal of the appointment orders issued to the petitioners, it is clear from the terms and conditions that they will be on the pay scale of their respective post and other statutory benefits viz., pension, PF, gratuity and leave as per State Government Rules in force and medical allowance of 8% on basic pay and dearness allowance. Therefore, once agreed to pay the medical allowance that too other than the State Government Rules, the respondent cannot deviate its decision not to pay any medical allowance, since at the time of their appointment,



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the respondent agreed to pay medical allowance at 8% of their basic and dearness allowance, only on condition that the petitioners were joined in their respective post of the respondent, all of a sudden without any notice to the petitioners, the respondent cannot stop the medical allowance as per the Government order. Insofar as the 113th meeting it relates to the decision to stop medical allowance paid to the petitioners at 8% per month with effect from 01.11.2012 is illegal and the next resolution dated 29.04.2013 to recover the medical allowance, which is already paid by the petitioners inception till October 2012 and it is liable to be set aside.

7. Accordingly, the Minutes of 113th Board meeting dated 29.01.2013 and its consequential decision taken in the 114th Board meeting dated 29.04.2013 are hereby quashed and the writ petition is allowed. Consequently connected miscellaneous petition is closed. There shall be no order as to costs.

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Index:Yes/No
Internet:Yes/No

To



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G.K.ILANTHIRAIYAN,J.



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