



W.P.Nos.24368 of 2014 etc batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.24368 to 24388, 31223 to 31232 & 31233 to 31243 of 2014
and MP.Nos.1 & 2 of 2014 (42 Nos.)

WP.No.24368 of 2014

VS Chandramouli

... Petitioner

Vs.

- 1.Indian Overseas Bank represented
by its Chief Manager,
763, Anna Salai,
Chennai 600 002
 - 2.The President Indian Bank Association,
World Trade Centre, Complex, Centre-1, 6th Floor,
Cuffe Parade Mumbai 40005
 - 3.Union of India represented by its Secretary,
Ministry of Finance, Department of Financial Services,
Jeevan Deep, 10th Parliament Street, New Delhi 110 001
 - 4.Union of India represented by its Joint Secretary,
Ministry of Defence, Department of Ex-Servicemen Welfare,
SenaBhavan, New Delhi 110 010
 - 5.Union of India represented by its Secretary,
Ministry of Personal, Public Grievances and Pensions,
Department of Personnel & Training 2nd Floor,
Sardar Patel Bhavan, SansadMarg,
New Delhi 110 001
- ... Respondents

PRAYER: Writ petition is filed under Article 226 of the Constitution of



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India to issue a writ of certiorarified mandamus calling for the records connected in passing order No.PAD/178/EX-S/2014-15 dated 16.06.2014 on the file of first respondent and quash the same, consequently direction may be issued to the first respondent to give effect to office memorandum dated 08.11.2010 and government notice dated 30.08.2008 and restore the pay originally fixed and to refund the amount recovered.

For Petitioner
in all WP's : Mr.M.Selvaraj

For Respondents
For R1
in all WP's : Mr.K.K.Sivashanmugam

For R3 to 5
in all WP's : Mr.J.Madanagopal Rao,
Senior Panel Counsel

For R2
in all WP's : No appearance

COMMON ORDER

These writ petitions have been filed to quash the orders of the first respondent and for direction to the first respondent to give effect to office memorandum dated 08.11.2010 and Government Notice dated 30.08.2008 and to restore the pay originally fixed and to refund the amount recovered.



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2. Heard, the learned counsel appearing on either side.

3. The case of the petitioners is that the petitioners joined military service and thereafter they were discharged from military services. Sixth Central Pay Commission recommended for Military Service Pay (hereinafter called MSP) and accordingly while fixing of salary, the element of MSP along with the rank pay-grade, pay, etc. was given. Therefore, on the date of discharge they were drawing basic pay + grade pay Rs.2800+MSP Rs.2000 + classification allowance Rs.300/- + dearness allowance. After discharge from military service, they joined in Indian Overseas Bank in various categories and while fixing their salary, the last drawn pay which included MSP was taken into account and their pay was protected as per Government Order and Office Memorandum dated 08.11.2010. Accordingly, MSP element need not be deducted on the pay fixed on re-employment. Accordingly, they were re-employed and their pay was rightly fixed in terms of the above Office Memorandum and notifications and as such, there was no error in fixing their pay. While being so, the first respondent by relying on the guidelines received from



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the Indian Banks Association i.e. the second respondent herein by order dated 16.06.2014 was passed for recovery of excess amount and also refixed their salary by the impugned order.

4. On perusal of counter filed by the first respondent, revealed that all the petitioners were ex-servicemen and got re-employed in the first respondent Bank. After Sixth Pay Commission's report and after notification by Government dated 30.08.2008, MSP was extended to all posts in Defence Forces to the level of Brigadier / equivalent. MSP benefits were granted only to the defence personnel who are in services and to the retirees.

5. Therefore, the only question is whether the MSP benefits should be extended to the ex-servicemen on re-employment in civilian organisations or not?

6. Vide memorandum dated 15.04.2010 issued by the Ministry of Personnel, Public Grievances and Pension, Department of Personnel



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and Training, the subject of treatment of MSP mentioned as follows:

“MSP is granted to Defence Forces officers/personnel while they are serving in the Defence Forces. Accordingly, on their re-employment in civilian organization, including secret organisations under the Cabinet Secretariat umbrella, the question of grant of MSP to such officer/personnel does not arise. However, the benefit of MSP given to all retired Defence Forces Officers / Personnel by reckoning it at the time of calculation of their pension (notionally in the case of pre 01.01.2006 pensioner) should not be withdrawn. Accordingly, while the pension of such re-employed pensioners will include the element of MSP, they will not be granted MSP while working in civilian organizations.”

7. Subsequently, by the office memorandum dated 08.11.2010 clarifying the earlier office memorandum dated 05.04.2010 on the subject of fixation of pay of re-employed petitioners-treatment of MSP based on Military of Defence letter dated 24.07.2009, in which pre-retirement pay has been defined as under:

“(I) In respect of re-employment taking place



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on/ or after 1.1.2006 pre-retirement pay for those who retired after 1.1.2006 means the pay in the pay band plus grade pay but inclusive of Non Practicing Allowance (NPA) if any, last drawn before retirement.

(II) In case of officers who retired before 1.1.2006 and also those who retired after 1.1.2006 in the pre-revised pay scales without opting for the revised pay scales promulgated on or after 1.1.2006 the pay will be basic pay including stagnating increment and Rank pay plus the Dearness pay and Dearness allowance drawn at the time of retirement.”

8. Accordingly, it was concluded that the element of MSP is not reckoned in the pay fixation re-employment, it need not be reduced from the pension either. Therefore, in respect of all those Defence Officers / personnel, whose pension contains an element of MSP that need not be deducted from pay fixed on re-employment. Since it was ridden with ambiguity in its conclusion, the same could not be effectively implemented with respect to pay fixation on re-employment. Therefore, the Government of India has clarified on receipt of various representations from the associations that the ex-servicemen re-employed



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in the banks who retired on or after 01.01.2006 are eligible to pay fixation in banks based on the pay drawn by them at the time of discharge from the defence services which would include banned pay + grade pay, but does not include MSP by the communication dated 23.03.2012. Further, by the office memorandum dated 03.11.2021, it is clarified as follows:

(a) MoD OM No.369/D(P/S)/20 dated 3rd Nov. 2020 regarding treatment of MSP while fixation of pay to ESM on re-employment in civil posts including financial institutions. In this OM. MoD has clarified that the MOD letter No.1/69/2008/D(Pay/Services) dated 24.7.2009 pertains to pay and allowance of ret'd Officers of Armed Forces on re-employment in the Armed Forces. This OM is not applicable to PBORs.

(b) DOPT also issued clarifications during follow up of some court cases. In the OM No.1418309/20-Estt(Pay-II) dated 8th Sept 2020. DoPT has clarified (in para xi) that Military Service Pay (MSP) is not taken into consideration for the purposes of pay fixation on re-employment in civilian organizations. It also provides (in para xii) that the Dearness Relief (DR), on pension is governed by the



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instructions of Deptt of Pension and Pensioners' Welfare. Again in the O.M.No.1435275/20-Estt.(Pay-II) dated 26.11.2020. DoPT has re-iterated (in para 4) that while the pension of such re-employed pensioners will include the element of MSP, they will not be granted MSP as part of pay while working in civilian organizations.

(c) In the Om No.1418309/20-Estt(Pay-II) dated 4 Dec. 2020, and again in OM No.1457323/21-Estt.(Pay-II) dated 4 Aug 2021. DOPT has clarified that the instructions issued by DOPT are applicable to Central Govt. Civilian employees and posts. These are not directly applicable to autonomous bodies, PSUs. Trusts or Banks etc which are governed by their own set of rules/regulations.

(d) In their OM No.1425671/20-Estt.(Pay-II) dated 14 Dec 2020, DOPT has furnished a clarification (in para 8) regarding determination of notional pay in respect of personnel / officers who retired prior to 1.1.2006 and who were re-employed after 1.1.2006. It has been clarified that this notional pay is applicable only in case of -

(i) Commissioned Service Officers belonging to Defence Forces:



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*(ii) Civilian pensioners who held Group A posts
at the time of their retirement*

*(iii) PBORs/Civilian pensioners who held posts
below Group A and retired after attaining the age of 55
years and were re-employed thereafter.*

9. Therefore, this Court finds no infirmity or illegality in the orders passed by the first respondent and all the writ petitions are devoid of merits. Accordingly, all the writ petitions are dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

24.07.2023

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order

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G.K.ILANTHIRAIYAN, J.

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To

- 1.Chief Manager,
Indian Overseas Bank represented
763, Anna Salai,
Chennai 600 002
- 2.The President Indian Bank Association,
World Trade Centre, Complex, Centre-1, 6th Floor,
Cuffe Parade Mumbai 40005
- 3.Secretary,
Union of India,
Ministry of Finance, Department of Financial Services,
Jeevan Deep, 10th Parliament Street, New Delhi 110 001
- 4.Joint Secretary,
Union of India,
Ministry of Defence, Department of Ex-Servicemen Welfare,
SenaBhavan, New Delhi 110 010
- 5.Secretary,
Union of India,
Ministry of Personal, Public Grievances and Pensions,
Department of Personnel & Training 2nd Floor,
Sardar Patel Bhavan, SansadMarg,
New Delhi 110 001
- 6.The Government Advocaote,
Madras High Court

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