



W.P.(MD).No.2730 of 2016

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THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.2730 of 2016

and

W.M.P.(MD).Nos.2415 and 2416 of 2016

1.R.Kalyana Sundaram

2.S.Pushpa Raj

3.K.Velu

4.T.M.Ramani

5.N.Jayakumar

6.D.Raja Selvan

... Petitioners

Vs.

1.The General Manager (HR),
State Bank of Travancore,
Head Office, Poojapura,
Thiruvananthapuram,
Kerala State – 695 012.

2.The Deputy General Manager,
State Bank of Travancore,
Zonal Office, Chennai,
4th Floor, Centennial Square,
Block No.6A, Dr.Ambedkar Road,
Murugesan Naicker Nagar,
Kodambakkam, Chennai – 600 024.



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3.The Assistant General Manager,
State Bank of Travancore,
Regional Office, Madurai,
Madurai District.

4.The Assistant General Manager,
State Bank of Travancore,
Regional Office, Nagercoil,
Kanyakumari District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned proceedings issued by the second respondent herein in DGM/CHE/PER/895/2015-16 dated 11.01.2016, quash the same.

For Petitioners : Mr.E.V.N.Siva

For Respondents : Mr.V.P.Rajan

ORDER

This Writ Petition is filed challenging the impugned notification dated 11.01.2016.

2. The petitioners are Ex-serviceman served for Indian Army Force for several years. After serving 22 years, they were retired from Army service, then they were re-employed in the State Bank of Travancore and working as Single Window Operators in the respective branches. The first respondent vide letter dated 27.03.2013 directed the controlling authorities to re-fix the salary in



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respect of Military Service Pay to the Ex-serviceman and to disburse eligible amount. Subsequently, the first respondent without providing any opportunity to the petitioners vide letter dated 01.03.2014, directed all the branch Managers to re-fix the salary excluding Military Service Pay and to recover the amount already paid to the Ex-serviceman. In pursuance to this direction, the second and third respondents without issuing any notice to the petitioner vide proceedings dated 24.03.2014 and 01.04.2014 respectively re-fixed the salary of pay excluding Military Service Pay and ordered recovery of payment already made. The petitioners submitted representations requesting to keep the recovery process in abeyance till the final outcome of the identical case in CWP.No.5370 of 2014, wherein the Hon'ble Punjab and Haryana High Court vide order dated 21.03.2014 granted stay. Based on the same, the respondents did not proceed with the re-fixation and recovery. While so, similarly affected Ex-serviceman working under State Bank of Travancore approached the Hon'ble Kerala High Court in W.P.Nos.9503 of 2014 batch, wherein, the Hon'ble Kerala High Court granted stay of recovery. The Chief Manager (Personnel) Zonal Office, Chennai also issued instruction dated 28.09.2015 directing the authorities not to proceed with the matter till the stay is vacated. The second respondent without issuing any notice suddenly passed the impugned order dated 11.01.2016 directing the respondents 3 and 4 to proceed with the recovery insofar as the persons who have not obtained stay. Based on



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the above, the respondents 3 and 4 herein are taking effective steps for recovery and the said recovery is without any prior notice or any opportunity to the petitioners. Hence, the petitioners are come before this Court.

3. The respondents have filed a counter stating that how the components of pay are taken and also stated the split in the scale of pay and the said split is stated as hereunder:

Retired From Armed Forces		
On/After 01.01.2006	Before 01.01.2006	After 01.01.2006 in Pre-Revised Pay Scale Without Opting For Revised pay Scale promulgated on or after 01.01.2006
• Pay Band • Grade Pay but inclusive of Non Practicing Allowance, if any	• Basic (including Stagnation) • Rank Pay • Dearness Pay • Dearness Relief	

It is also stated that the Ministry of Defense vide letter dated 24.07.2009 explains that Military Service Pay has not been included in the Pre-Retirement Pay. The protection of component of the Military Service Pay in fixation of pay in Bank has been excluded. However, the Ministry has further clarified that the re-employed Ex-serviceman is entitled to get benefit of the component of the



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Military Service Pay, if any, in their pension from the Government. Based on the circular of IBA, the Deputy General Manager ordered to revise the pay fixation by excluding component of the Military Service Pay to all the Ex-serviceman including the petitioners by an order dated 01.03.2014 and further ordered to recover the excess pay paid through inclusion of the MSP in their pay scale. The batch of Writ Petitions was filed before the Kerala High Court was disposed of vide order dated 12.02.2019 directing the Ministry of Finance to consider and pass orders, until then the recovery cannot be made. Based on the direction of Kerala High Court, the Ministry of Defense vide letter dated 14.06.2021 has rejected the claim of the petitioners and has directed to re-fix excluding MSP. Since the issue is decided, this Court is of the considered opinion that the petitioner is not entitled to relief as claimed in the present writ petition.

4. The learned counsel appearing for the respondents submitted that even though there is a stay of recovery, the respondents have not re-fixed the salary including MSP and until today, the petitioners are receiving the salary including MSP. Therefore, this Court is of the considered opinion that since the impugned order is upheld by this Court, the respondents are at liberty to take action as per law.



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5. With the above observations, this Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr

To

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S.SRIMATHY, J.

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