



W.P.No. 14335 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2024

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

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Tamil Selvan

.. Petitioner

Versus

1. The Chairman
Chennai Port Authority,
Chennai – 600 001.

2. The Deputy Chairman
Chennai Port Authority
Chennai 600 001.

3. The Chief Mechanical Engineer,
M & EE Department,
Chennai Port Authority,
Chennai – 600 001.

...Respondents

Prayer: This petition is filed under article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to disburse the Gratuity benefits in the light of the order passed by the Hon'ble Supreme Court in State of Jharkhandment, Pension and other–



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vs- Jitendra Kumer Srivastava and others reported in AIR 2013 SC 3383

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within a time frame fixed by this Hon'ble Court and pass orders.

For Petitioner : Mr.K.C. Karl Marx

For Respondents : Mr.A. Kumaraguru
Special Government Pleader

ORDER

The short question which arises for consideration in this case is as to whether, in the absence of any provisions in the Pension Rules, the authorities concerned can withhold the pension during the pendency of departmental/criminal proceedings or not.

2. The case of the petitioner is that the petitioner is an retired employee of Chennai Port Authority. The grievance of the petitioner is that the third respondent through proceedings No.MEE/DBI/0405/2023/Estt dated 10.05.2024 informed that the terminal benefits would be withheld and the petitioner will be paid only provisional pension till the finalization of the disciplinary proceedings and the judicial proceedings pending against the petitioner. Aggrieved over the same the petitioner has come up with this petition.



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3. The learned counsel for the petitioner submitted that a criminal case was registered against the petitioner on the alleged complaint given by one Baskar stating that the petitioner abused the said Baskar with unparliamentary language and a F.I.R was also registered in Crime No.5 of 2021 on the file of B-5, Harbour Police Station for the offences under Section 294(b) and 323 of I.P.C. It is pertinent to note that a F.I.R was also registered against the said Baskar. He further submitted that inspite of the fact that he was exonerated from the charges initiated against him, till he was paid only the provisional pension. The third respondent vide order No.MEE/DBI/0405/2023/Estt dated 10.05.2024 informed that the terminal benefits would be withheld till the outcome of the disciplinary proceedings and judicial proceedings. Hence, prays to allow this petition.

4. The learned Special Government Pleader appearing for the respondents submitted that a criminal proceedings has been initiated against the petitioner and the same is pending before the Metropolitan Magistrate Court. He further submitted that as per the Regulation 56-A of Chennai Port Trust (Pension) Regulations, 1987 only provisional



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pension is admissible when judicial proceedings are pending against the petitioner. Hence, prays to dismiss this petition.

5. Heard both sides and perused the materials available on records including F.I.R, Charge memo and Final Report.

6. On perusal of the F.I.R and other records it is found that there was only a altercation between the petitioner and other persons, which escalated into violence and assault.

7. Before advertng further it would be relevant to go into the Chennai Port Trust (Pension) Regulations, 1987 and the relevant portion is extracted hereunder:

56. RIGHT TO WITHHOLD OR WITHDRAW PENSION:

The Chairman reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to the Board, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct or negligence during his



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service, including service rendered on re-employment after retirement.

Provided that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the minimum limit permissible.

8. On going through the above provisions it is made clear that the Chairman reserves the right to withhold the pension in whole or part, if the delinquent cause pecuniary loss to the Board.

9. To arrive at a better conclusion as to whether the issue involved in this writ petition in holding the pension till the outcome of the disciplinary proceedings and judicial proceedings is acceptable or not, the observations made in the relevant records such as F.I.R, charge memo, enquiry report, Chennai Port Trust (Pension) Regulations 1987, etc., has to be taken into account.

10. On a perusal of the F.I.R and charge memo it is made clear that there was a only a altercation between the petitioner and the other persons. In the Enquiry Report it has been stated that the charges framed



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on the delinquent vide Memorandum of Charges Ref.no.CME/DA1/0255/2021/MEE dated 13.12.2021 under Regulations 3(1)(iii) & 4(17) & 4(20) of the Ch.P.T. Employees'(Conduct) Regulations, 1987 are not proved. In the Chennai Port Trust (Pension) Regulations 1987, etc., it has been stated that the employer is entitled to withhold pension, if the delinquent has caused pecuniary loss to the organization.

11. In the instant case, the petitioner has not caused any pecuniary loss to the organization and there was only a altercation between the parties which escalated into violence and assault, hence there is no necessity for the 3rd respondent to hold the petitioner's pension. It is pertinent to note that in the enquiry report also it is stated that the charges framed against the delinquent has not been proved. Hence, there is no legal impediment for the 3rd respondent to pay pension to the petitioner.

12. Therefore, it is made clear that the order passed by the third



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respondent in No.MEE/DBI/0405/2023/Estt on 10.05.2024 is illegal and the same is set aside. The 3rd respondent is directed to pass fresh orders on merits and in accordance with law and pay the eligible amount to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order.

13. With the aforesaid direction, this writ petition is disposed of.

No order as to costs.

08.11.2024

Speaking order : Yes/No

Neutral citation : Yes/No

Index : Yes/No

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Note: Issue Order copy on 15.11.2024

To

1. The Chairman, Chennai Port Authority,
Chennai – 600 001.

2. The Deputy Chairman
Chennai Port Authority
Chennai 600 001.

3. The Chief Mechanical Engineer,
M & EE Department,



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Chennai Port Authority,
Chennai – 600 001.



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V.BHAVANI SUBBAROYAN, J.

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