BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.07.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.15323 of 2024 &
W.M.P.(MD)Nos.13428 & 13429 of 2024

S.Subramanian ... Petitioner

vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Department of Registration and Commercial Taxes,
Secretariat, Chennai - 9.

2.The Inspector General of Registration,
100, Santhome High Road,
Raja Annamalai Puram,
Chennai - 28.

3.The District Registrar,
O/o.The District Registrar,
Pattukottai, Thanjavur district.

4.The Treasury Officer,
O/o.The Treasury Office,
Thanjavur.

5.The Assistant Treasury Officer,
O/o.The Treasury Office,
Thanjavur. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the fourth respondent in Na.Ka.No. 2623/2023/I1 dated 30.04.2024 and quash the same as illegal and consequently direct the respondents to disburse the House Rent Allowance in conformity with the order of the third respondent vide proceedings in No.317/A1/2023 dated 05.01.2024.

For Petitioner	:	Mrs.R.Geethanjali for M/s.Ajmal Associates
For Respondents	:	Mrs.D.Farzana Ghousia Special Government Pleader

O R D E R

Heard Mrs.R.Geethanjali, learned counsel appearing for the petitioner and Mrs.D.Farzana Ghousia, learned Special Government Pleader appearing for the respondents.

2. The petitioner has filed this petition seeking to quash the impugned order of the fourth respondent in Na.Ka.No.2623/2023/I1 dated 30.04.2024 and to direct the respondents to disburse the House Rent Allowance in conformity with the order of the third respondent in No. 317/A1/2023 dated 05.01.2024.

3. The petitioner has challenged the impugned order which refused the House Rent Allowance (HRA) sanctioned to him for the period between February 2010 and August 2010 by stating that he is not entitled to any HRA subsequent to his retirement.

4. Mrs.R.Geethanjali, learned counsel appearing for the petitioner submitted that the petitioner had reached the age of superannuation on 30.11.2009. However, he was placed under suspension on the date of his retirement on 25.11.2009 and hence, he filed a writ petition in W.P.(MD)No.9367 of 2020 before this Court challenging the suspension order issued by the second respondent; consequential order of not allowing the petitioner to retire from service; and also the Charge Memo dated 12.05.2010. The said writ petition was dismissed on 11.09.2012. However, the appeal preferred by the petitioner in W.A.(MD)No.1040 of 2012 was allowed by this Court on 03.08.2017. In fact, the Government has filed a Review Application Rev.Aplw.(MD)No.17 of 2022 and the same was dismissed on 28.11.2022. Only thereafter, the petitioner was allowed to retire from service by proceedings of the second respondent dated 03.02.2023. Until 03.02.2023, the petitioner was kept under suspension and he was given with subsistence allowance only. Hence, it is the submission of the learned counsel that the petitioner is entitled to HRA also.

5. It is further submitted by the learned counsel appearing for the petitioner that the third respondent who is the appropriate authority has sanctioned HRA, but the fourth respondent who is the disbursing authority without any authority has issued a direction to the fifth respondent to recover HRA already allowed to petitioner for the period between February 2010 and August 2010. Since the above affected the interest of the petitioner, when he came to know about the same, he has filed this writ petition.

6. Mrs.D.Farzana Ghousia, learned Special Government Pleader appearing for the respondents submitted that earlier very same issue was raised before the Principal Seat of this Court in W.P.No.5029 of 2016, wherein, by order dated 21.07.2023, a learned single Judge has held that the petitioner therein who was kept under suspension for the purpose of taking disciplinary action is not entitled to other allowances subsequent to the date of attaining his superannuation. It is also observed that the employer - employee relationship frustrated on the date of superannuation and whatever thereafter paid would be only pension and not salary. The relevant part of the above order for the sake of clarity is extracted hereunder.

> *"10. The contention of the learned counsel for the petitioner that the petitioner is entitled for House Rent Allowances and City Compensatory Allowances only because of the statement in the suspension order that "the petitioner is retained in service" is not justifiable on the ground that the petitioner has been retained in service for the purpose of disciplinary proceedings alone. Only if the petitioner is retained in service, would the respondents have a legitimate right to continue with the disciplinary proceedings. It is for that purpose that the petitioner was retained in service and not to give any additional benefit or any allowances. The employer and employee relationship is frustrated on the date of attaining the age of superannuation. Thereafter, there is no salary paid to any government servant but only pension and also other benefits for the period of service from the date of joining till*

date of retirement. After the date of retirement, no allowances are payable. The petitioner's claim is misconceived. The Writ Petition stands dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed."

7. The learned counsel for the petitioner drew the attention of this Court to Rule 53 (5) of the Fundamental Rules of the Tamil Nadu Government, wherein, it is stated that if the suspension continues after the date of superannuation in view of the pending disciplinary proceedings, the Government Servant shall be paid with Dearness Allowance as admissible on normal superannuation and House Rent Allowance and City Compensatory Allowance as admissible prior to the date of superannuation for the period from the date subsequent to the date of superannuation to the date of final orders. In this regard, it is stated that a Government Order has also been issued in G.O.Ms.No.396, Personnel and Administrative Reforms (FR.III) Department, dated 16.04.1985, with effect from 05.03.1984. The relevant part of the above Rule is extracted hereunder.

"5. If a Government servant under suspension continues to be under suspension after the date of superannuation in view of pending disciplinary proceedings against him, and is fully exonerated from the charges against him later, he shall be paid dearness allowance as admissible on normal superannuation and house rent allowance and city compensatory allowance as admissible prior to the date of superannuation for the period from the date subsequent to the date of superannuation till the date on which final orders on the disciplinary proceedings are issued.

[G.O.Ms.No.396, Personnel and Administrative Reforms (FR.III) Department, dated 16th April 1985—with effect from 5th March 1984.]"

8. In fact, a copy of the above Rule has also been attached by the third respondent with the sanction order granted for HRA. However, the fourth respondent without any authority has not only abstained from disbursing the sanctioned HRA to the tune of Rs.2,93,791/-, but, had also passed an order by intimating the fifth respondent to recover the HRA allowed for the period between February 2010 and August 2010 (seven months).

9. So, it appears that the sanction order has been issued by the third respondent only in compliance of the Rules governing suspension of Government Servants.

10. It appears that in the earlier writ petition in W.P.5029 of 2016, the above Rule was not brought to the notice of the Court and it went out of sight. Had the petitioner was allowed to retire on the date of his superannuation and was allowed with provisional pension, then the question of sanctioning any allowances including HRA will not arise. Since the employer intends to have his authority over the employee even after he attained the age of superannuation, the employee was not allowed to retire.

11. Meaning to say that, the employee will be deemed to continue in service, however under suspension, till final orders are passed at the conclusion of the disciplinary proceedings. Since the petitioner has not been given with any pension but only subsistence allowance during the period of suspension, when his services were regularized consequent to his discharge from the charges, the claim for other allowances are governed under Rule 53 (5) of the Fundamental Rules of the Tamil Nadu Government *cited supra*. Since the sanction for HRA has been allowed only in accordance with the Rules in force, it is unfair on the part of the fourth respondent to pass the impugned order affecting the interest of the petitioner.

12. In view of the above stated reasons, the writ petition is **allowed** and the impugned order of the fourth respondent in Na.Ka.No. 2623/2023/I1 dated 30.04.2024 is set aside. The fourth respondent is directed to disburse HRA in conformity with the order of the third respondent in No.317/A1/2023 dated 05.01.2024. No costs. Consequently, connected Miscellaneous Petitions are closed.

10.07.2024

NCC: Yes/No
Index : Yes/No
Speaking/Non-Speaking order

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To

1.The Secretary to Government,
Department of Registration and Commercial Taxes,
Secretariat, Chennai - 9.

2.The Inspector General of Registration,
100, Santhome High Road,
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R.N.MANJULA, J.

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