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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2025

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THE HON'BLE MR. JUSTICE S. M. SUBRAMANIAM

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

Writ Petition No.4643 of 2025

and

Writ Miscellaneous Petition No.5144 of 2025

1. Union of India,
Represented by the Secretary,
Govt of India, Ministry of Defence,
Room No.227-B Wing, Sena Bhawan,
New Delhi 110 011.
- 2.The Chief of the Naval Staff,
Integrated Headquarters of MoD
Ministry of Defence (Navy),
New Delhi – 110 011.
3. The Joint Director,
Pension Section for PDPA
Directorate of Pay & Allowances,
DII Wing, Sena Bhawan,
New Delhi – 110 105.
4. Principal Controller of Defence Accounts (Pensions)
Draupadi Ghat, Allahabad
Uttar Pradesh, Pin – 211 014.



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5. The Logistics Officer-in-Charge,
Naval Pension Office,
c/o INS TANAJI, Sion-Trombay Road,
Mankhurd, Mumbai 400 088.

... Petitioners

Vs.

Ex LME Pachigolla Sudhakar

... Respondent

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records dated 16.11.2022 passed in O.A.No.64 of 2020 with M.A.No.64 of 2020 on the file of the Armed Forces Tribunal, Regional Bench, Chennai Circuit Branch, Hyderabad thereby quashing the impugned order.

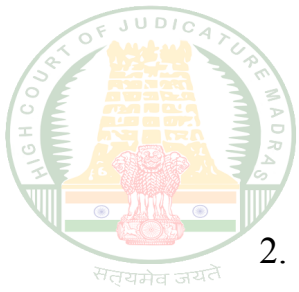
For Petitioners : Mr.V.Balasubramanian,
Senior Panel Counsel

For Respondent : Mr.D.Solomon Pandian

ORDER

(Order of the Court was made by S.M.SUBRAMANIAM,J.)

Under assail is the order dated 16.11.2022 passed in O.A.No.64 of 2020 with M.A.No.64 of 2020 on the file of the Armed Forces Tribunal, Regional Bench, Chennai.



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2. Union of India, represented by the secretary, Government of India.

Ministry of Defence is the writ petitioner before this Court. The respondent has instituted the original application to condone the delay in filing the original application in M.A.No.64 of 2020. The relief sought for in the original application is to recall the letter of the Logistics Officer in-charge, Naval Pension Office, vide letter dated 01.03.2018 and set aside the same and to direct the writ petitioners to treat the applicant deemed to be in actual service, till the completion of the service period of 15 years and accordingly release service pension from 01.08.1986 with arrears and interest besides sanction ECHS family and other consequential benefits.

3. The facts which are all not controverted between the parties are that the respondent was enrolled in the Indian Navy on 03.07.1976 and discharged in the rank of LME on 31.07.1986 after rendering 10 years and 29 days of service. The respondent was classified as non-pensioner and no pensionary benefits were sanctioned. The respondent pleaded before the Tribunal that at the time of his discharge, he was not aware of the modifications in the Naval Service Conditions, with effect from 03.07.1976 vide MOD Notification dated 03.07.1976 on the date of his enrolment in the Navy, the Naval Service Conditions has been modified to 15 years of service. It was contended that the



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respondent was not informed about the amended notification of modification of service conditions from 10 years to 15 years. Since the respondent was not aware of the extended services of 15 years as on the date of his enrolment on 03.07.1976, he was discharged on completion of 10 years of service.

4. The respondent filed an appeal to the competent authority on 04.12.2017 for grant of special pension, which was rejected. With reference to the modified notification by the Ministry of Defence, vide its letter dated 03.07.1976 the respondent claims that he is entitled for reckoning the qualifying services for 15 years and it is deemed to be declared so.

5. The Tribunal adjudicated the issues and held that the sailors enrolled prior to deemed completion of pensionable services is also eligible for service pension and therefore, services of 10 years rendered is to be converted as 15 years, deemed services making them eligible to get service pension.

6. Challenging the said order, the present writ petition came to be instituted.

7. The learned senior panel counsel appearing on behalf of the petitioners would mainly contend that the modified notification dated 03.07.1976, no doubt



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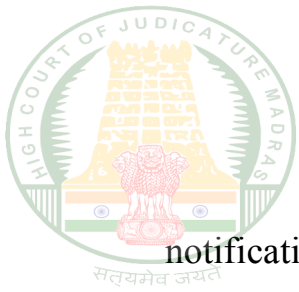
came into effect from the date of enrolment of the respondent in Indian Navy.

However, the terms of service conditions for the respondent was 10 years, which was not disputed. On completion of 10 years of service, the respondent has signed “certificate of unwillingness” for extension of service up to 15 years and based on his unwillingness, he was discharged from service. Therefore, after a lapse of 31 years, now the respondent cannot turn around and claim the benefit of service pension.

8. The learned counsel for the respondent would oppose by stating that the “certificate of unwillingness” is unnecessary. Once, the Ministry of Defence issued a modified notification by fixing the engagement period as 15 years, it is to be applied automatically to the respondent and in the present case, the benefit was not extended. Thus, the respondent is to be declared, deemed to be in service for 15 years and service pension is to be granted.

9. This Court has considered the rival submissions made between the parties to the *lis*.

10. As per the terms of engagement, admittedly, the period of engagement for the respondent was 10 years. It was not extended pursuant to the modified



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notification issued on the date of the engagement of the first respondent on 03.07.1976. However, an option was made available to the respondent on completion of 10 years of service. Pertinently, the respondent signed “certificate of unwillingness” to continue to be in service up to 15 years. The said certificate signed by the respondent and counter signed by the competent authority has been extracted hereunder:

“REGISTERED

APPENDIX 'B'

(Refers Para 17 of No.80/81)

**CERTIFICATE X OF UNWILLINGNESS TO SIGN FOR
FURTHER SERVICE**

1. I understand that I am required vide captain, Bureau of Sailors letter/signal 2/540/Pome/1/84 dated 24.12.83 to sign for further service.

2. I hereby declare that I am unwilling to sign for further service and wish to be released from the service on completion of my present engagement. I fully understand that the consequence of this declaration will be that any subsequent application from me for re-engagement will not be entertained.

Signature of the Sailor Sd/-

Name: P.SUDHAKAR

Rank: LME

No.106467Y

Date: 16.1.84

Signature in my presence

Signature: Sd/-



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Rank and of Divisional Officer: Lt DR VK.MEHRA

Ship/Estt:SHIVAJI

Date: 18.1.84

Date:18 Jan 84

INS Shivaji, Lonavala

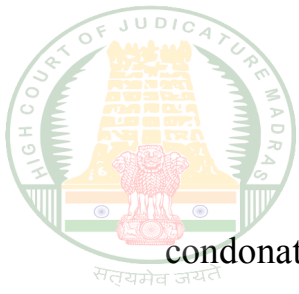
*Sd/-Lieutenant
O/C SD Section
for commanding*

officer

*Forwarded to: The Captain Commodore
Bureau of Sailor
Bombay”*

11. The above letter of unwillingness, unambiguously stipulates that the consequence of the declaration will be that any subsequent application from the respondent for re-engagement will not be entertained. There is a specific condition in the certificate of unwillingness signed by the respondent. Thus, he cannot turn around at later point of time, and institute original application claiming deemed services for the purpose of getting service pension. The certificate of unwillingness signed by the respondent is binding on him.

12. Interestingly, the respondent has not challenged the said letter of unwillingness or made representation for continuance of his services during the relevant point of time in the year 1984 or 1986, after his discharge. Contrarily, he preferred an appeal in the year 2017 after a lapse of 31 years. Thus, the delay



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condonation granted by the Tribunal itself is not inconsonance with Section 22 of the Armed Forces Tribunal Act.

13. No doubt, pension is a recurring cause of action as held by the Hon'ble Supreme Court of India in several Judgments including in the case of ***Union of India and Others vs. Tarsem Singh*** reported in ***(2008) 8 SCC 648***. However, the eligibility for pension has been determined by the competent authority by passing an order in the present case and the said order remains unchallenged for several years. Therefore, the limitation as contemplated under the Armed Forces Tribunal Act should be applied and, in such circumstances, it cannot be construed as recurring cause of action. If a decision has been taken by the competent authority and an order has been passed and communicated to the employee, the aggrieved person has to approach the Tribunal within the time line contemplated under the Act.

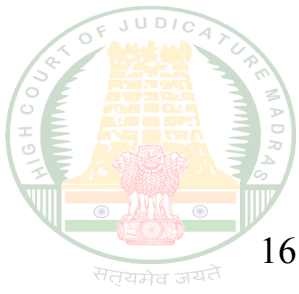
14. It is made clear that merely submitting a representation after a lapse of several years would not provide a fresh cause of action for challenging the order communicated to the employee long before. Any attempt to reopen the dead cause of action at no circumstances be encouraged by the Courts. The recent



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practice of the litigants is to submit a representation to the authority and file a writ petition or original application before the High Court or Tribunal seeking a direction to dispose of the representation and such directions are granted in a routine manner by the Courts on some occasions. The said orders are taken undue advantage and based on the order of the authority passed in pursuance to the directions issued by the Courts to dispose of the representation, cause of action already dead has been restored and such a practice is to be deprecated. Therefore, a representation submitted beyond the period of limitation or within a reasonable period need not be entertained by the competent authorities and even if it is entertained and an order has been passed, the said order would not provide a fresh cause of action for institution of any proceeding before the Courts. The decision originally taken alone should be considered for the purpose of calculating the period of limitation under the Armed Forces Tribunal Act.

15. In the present case, the respondent was enrolled in Indian Navy on 03.07.1976 and discharged on 31.07.1986. Required qualifying service for grant of service pension is admittedly, 15 years. Deemed services cannot be granted in such circumstances, in the absence of service Rules.



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16. Courts cannot grant deemed services over and above the actual services rendered by an employee in the Government establishment. Addingly, in the present case, the respondent has signed “certificate of unwillingness” and the said certificate contains a condition that his subsequent application for re-engagement will not be entertained. That being the condition, any subsequent application for grant of service pension, would also is not entertainable since the respondent has not completed the requisite qualifying services of 15 years for grant of service pension.

17. Thus, the Armed Forces Tribunal has granted the relief, which is not inconsonance with the Pension Regulation of Indian Navy and the established legal principles. Consequently, the order impugned passed in O.A.No.64 of 2020 with M.A.No.64 of 2020 is set aside. The writ petition stands allowed. There shall be no order as to costs. Consequently, the connected miscellaneous petition stands closed.

(S.M.S., J.) (K.R.S., J.)

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Index: Yes

Speaking Order: Yes/No

Neutral Citation Case : Yes/No



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