IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.A.No.1233 of 2025
and
C.M.P.No.9365 of 2025

1.The Chairman,
Chennai Port Authority,
Chennai.

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

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

Vs.

Tamil Selvan ... Respondent

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order passed in W.P.No.14335 of 2024 dated 08.11.2024.

For Appellants : Mr.P.M.Subramaniam, Senior Counsel

For Respondent : Mr.K.C.Karl Marx

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JUDGMENT

*(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)*

Aggrieved by the order of the writ Court directing the employer to release the retiral benefits of the employee, the employer is on appeal.

2. The employee while in service faced certain criminal charges and an FIR was registered against him in Crime No.5 of 2021 for offences under Section 294(b) and 323 of the Indian Penal Code. The employer parallelly commenced the disciplinary proceedings against the employee. The disciplinary proceedings were concluded exonerating the employee from the charges. Thereafter, the employee was allowed to retire on superannuation on 30.04.2024. However, his retiral benefits were not paid. This forced the employee to move this Court seeking a Writ of Mandamus directing the respondents to disburse the retiral benefits and pension. Reliance was placed on the judgment of the Hon'ble Supreme Court in ***State of Jharkhand, Pension and other Vs. Jitendra Kumer Srivastava and others*** reported in ***AIR 2013 SC 3383.***

3. The claim of the employee was resisted by the appellant/employer contending that since the criminal proceedings were pending, it will be open to the employer to withhold the pension or gratuity in terms of Regulation 56-A of the Chennai Port Trust (Pension) Regulations, 1987, which reads as follows:-

> ***56-A PROVISIONAL PENSION WHERE DEPARTMENTAL OR JUDICIAL PROCEEDINGS MAY BE PENDING;***
>
> *(1) Where any departmental or judicial proceedings is instituted in respect of an employee referred to under Regulation 56 (1) or where departmental proceedings are continued under Clause (i) of the second proviso thereto against an employee who has retired on attaining the age of superannuation or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceedings, final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service upto the date of his retirement, or if he was under suspension on the date of his retirement upto the date immediately*

preceding the date on which he was placed under suspension; but no Death- Cum-Retirement Gratuity shall be paid to him until the conclusion of such proceedings and the issued of final order thereon;

Provided that where departmental proceedings have been instituted under Regulation-14 of the Chennai Port Trust Employees' (Classification, Control and Appeal) Regulations, 1988 for imposing any of the penalties specified in the Clauses (a) (i), (ii) and (iv) of Regulation 8 of the said Regulations, the payment of Death-cum-Retirement Gratuity shall be authorized to be paid to the employee.

(2) Payment of provisional pension made under sub-regulation (1) above shall be adjusted against the final retirement benefits, sanctioned to such an employee upon conclusion of the aforesaid proceedings, but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

4. The learned Single Judge, however, concluded that there was no provision in the Regulations, which would enable the employer to withhold the pension and the retiral benefits after having allowed the employee to retire. The writ Court also came to a conclusion that unless there has been a financial loss to the employer, the employer will not be justified in withholding the pension.

5. We have heard Mr.P.M.Subramaniam, learned Senior Counsel appearing for the appellants and Mr.K.C.Karl Marx, learned counsel appearing for the respondent.

6. Mr.P.M.Subramaniam, learned Senior Counsel appearing for the appellants would invite our attention to the Regulation 56-A of the Chennai Port Trust (Pension) Regulations, 1987 to contend that there is a power vested in the employer to withhold pension and gratuity till the conclusion of any judicial proceedings which is pending against the employee on the date of his retirement. He would also rely upon the judgment of the Hon'ble Supreme Court in ***Chairman-cum-Managing Director, Mahanadi Coalfields Limited Vs. Rabindranath Choubey*** reported in ***(2020) 18 Supreme Court Cases 71.*** Reliance is also placed on the subsequent judgment in ***Secretary, Local Self-Government Department and others, State of Kerala Vs. K.Chandran and others*** reported in ***(2022) 12 Supreme Court Cases 104.***

7. Contending contra Mr.K.C.Karl Marx, learned counsel appearing for the respondent / employee would submit that though the power to withhold pension is available under the Regulations, the power to withhold gratuity is inconsistent with the provisions of Payment of Gratuity Act. Therefore, in view of Section 14 of the Payment of Gratuity Act, the said Regulations being inconsistent with the provisions of Gratuity Act cannot be held to be valid. The sum and substance of the submissions of the learned counsel is that any Regulations inconsistent with the provisions of Payment of Gratuity Act cannot be held against the employee.

8.As far as the pension is concerned, it is governed by the Pension Regulations. If the Pension Regulations invest a power in the employer to withhold pension during the pendency of any criminal proceedings against the employee, that would prevail. Therefore, the contention of the employer that it is entitled to withhold pension in terms of Regulation 56-A of the Chennai Port Trust (Pension) Regulations, 1987 is well founded.

9. The writ Court had given a restricted scope to Regulation 56-A, inasmuch as it came to the conclusion that pension can be withheld only if there is a financial loss to the employer. Regulation 56-A extracted above does not attempt such restrictive interpretation. It enables the employer to withhold the pension and pay provisional pension till such time the criminal case is concluded. In so far as the restriction on payment of gratuity is concerned, the same cannot prevail over the provisions of payment of Gratuity Act.

10. Section 7(3) of the Payment of Gratuity Act provides that the gratuity shall be paid within a period of 30 days, if the gratuity is to be withheld, then the employer will have to make an application with the Authority under the Payment of Gratuity Act and seek an order directing the employer to withhold the gratuity. Sub-Section 6 of Section 4 provides the circumstances under which gratuity can be forfeited. That would arise only in the even where the employee's services are terminated for the reasons enumerated under 6(1)(a) or 6(1)(b).

11. In the case on hand, the employee has not been terminated. He has been exonerated in the disciplinary proceedings and he has been allowed to retire. Therefore, the circumstances under which the gratuity can be forfeited by the employer do not exist in the case on hand. Hence, Section 7(3) would come into play and the employer should have paid the gratuity within 30 days. It will be pertinent to point out that proviso to the Regulation 56-A makes it clear that even during the pendency of the disciplinary proceedings, if the delinquency complained of could only invite a minor punishment, payment of Death cum Retirement Gratuity shall be authorized to be paid to the employee. We have already found that the employee was actually exonerated in the disciplinary proceedings. Therefore, withholding of the gratuity and other retiral benefits, in our opinion, is not authorized by any of the statutes governing the issue.

12. We are however unable to agree with the conclusion of the writ Court when it said that there is no provision which enables the Port Trust to withhold the pension and that it can be withhold only in the event of financial loss being caused to the Port Trust because of the delinquency of the employee.

13. As we have already stated Regulation 56-A does not permit such restrictive interpretation. We therefore **allow the Writ Appeal in part,** set aside the order of the writ Court and direct the Port Trust to pay the Death Cum

Retirement Gratuity and other retiral benefits of the employee within a period of twelve (12) weeks from the date of receipt of the copy of the order. In so far as the pension is concerned, the provisional pension will be continued to be paid and final decision will be taken after conclusion of the criminal case. It will be open to the employee to make a claim of interest on gratuity after the completion of the criminal proceedings. No costs. Consequently, the connected miscellaneous petition is closed.

(R.S.M.,J.) **(G.A.M.,J.)**
24.04.2025

dsa

Index : No
Neutral Citation : No
Speaking order

To

1.The Chairman,
Chennai Port Authority,
Chennai.

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

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

Chennai - 600 001.

R.SUBRAMANIAN, J.
and
G.ARUL MURUGAN, J.

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