



W.P.No. 9047 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2025

CORAM:

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

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A. Krishnamoorthy

.. Petitioner

Versus

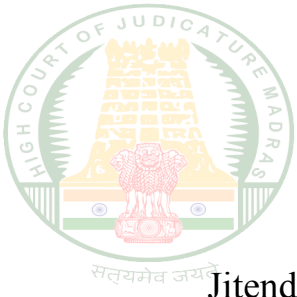
1. The Chairman
Chennai Port Authority,
Chennai – 600 001.

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 consider the representation made by the petitioner dated 15.03.2024 seeking to disburse the terminal benefits in the light of the order passed by the Hon'ble Supreme Court in State of Jharkhandment, and other – vs-



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Jitendra Kumar Srivastava and another 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 in CME/B1/0443/2023/MEE dated 28.02.2024 informed that the terminal benefits would be withheld and the petitioner will be paid only provisional pension till the outcome of the judicial proceedings pending against the petitioner. Hence the petitioner has given a representation to to the respondents on 15.03.2024 in this regard. However, there was no



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response in the said representation, which has given rise to this petition.

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 and the same was informed to the petitioner by proceedings No.MEE/DA1/0255/2021/Estt dated 13.11.2023, till he was paid only the provisional pension. It is pertinent to note that the third respondent vide order No.CME/B1/0443/2023/MEE dated 28.02.2024 informed that the terminal benefits would be withheld till the outcome of the judicial proceedings. Hence, prays to allow this petition.



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



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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 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.



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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 in Ref.no.CME/DA1/0255/2021/Estt dated 13.11.2023 it has been stated that the charges framed against the delinquent in Charge Memo No.CME/DA1/0255/2021/MEE dated 13.12.2021 is 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.



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12. Therefore, it is made clear that the order passed by the third respondent in No.CME/B1/0443/2023/MEE dated 28.02.2024 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 stands allowed.

No order as to costs.

27.01.2025

Speaking order : Yes/No

Neutral citation : Yes/No

Index : Yes/No

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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,
Chennai Port Authority, Chennai – 600 001.



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V.BHAVANI SUBBAROYAN, J.

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