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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-02-2025

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THE HONOURABLE MS JUSTICE R.N.MANJULA

WP No. 17139 of 2018
and W.M.P.Nos.20400, 20401 and 2742 of 2019

1. N.Krishnan,
Chief Engineer (Highways) Retd.,
No.21, East Shenoy Nagar, 4th Cross
Street, Chennai-600 030.

Petitioner(s)

Vs

1. The Secretary to Govt.,
Highways Department, Secretariat,
Chennai-600 009.

2.The Secretary to Govt.,
Finance Department, Secretariat,
Chennai-600 009.

3.The Accountant General (A and E)
Tamil Nadu, No.361, Anna Salai,
Teynampet, Chennai-600 018.

4.The Pension Pay Officer,
Integrated Finance Department
Complex, Nandanam, Chennai-600
035.

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5.The Chief Engineer,
Tamil Nadu Highways Department,
Chepauk, Chennai-600 005.

Respondent(s)

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the fourth respondent to restore the original pension sanctioned by the Accountant General (A&E) Tamil Nadu in his letter No.PPO.No.C315335/HW dated 12.10.2007 from 01.07.2018 on completion of 15 years of Pensionable service from the date of superannuation on 30.06.2003 and also not to effect further recovery from the Pension of the petitioner.

For Petitioner(s):	M/s.T.Ranganathan
For Respondent(s):	Mr.U.Umakanth Government Advocate for R1 and R5 Mr.P.Manorajan Sc For R3 Mr.Azizulla Khan Government Advocate for R2 and R4

ORDER

The writ petition has been filed to direct the fourth respondent to restore the original pension sanctioned by the Accountant General (A&E) Tamil Nadu in his letter No.PPO.No.C315335/HW dated 12.10.2007, on completion of 15 years of Pensionable service from the date of superannuation on 30.06.2003 and

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also not to effect further recovery from the Pension of the petitioner.

2. The petitioner who was working as Chief Engineer in Highways Department has attained the age of superannuation on 30.06.2003. On the date of his superannuation he was placed under suspension and he was not allowed to retire. Disciplinary proceedings have been initiated against him and further the proceedings were dropped by issuing a G.O.(D) No.282, Highways (HL.1) Department dated 06.12.2006. Thereafter by virtue of the Government Order in G.O.(D) No.149, Highways (HL.1) Department dated 07.06.2007 the petitioner was retired from service with effect from the date of his attaining superannuation i.e. on 30.06.2003. The petitioner had availed the commutation benefit for 15 years by surrendering 1/3rd of the pension amount sanctioned for him. However, after 15 years the said amount so surrendered should also be restored and thereby the petitioner is entitled to get his original pension of Rs.8,650/- from 01.07.2018. In this regard, the petitioner had made representation to the pension pay officer to restore his original pension in the above manner. However the pension pay officer has informed that the recovery will be made for a further period of four years since the 15 years period will be counted only from the date of the order issued permitting the petitioner to retire i.e. on 07.06.2007 and not from the date on which the petitioner attained the age of superannuation. Since the commutation itself has been made only from the year 2007 and thereafter the petitioner was allowed to retire, it is submitted that it can be restored only by counting 15 years of service from the date of allowing

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the petitioner to retire.

3. The only point that has to be taken into consideration is whether the 15 years for restoring the pension be calculated from the date of attaining the age of superannuation of the petitioner or from the date on which the petitioner had commuted his pension after he was allowed to retire on 05.11.2007, which is a crucial date from when on 1/3rd of recovery was made from the pension sanctioned to the petitioner towards commutation.

4. Mr.P.Manoranjan, the learned Standing Counsel for the third respondent, has attracted the attention of the Court to proviso 2 to Rule 11 of the Tamil Nadu Civil Pension (Commutation) Rules, 1944 which reads as under:

> *" A commutation once given effect to cannot be rescinded, that is, the portion of a pension commuted cannot be restored on refund of its capitalized value.*
>
> *Provided that the portion of a pension commuted shall be restored in full as and when a pensioned completes a period of fifteen years from the date of his retirement where such commutation is effective during the first month of his retirement and in other cases as and when he completes a period of fifteen years from the date on which reduction in pension on account of such commutation becomes effective."*

5. The above Rule would make it clear that 15 years waiting period to get the original pension amount restored will be calculated normally from the date

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of retirement of the Government employee and in exceptional cases, from the date on which reduction in pension on account of the commutation became effective. Admittedly, the petitioner was not allowed to retire on the date of his attaining the age of superannuation i.e. on 30.06.2003, in view of certain disciplinary proceedings. In fact the petitioner was placed under suspension on the date of his attaining the age of superannuation on certain allegations. Consequently, no further action has been initiated and action was dropped in the year 2007 and only thereafter the petitioner was allowed to retire however with effect from the date of his attaining the age of superannuation i.e. 30.06.2003. In the interregnum the petitioner cannot be sanctioned with the pension. It is obviously because the third respondent can get the proposal from the department and sanction pension only after ascertaining the fact as to whether the petitioner has been allowed to retire or whether any punishment has been imposed on him. Naturally the petitioner can avail the commutation benefit also only after he was given with the permission to retire. Unless the deduction in pension is made towards the commutation benefit availed by the petitioner for 15 years, the respondents cannot be expected to restore it before the said period of 15 years.

6. It is submitted that for returning the deduction made towards commutation one need not count 15 years and it can be just 11 years. In such case the petitioner ought to have availed the commutation benefit for 11 years. Having chosen to avail the benefit for 15 years, the petitioner cannot now claim

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the short cut of 4 years by taking any undue advantage. As the date of commencement of recovery is only from 05.11.2007 the petitioner is entitled to the deducted pension towards commutation only after 15 years i.e. from 05.11.2007. As the Rules are clear in this regard and the petitioner had also availed the benefit for 15 years, the petitioner cannot expect to prepone the retirement any time earlier. However, in case any recovery is stopped due to the interim order of this Court it goes without saying that it can be restored.

7. In the result the writ petition is dismissed. No costs. Connected miscellaneous petitions are closed.

17-02-2025

Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No

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R.N.MANJULA J.

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