



W.P.No.37753 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 17.03.2025

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

AND

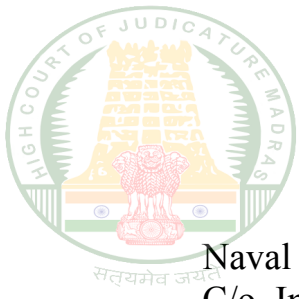
THE HON'BLE MR. JUSTICE K. RAJASEKAR

Writ Petition No.37753 of 2024

and

Writ Miscellaneous Petition No.40817 of 2024

1. Union of India,
Rep. by the Secretary,
Government of India,
Ministry of Defence,
Room No 227B Wing,
Sena Bhawan, New Delhi 110 011.
2. The Chief of Naval Staff,
Integrated Head Quarters,
Ministry of Defence (Navy),
New Delhi – 110 011.
3. The Joint Director,
Pension Section for PDPA
Directorate of Pay & Allowances,
Integrated Head Quarters Ministry of Defence (Navy)
DPA “A” Block Hutments DARA Shikoh Road
New Delhi – 110 011.
4. The Principal Controller of Defence Accounts (Pensions)
Draupadi Ghat,
Allahabad – 211 014.
5. The Logistics Officer-in-Charge,



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Naval Pension Office,
C/o. Ins TANAJI, SION TROMBAY ROAD, MANKHURD,
Mumbai – 400 088.

... Petitioners

Vs.

Jhansi Rani

... Respondent

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records dated 08.11.2023 passed in O.A.No.132 of 2021 with M.A.No.132 of 2021 on the file of the Armed Forces Tribunal, Regional Bench, Chennai (Circuit Bench Hyderabad) thereby quashing the impugned order.

For Petitioners : Mr.V.Balasubramanian,
Special Panel Counsel for Government of India

For Respondent : Mr.D.Solomon Pandian
For Ms.B.Sandhiya

ORDER

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

Under assail is the order dated 08.11.2023 passed in O.A.No.132 of 2021 with M.A.No.132 of 2021 on the file of the Armed Forces Tribunal, Regional Bench, Chennai.

2. Union of India, Ministry of Defence, New Delhi filed the present writ petition. The respondent is the wife of late EX LME Sunkara Venkateshwara Prasad, Service No.106468-Z.

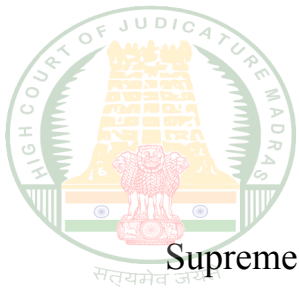
3. The facts in nutshell necessary for considering the issue in the present



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writ petition are that the husband of the respondent enrolled in the Indian Navy on 03.07.1976 as sailor and discharged from service on 31.07.1986 after rendering 10 years and 29 days of service. The deceased husband of the respondent/sailor was classified as non-pensioner and no pensionary benefits were sanctioned. Pertinently, the Ministry of Defence amended the period of engagement from 10 years to 15 years for sailors.

4. The contention of the learned counsel appearing on behalf of the respondent is that the late husband of the respondent opted to continue in service as sailor but his request was not considered during the relevant point of time when he was discharged from his service. Despite the fact that he is entitled to continue in service for 15 years, he was discharged on completion of 10 years. Therefore, he is entitled for declaration of deemed services and to be brought under the pensionable service. It is not in dispute that the late sailor was re-employed in Indian Bank on 20.01.1988 and he was promoted upto the level of Assistant Manager in Indian Bank and subsequently, died on 13.02.2008, after rendering services about 20 years. Further, it is not in dispute that the respondent is receiving family pension for the services rendered by her late husband in Indian Bank services. The learned counsel for the respondent would further submit that family pension is a recurring cause of action as held by the Hon'ble



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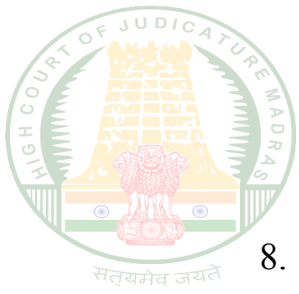
Supreme Court in the case of *Union of India and Others vs. Tarsem Singh*

reported in **(2008) 8 SCC 648** and therefore, delay in filing the Original Application cannot be held against the respondent.

5. The Tribunal has considered the fact that the deceased sailor is entitled to continue in service for 15 years, but he was discharged on completion of 10 years. Thus, the benefit of deemed services is to be extended and consequently, the deceased sailor must be brought under the pensionable services, enabling the respondent to receive family pension from the date on which the deceased sailor is entitled for pension.

6. The original application was filed before the Armed Forces Tribunal, in the year 2021. The relief sought for is to recall the discharge order dated 31.07.1986 and to treat the deceased husband of the respondent to have notionally completed the amended service period of 15 years, as per the Government of India Memorandum dated 3rd July 1976. All the attendant benefits are also claimed in the original application. The Tribunal adjudicated the issues and allowed the original application. Thus, the Union of India preferred the present writ petition.

7. Heard the parties.



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8. Undisputed facts between the parties reveal that the service Discharge

Certificate was issued by the Commodore Bureau of Sailors on 31.07.1986. The Discharge Certificate clearly states that the late husband of the respondent is the non-pensioner. The said certificate remained unchallenged and the deceased sailor has not challenged the same but accepted the certificate during the relevant point of time. After accepting the services, he got re-employment with Indian Bank and joined on 20.01.1988. Even within the period of 15 years of services as claimed by the respondent, her late husband got re-employment in Indian Bank within a period of two years from the date of his discharge on 20.01.1988. He was promoted upto the level of Assistant Manager and died on 13.02.2008. Pertinently, the respondent married the late sailor after his discharge in the year 1988 and receiving family pension from Indian Bank.

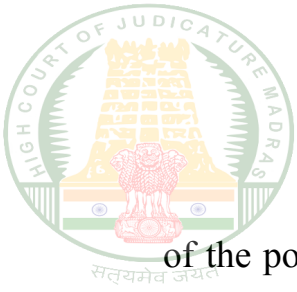
9. This Court is of the considered opinion that once a sailor has been discharged and Discharge Certificate has been issued stating that the sailor is a non-pensioner and the said sailor secured re-employment in the Indian Bank within a period of two years from the date of discharge, Court cannot grant the relief of deemed services for 5 years, enabling the widow of the sailor to get family pension from the Ministry of Defence. Declaration of deemed services for 5 years is unknown to service jurisprudence, since the actual services rendered by



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the sailor alone is to be taken into consideration for the purpose of reckoning the qualifying services for grant of pension, under the Pension Regulations. Further, there is no Service Rules for grant of deemed services, when the sailor has not actually rendered services in Indian Navy. Even in case, where a sailor has given an option to continue in service and the competent authority rejected the claim, then also the sailor may not be entitled for deemed services for grant of pension.

10. However, in the present case, the writ petitioners have clearly stated that the respondent's late husband had not submitted any request for continuation of service. Despite being discharged as a "non-pensioner" he did not approach any authority for continuation in service. Fact remains that the deceased sailor was not allowed to continue in service. Thus, he is not entitled for service pension under Regulation 78 of Navy Pension Regulations, 1964. Under the Regulation, 15 years of qualifying services is mandatory for grant of service pension. Court cannot in exercise of the powers of judicial review grant deemed services for 15 years for a sailor, who has actually rendered 10 years and 29 days of service. The said concept if considered would create an anomalous situation since there is no such provisions available under Pension Regulations. The services between employer and employee are contractual in nature. The employee is bound by the service Rules and the Regulations. Courts in exercise



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of the powers of judicial review cannot grant any relief beyond the scope of the service rules, which will result in opening of Pandora's box, wherein many such ineligible employees also will claim the benefit of service pension or other benefits, which all are otherwise not contemplated under the service rules applicable to a particular post/cadre.

11. Admittedly, the deceased sailor was discharged in the year 1986. The said discharge order is under challenge in the original application filed in the year 2021. The concept of recurring cause of action would have no application, in cases, where a final decision was taken and communicated to the employee concerned. Once the order of rejection has been passed and the sailor has been declared as a non-pensioner, the cause of action arose on the date on which such a decision has been communicated to the sailor. Therefore, such an order must be challenged within a period of 3 years as contemplated under Section 22(1) (c) of the Armed Forces Tribunal Act. However, in the present case, the challenge has been made after a lapse of 36 years by the widow of the deceased sailor.

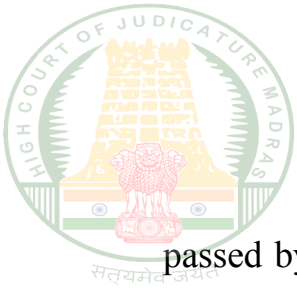
12. It is made clear that merely submitting a representation after a lapse of several years would not provide a fresh cause of action for challenging the order communicated to the employee long before. Any attempt to reopen the dead



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cause of action at no circumstances be encouraged by the Courts. The recent 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.

13. The facts and circumstances established would be sufficient to arrive a conclusion that the Tribunal has proceeded without considering the legal principles settled and the applicable Pension Regulations. The facts itself would be sufficient to arrive an irresistible conclusion that the respondent is not entitled for any relief from the hands of this Court. Consequently, the order impugned



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passed by the Armed Forces Tribunal in O.A.No.132 of 2021 with M.A.No.132 of 2021 dated 08.11.2023 is set aside and the writ petition stands allowed. There shall be no order as to costs. Consequently, the connected miscellaneous petition also stands closed.

(S.M.S., J.) (K.R.S., J.)
17.03.2025
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Index: Yes
Speaking Order: Yes/No
Neutral Citation Case : Yes/No

S. M. SUBRAMANIAM., J.
AND
K. RAJASEKAR., J.

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