
(2012) 07 BOM CK 0039
In the Bombay High Court
Case No : Writ Petition No. 361 of 2004

Wing Commander Cecil Barretto VSN (Retd), Lt. Col. S.P. Gunaji (Retd.). and Colonel D. R. Rao (Retd.) APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 23-07-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 07 BOM CK 0039

Hon'ble Judges : U.V. Bakre, J;A.P. Lavande, J

Bench : Division Bench

Advocate : J.P. Mulgaonkar, for the Appellant; C.A. Ferreira, Assistant Solicitor General for Respondents No. 1 to 5, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Lavande, J.—Mr. Mulgaonkar submits that petitioners no. 2 and 3 have expired. This position is not disputed by Mr. Ferreira, learned Assistant Solicitor General for the respondents. Hence, Petitioners no. 2 and 3 be shown as deceased. Amendment to be carried out forthwith. By this petition, the petitioners seek the following reliefs:

a) That this Hon"ble Court be pleased to issue a writ of certiorari, or a writ in the nature of certiorari, or any other appropriate writ, order or direction under Article 226 of the Constitution of India calling for the records of the case and on examining the legality, validity and propriety thereof to quash the instructions contained in letter dated 11/9/2001 (Annexure A) of the Ministry of Defense, Government of India directing CGDA and CCDA (P) to exclude NPA from computation of pension payable to the petitioners.

b) That this Hon"ble Court be pleased to issue a writ of mandamus, or a writ in the nature of mandamus, or any other appropriate writ, order or direction under Article 226 of the Constitution of India directing the Respondents, their officers,

servants and agents to make payment of future pension by taking into account non practicing allowances as constituting a component of pay.

c) That this Hon"ble Court be pleased to issue a writ of mandamus, or a writ in the nature of mandamus, or any other appropriate writ, order or direction under Article 226 of the Constitution of India directing the respondents, their officers, servants and agents to forthwith refund the amount, if any, wrongly deducted from pension for any month as excess payment made by excluding non practicing allowances in respect of pension.

2. Mr. Ferreira, learned Assistant Solicitor General submits that the issues involved in this petition are squarely covered against the petitioner no. 1 by the Judgment of the Apex Court in the case of Col. (Retd.) B.J. Akkara Vs. The Govt. of India and Others, .

3. This position has not been disputed by Mr. Mulgaonkar, learned counsel for the petitioner. In view of the above, the petition stands dismissed, with no order as to costs.