

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2016

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.15611 of 2010

M.Chinnusamy

.. Petitioner

Vs.

1. The District Adi Dravidar and Tribal Welfare Officer,
Salem District, Salem.

2. The Special Tahsildar,
(Adi Dravidar Welfare), Salem, Salem District.

3. The Treasury Officer,
Salem-636 007.

4. The State Government
Rep. By the Secretary to Government
Adi Dravidar and Tribal Welfare Department
Chennai.

(R-4 is suo motu impleaded as per order dated
02.11.2016 by RSKJ in W.P.No.15611 of 2010) ... Respondents

Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of mandamus, directing the third respondent to disburse the arrears of salary to the petitioner consequent on the fixation of pay ordered by the first respondent in Na.Ka.No.358/08/D3 dated 29.07.2008 and fixed by the second respondent in Na.Ka.No.987/2002(C) dated 3.10.2008 with interest.

For Petitioners : Mr.P.Rajendran

For R1 to R4 : Mr. P.Sanjay Gandhi
A.G.P

ORDER

The prayer in the writ petition is for a writ of mandamus, directing the third respondent to disburse the arrears of salary to the petitioner consequent on the fixation of pay ordered by the first respondent in Na.Ka.No.358/08/D3 dated

29.07.2008 and fixed by the second respondent in Na.Ka.No.987/2002(C) dated 3.10.2008 with interest.

2. When the petitioner was working as Secondary Grade Warden, his junior one Arunachalam was promoted as Primary School Headmaster by the proceedings of the first respondent dated 30.6.1994 overlooking the seniority of the petitioner. Aggrieved by the same, the petitioner had approached the Tamil Nadu Administrative Tribunal in O.A.No.4736/94. Thereafter, on abolition of the Tribunal, the case was transferred to this Court and re-numbered as W.P.No.20125 of 2006. The said writ petition was finally decided by the orders of this Court dated 29.11.2007 wherein this Court was pleased to hold that the petitioner's seniority was overlooked arbitrarily and also contrary to the statutory provisions and therefore, the petitioner was entitled for all the benefits and for promotion with effect from the date on which the second respondent in that writ petition i.e., the junior of the petitioner, was promoted.

3. Pursuant to the said order of this Court, the first respondent by order dated 29.7.2008 has fixed the salary for the petitioner on par with his junior, the said Arunachalam from the date, the said junior was promoted i.e., 01.6.1988 and the third respondent was directed to fix the salary difference to the petitioner to be paid after getting the same from the authorities concerned to disburse the same to the petitioner.

4. In response to the said order of the first respondent dated 29.7.2008, the second respondent issued proceedings dated 3.10.2008 whereby the second respondent has fixed the salary for the petitioner on par with his junior Arunachalam from 01.6.1988 in the time scale of pay of Rs.1640-2900/- with a basic pay of Rs.1760/-. Though these orders were passed by the first and second respondents pursuant to the orders of this Court as referred to above, the pay arrears from 01.6.1988 were not paid to the petitioner. Therefore, the petitioner has issued a legal notice on 28.3.2010. Even then, since no positive action was forthcoming from the respondents, the petitioner has come out with the present writ petition with the aforesaid prayer.

5. Heard both sides.

6. The learned Additional Government Pleader appearing for the respondents relying on the averments made in the counter affidavit filed by the second respondent has stated that pursuant to the orders of this Court, the first respondent passed order on 29.7.2008. Thereafter, the second respondent also passed necessary orders fixing and calculating the pay to the petitioner and necessary pay bills were prepared and presented to the third respondent office, i.e., Treasury, Salem. The said bills after having been audited were returned to the

office of the second respondent for rectifying certain defects. After having rectified the defects as pointed out by the third respondent office, the bills were represented to the Treasury, Salem i.e., Office of the third respondent in the year 2008 itself. However, for the reasons unknown to any one, so far the amount has not been paid to the petitioner.

7. The learned Additional Government Pleader would also make his submissions that as per the procedure, neither the first respondent nor the second respondent have power to fix the salary or disburse the same to the petitioner.

8. This issue has never been raised either in the counter or at any point of time for all these years after the orders passed by this Court in the earlier writ petition dated 29.11.2007. Since order of this Court dated 29.11.2007 became final and the same has been acted by the first and second respondents, the present objection as projected by the respondents through the learned Additional Government Pleader that only the fourth respondent has to take a decision for payment cannot be accepted for the simple reason that if it is the State entire officials or authorities from top to bottom are representing only the State and therefore, whoever may be the authority, who is empowered to do or to comply with the orders of the courts, that authority either has to comply with the order or to raise any objection in the manner known to law.

9. Here in this case, so far no contra view has been taken even by the Government represented by the fourth respondent, who has been impleaded by this Court. When that being the position, the delay caused on the part of the respondents in making the payments cannot be countenanced, inspite of the said objection raised by the learned Additional Government Pleader.

10. It is apparent that the petitioner's pay arrears have unnecessarily been with held by the respondents inspite of the orders of this Court and consequential orders passed by the first and second respondents as referred to above. Though the necessary bills were submitted to the third respondent's office and even after the mistakes pointed out were rectified and represented to the third respondent office several years back, still the payment is being withheld either by the third respondent or some other officers which is unfortunate and unjust.

11. Therefore, this Court is of the considered view that the writ petition deserves to be considered and allowed.

12. In the result, the writ petition is allowed in the following terms:

(i) The respondents shall pay entire pay arrears for which the petitioner is entitled to pursuant to the orders of the first respondent dated 29.7.2008 and the consequential order of the second respondent dated 03.10.2008 within a period of four weeks from the date of receipt of a copy of this order.

(ii) Even though orders were passed in the year 2008 by the respondents 1 and 2 and the bills were submitted to the third respondent immediately, apparently, there is no plausible reason for the respondents to withhold the payment of the petitioner and therefore, the petitioner being the senior citizen struggling a lot for all these years without getting his due salary arrears, is certainly entitled to get interest and therefore, this Court fix 6% interest to be paid from 03.10.2008, the date on which the orders were passed by the second respondent till the date of payment.
No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

1. The District Adi Dravidar and Tribal Welfare Officer,
Salem District, Salem.

2. The Special Tahsildar,
(Adi Dravidar Welfare), Salem, Salem District.

3. The Treasury Officer,
Salem-636 007.

4. The Secretary to Government
Adi Dravidar and Tribal Welfare Department
Chennai.

+1cc to M/s P.Rajendran, Advocate Sr.65460

+1cc to Government Pleader Sr.65280

W.P.No.15611 of 2010

SUI (CO)
RVR 02/01/2017