



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.11.2016

CORAM:

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

and

THE HONOURABLE MRS. JUSTICE J. NISHA BANU

W.P (MD) No. 10824 of 2013

K. Thangaraj

... Petitioner

Vs.

1. The Government of Tamil Nadu,
through its Secretary to Government,
Home Department, Courts V,
Secretariat,
Chennai - 600 009.
2. The Registrar General,
High Court of Madras,
Chennai - 600 014.
3. The Principal District Judge,
Theni District, Theni.

... Respondents

PRAYER: The Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to pay salary for the period from 01.02.2011 to 08.07.2011 to the petitioner within the stipulated time that may be fixed by this Hon'ble Court.

For Petitioner : Mr. P. Veerabaku

For 1st Respondent : Mr. A. K. Baskarapandian
Special Government Pleader

For Respondents 2 & 3 : Mr. G. Thalaimutharasu

ORDER

(Judgment of this Court was delivered by M. SATHYANARAYANAN, J.)

By consent this writ petition is taken up for final disposal.

2. The petitioner, in the affidavit filed in support of the writ petition would aver among other things that he was appointed as Masalchi in the Court of Sub Divisional Judicial Magistrate Court, Usilampatti with effect from 01.03.1980. His services were regularised with effect from 01.04.1980 as per the order of Chief Judicial Magistrate, Madurai dated 17.12.1981. The petitioner has



successfully completed the probation on the afternoon of 31.03.1982 as per the order of the Chief Judicial Magistrate, Madurai in Roc No.5051/82-A1 dated 22.12.1982. Thereafter, he was posted as Office Assistant and then Junior Bailiff with effect from 22.10.2001. According to the petitioner, the post of Junior Bailiff / Process Server was under Tamil Nadu Basic Service prior to 12.12.2008 and as such the age of retirement was 60 years and he would retire on 31.01.2013 as his date of birth was 09.01.1953. Disciplinary proceedings were initiated against the petitioner, which culminated into the punishment of reduction of 3 years to lower post (Office Assistant) vide order dated 11.07.2008, which also resulted in postponement of 3 increments and the said reduction was imposed between 11.07.2008 to 10.07.2011. The petitioner would further state that the first respondent vide G.O.Ms.No.1653 Home Department dated 12.12.2008 has deleted the post of Junior Bailiff / Process Server from Tamil Nadu Basic Service and included it under Group C Post, for which the age of retirement is 58 years and accordingly the petitioner was permitted to retire from service in the post of Junior Bailiff, restricting the period of punishment up to 31.01.2011 vide Official Memorandum of Registrar (Management) of High Court of Madras.

3.The grievance expressed by the petitioner is that he had worked as Office Assistant from 11.07.2008 to 08.07.2011 and he was not paid any salary from 01.02.2011 to 08.07.2011 by Judicial Magistrate, Periyakulam, despite the fact he was permitted to retire on 31.01.2011 and he has worked beyond that period also. Therefore, he is entitled to salary for that period. In this respect, he has repeatedly communicating with the respondents and since no response is forthcoming, he has filed this Writ Petition.

4.Mr.P.Veerabaku, learned counsel appearing for the petitioner has drawn the attention of this Court to the typed set of papers and would submit that admittedly the fact that the petitioner worked as Office Assistant from 11.07.2008 to 08.07.2011 and the non-payment of salary from 01.02.2011 to 08.07.2011 is not in serious dispute and hence prayed for positive orders.

5.Mr.A.K.Baskara Pandian, learned Special Government Pleader appearing for the first respondent would submit that the petitioner may be directed to submit a joint representation to respondents 1 to 3 and in the light of the order made in the writ petition, the representation would be considered and disposed of within a stipulated period.

6.Mr.G.Thalaimutharasu, learned counsel appearing for the respondents 2 and 3 would submit that since the financial aspects of the case are within the jurisdiction of first respondent, they have to take a decision.



7. This Court considered the rival submission and also perused the typed set of papers.

8. The petitioner while working as Junior bailiff was visited with a disciplinary proceedings which culminated in punishment of reduction for 3 years to lower Post (Office Assistant) and postponement of 3 increments on restoration to the post of Junior Bailiff and the order of reduction was in force from 11.07.2008 to 10.07.2011. Subsequently, the 1st respondent vide G.O.Ms.No.1653 Home Department dated 12.12.2008, has deleted the post of Junior Bailiff / Process Server from Tamil Nadu Basic Service and included it under Group C post, to which the age of retirement is 58 years and consequently the service of the petitioner was got reduced to 58 years. Therefore, the petitioner during the period of punishment, was permitted to retire on 31.01.2011 and it is an order giving retrospective effect. Admittedly, the petitioner was working as Office Assistant from 01.02.2011 to 08.07.2011. But for the deletion of the post of Junior Bailiff / Process Server, the petitioner would have continued further till attaining the age of 60 years. But on account of deletion of the post of Junior Bailiff from Tamil Nadu Basic Service, he was permitted to retire on 31.01.2011. In all fairness, the respondents should have taken note of the fact that he had not been paid salary till he was relieved from service, but unfortunately they did not do so. Therefore, this Court is of the view that the petitioner is to be granted liberty to submit a joint representation to the respondents and on such representation being made, the first respondent shall pass appropriate orders.

9. In the result, the Writ Petition is disposed of giving liberty to the petitioner to give joint representation to the respondents 1 to 3 as to the non-payment of salary between 01.02.2011 to 08.07.2011 and the first respondent, if on receipt of the same, shall call for remarks from the respondents 2 and 3 and on obtaining the remarks, shall pass order in the light of the observation made in this writ petition, on merits and in accordance with law within a period of 12 weeks from the date of receipt of a copy of this order and communicate the decision taken to the petitioner. No costs.

Sd/-
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
The Government of Tamil Nadu,
Home Department, Courts V,
Secretariat, Chennai - 600 009.



2.The Registrar General,
High Court of Madras,
Chennai - 600 014.

3.The Principal District Judge,
Theni District, Theni.

+1 CC to Mr.P.VEERABAKU, Advocate, SR No.68425

W.P(MD)No.10824 of 2013

sj

SH/DB:24.11.2016:4P/5C