

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.11.2017

Coram

THE HON'BLE MR.JUSTICE RAJIV SHAKDHER
and
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.6367 of 2014

Justice Y.Venkatachalam
Judge, High Court of Madras (Retired) ... Petitioner

Vs.

- 1.Union of India
Rep. by Secretary to Government
Government of Pondicherry
- 2.State of Puducherry
Rep. by its Secretary
Department of Civil Supplies and
Consumer affairs, Puducherry
- 3.Director of Civil Supplies,
Department of Civil Supplies and
Consumer Affairs,
Government of Pondicherry
- 4.Pondicherry State Consumer Disputes
Redressal Commission,
Rep. by its Registrar
No.46, Gulbert Avenue (Beach Road),
Puducherry 605 001
represented by its Registrar ... Respondents

PRAYER: Petition has been filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records of the 3rd respondent in proceedings No.8525/DCS&CA/CAD/2003/732 dated 19.07.2013 and quash the same and consequently direct the respondents to pay the balance payment of Rs.5,16,660/- towards daily allowance together with interest to the Petitioner.

For Petitioner : Mr.Niranjan Rajagopal
for M/s.G.R.Associates

For Respondents : Mr.B.Nambiselvan
Addl. Government Pleader (Puducherry)
for R1 to R3
for R4 - No Appearance

O R D E R

(Order of the Court was made by RAJIV SHAKDHER, J.)

1. The instant writ petition is directed against the order dated 09.07.2013 passed by the 3rd respondent.

2. Since, this matter has had some history and therefore same is set out here, albeit, briefly:

2.1. The writ petitioner is a former Judge of this Court. He was initially appointed as a judge in the Subordinate judiciary in the State of Andhra Pradesh. On 04.11.1994, the petitioner was appointed as a Judge of the Andhra Pradesh High Court. The petitioner was thereafter, transferred to this Court on 23.11.1994. The petitioner, upon reaching the age of superannuation demitted office on 16.12.2000.

2.2. Since a vacancy had arisen in the post of President of State Consumer Disputes Redressal Commission, Puducherry (hereinafter referred to as "State Consumer Forum") , the then Acting Chief Justice of this Court sought the petitioner's consent for appointment to the said post. Upon receipt of consent, Respondent No.2 issued a Government Order in that behalf i.e., G.O.Ms.No.11, Department of Civil Supplies & Consumer Affairs, Pondicherry, dated 15.10.2001. Pertinently, the petitioner was appointed for a period of four (4) years, albeit, on part-time basis. Evidently, the petitioner assumed charge as the President of State Consumer Forum on 17.10.2001.

2.3. As the President of the State Consumer Forum, the petitioner was, to begin with paid an honorarium of Rs.2,000/- which was enhanced to Rs.5,000/-. In addition to the honorarium, the petitioner was also paid a sitting fee of Rs.500/- per day.

2.4. In and about April, 2002, the Accountant General raised an objection, with regard to payment of daily allowance of Rs.600/- per day, to the petitioner. This objection was apparently taken on the ground that the petitioner was not eligible to the same as per the T.A. Rules, as the said

allowance was payable only when journey was undertaken to places other than Puducherry which were beyond 8 k.m. radius. Since, the State Consumer Forum's headquarter was in Puducherry, it was the view of the Accountant General's office that, daily allowance was not payable to the petitioner as per the T.A. Rules then in vogue. Accordingly, a communication dated 09.08.2002, whereby, the petitioner was informed that he was not entitled to daily allowance of Rs.600/- per day, which was being drawn by him upto then.

2.5. Being aggrieved, the petitioner assailed the Communication dated 09.08.2002 by instituting a writ petition in this Court. The petition was numbered as W.P.No.36094 of 2002.

2.6. This apart, the petitioner filed another writ petition being: W.P.No.36144 of 2002. Via this writ petition, the petitioner challenged that portion of his appointment order whereby he was appointed on a part-time basis.

2.7. It appears that the respondents 1 to 3 were unhappy with the fact that the aforementioned writ actions had been initiated by the petitioner consequently and therefore via order dated 21.08.2003 petitioner's appointment as the President to the State Consumer Forum was terminated.

2.8. This propelled the petitioner to file yet another writ petition i.e., W.P.No.24940 of 2003, which came up for hearing before a Division Bench of this Court. The Division Bench of this Court, on 15.03.2005 set aside the termination order and directed the payment of salary, allowances and monetary value of perquisites to the petitioner from the date of issuance of the termination order till he attained either the age of 67 years or, completed the term of five (5) years from the date of his appointment, whichever was earlier. Furthermore, a direction was also issued to the effect that the moneys would be paid to the petitioner with interest at the rate of 10% per annum. A period of two (2) months from the date of receipt of copy of the order was stipulated for this purpose.

2.9. Respondents 1 to 3 being aggrieved, preferred a Special Leave Petition in SLP.No.11885 of 2005. The Special Leave Petition was admitted and thereafter numbered as C.A.No.3616 of 2005. By an order dated 19.05.2010, the Supreme Court allowed the appeal preferred by respondents 1 to 3. The operative part

of the Judgment of the Supreme Court is read as follows:

"We have considered the respective submissions. In our view, the Division Bench of the High Court committed serious error by declaring that respondent No.1 is entitled to all the benefits of the post of President of the State Commission as if he had been appointed for a period of 5 years ignoring that the only prayer made in Writ Petition No.24940 of 2003 was for quashing Notification dated 21.08.2003 by which tenure of respondent No.1 was abruptly curtailed and two writ petitions, in which respondent No.1 had prayed for grant of allowances and perquisites and for being allowed to continue on the post of President till the age of 67 years or for a period of 5 years, whichever is earlier were pending adjudication. We are also inclined to agree with learned senior counsel appearing for the appellants that the impugned order of the Division Bench of the High Court had the effect of amending the terms and conditions incorporated in Notification dated 15.10.2001 vide which respondent no.1 was appointed as President of the State Commission and this could not have been done without pronouncing upon the legality of that notification.

In the result, the appeal is allowed and the impugned order is set aside. The High Court shall now hear the parties and decide all the writ petitions filed by respondent No.1 by one order without being influenced by the observations contained in the impugned order or the one passed by this Court."

3. It is in this background that the writ petitions being: W.P.No.24940 of 2003, W.P.No.36094 of 2002 and W.P.No.36144 of 2002 were once again taken up, heard and disposed on 28.09.2011. The Division Bench in turn passed the following operative directions:

"34. In view of the submissions made by the learned counsels appearing on behalf of the petitioner and the respondents and in view of the decision cited above, we are of the considered view that the contentions

raised on behalf of the petitioner cannot be countenanced.

36. Having accepted the said condition prescribed in the notification, it is not open to the petitioner to challenge the same at a later point of time stating that the notification, dated 15.10.2001, by which he had been appointed, as the President of the State Consumer Disputes Redressal Commission, Pondicherry, is contrary to the provisions of the Consumer Protection Act, 1986, especially section 16 of the said Act. However, we are of the view that the termination of the tenure of the petitioner, by way of a notification issued by the Lieutenant Governor of Pondicherry, in G.O.Ms.No.11, Department of Civil Supplies & Consumer Affairs, Pondicherry, dated 15.10.2001, for the reason that the petitioner had approached this Court, by way of a writ petition, is arbitrary and illegal. Without doubt, it tends to lower the dignity and the respect attached to the office of the President of the State Consumer Disputes Redressal Commission, Pondicherry, especially, when the appointee is a retired Judge of the High Court, as in the present case.

37. There is no doubt that the State Government concerned has been ill-advised in issuing such a notification. Therefore, the act of the State Government in issuing the notification, in G.O.Ms.No.11, Department of Civil Supplies & Consumer Affairs, Pondicherry, dated 15.10.2001, terminating the tenure of the petitioner as the President of the State Consumer Disputes Redressal Commission, Pondicherry, much before the expiry of the tenure of four years prescribed in the notification, dated 15.10.2001 (SIC 21.08.2003), deserves serious condemnation.

38. In such view of the matter, the notification, in G.O.Ms.No.11, Department of Civil Supplies & Consumer Affairs, Pondicherry, dated 15.10.2001 (SIC 21.08.2003), is set aside and the first respondent State Government is directed to pay the honorarium and the other allowances due to the Petitioner, as per the terms and conditions of his appointment, in accordance

with the Pondicherry Consumer Protection Rules, 1987, within a period of four weeks from the date of receipt of a copy of this order. The first respondent State Government shall also pay to the petitioner Rs.15,000/- (Rupees Fifteen Thousand only) as costs. The writ petition, in W.P.No.24940 of 2003 is ordered, accordingly. However, the reliefs sought for by the petitioner in the writ petitions, in W.P.No.36094 of 2002 and W.P.No.36144 of 2002, cannot be granted, as we are of the view that the petitioner, having accepted the terms and conditions of his appointment, by way of a notification in G.O.Ms.No.11, Department of Civil Supplies & Consumer Affairs, Pondicherry, dated 15.10.2001, it would not be open to him to challenge the same thereafter, on the ground that such a notification is contrary to the provisions of the Consumer Protection Act, 1986, and the Rules framed thereunder. In such view of the matter, the writ petitions stand dismissed. Connected Miscellaneous petition No.54314 of 2002 is closed."

4. A perusal of the aforesaid extract of the Division Bench judgment would show that while W.P.No.24940 of 2003 was allowed, W.P.No.36094 of 2002 and W.P.No.36144 of 2002 were dismissed. As indicated above, W.P.No.24940 of 2003 was directed against the termination order dated 21.08.2003. Insofar as Writ Petition No.36094 of 2002 was concerned, it was directed against the proceedings dated 09.08.2002 issued by the respondent No.3, whereby the petitioner's daily allowance was withdrawn. The last writ petition i.e. W.P.No.36144 of 2002 was filed by the petitioner with a prayer that, his appointment should be treated as one on full-time basis and not on part time basis. Admittedly, even according to the counsel for the petitioner, no challenge was laid to judgment dated 28.09.2011, passed by a Division Bench of this Court.

4.1. It is also not disputed before us that pursuant to the judgment dated 28.09.2011, the petitioner has received a sum of Rs.4,08,020/-.

5. The learned counsel for the petitioner says that, the said judgment is kept in mind, the petitioner's financial dues are completely satisfied. However, learned counsel for the petitioner's only contention is that judgment dated 28.09.2011 cannot come in the way of the petitioner challenging the

impugned order dated 19.07.2013. The argument is that after appointment, the terms and conditions of his appointment could not be altered to his prejudice.

5.1. In order to buttress his submission learned counsel relies upon G.O.Ms.16. Government of Pondicherry, Civil Supplies Department dated 22.08.1987. Particular reference is made to clause 6(2) of G.O.Ms.No.16 dated 22.08.1987. For the sake of convenience, the same is extracted below

"6.Salary and other allowances and terms and conditions of the President and Members of the State Commission (Section 16 (2)).-- President of the State Commission shall receive the salary of the Judge of the High Court if appointed on whole time basis or a consolidate[d] honorarium of Rs.5,000/- plus Rs.500/- per day for the sitting, if appointed on part-time basis. Other members, if sitting on whole time basis shall receive a consolidated honorarium of Rs.3,500/- per month and if sitting on part-time basis a consolidated honorarium of Rs.1,500/- plus Rs.200/- per day for the sitting.

(2) The President and the Members of the State Commission shall be eligible for such travelling allowance and daily allowance on official tour as are admissible to a Judge of a High Court and to a Grade-I Officer of the Government, respectively."

6. Based on Clause 6(2) of the said Government Order, the argument advanced by the learned counsel for the petitioner is that the President and Members of the State Consumer Forum would be eligible for travelling and daily allowance as is admissible to a Judge of High Court and to a Grade-I Officer .

7. According to us, the submission is misconceived. There was no alteration made in the terms and conditions pertaining to the petitioner's appointment which worked to his prejudice. A careful perusal of Clause 6(2) would show that the expression of "daily allowance" is suffixed by the expression of "official tour". The daily allowance adverted to in clause 6(2), is the one which the President of the State Consumer Forum is entitled to receive when he is in official tour, and not when he moves from his residence to his place of work, both of which, are located in Puducherry.

7.1. This apart, we are of the view that the relief claimed in this petition is barred by the doctrine of constructive res judicata in as much as the petitioner has raised a challenge with regard to denial of daily allowance when communication dated 9.8.2002 was issued. Writ Petition filed in that behalf (i.e., W.P.No.36094 of 2002) has been dismissed by a Division Bench of this Court, on 28.9.2011. The petitioner has not carried the matter further, and thus, the very same issue could not be agitated by instituting the present writ petition.

7.2. The impugned order dated 19.7.2013 only gives effect to the judgment dated 28.9.2011.

8. Thus, having regard to the foregoing discussion, we are unable to persuade ourselves to grant any relief in the writ petition. Accordingly, the writ petition is dismissed. However, there will be no order as to costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government
Government of Pondicherry,
Puducherry.
2. The Secretary
Department of Civil Supplies and
Consumer affairs, Puducherry
3. The Director of Civil Supplies
Department of Civil Supplies and
Consumer Affairs
Government of Pondicherry
4. The Registrar,
The Pondicherry State Consumer Disputes
Redressal Commission,
No.46, Gulbert Avenue (Beach Road)
Puducherry 605 001.

+1cc to M/s.G.R.Associates, Advocate SR.no.84032
+1cc to Special Government Pleader SR.no.84431

sm:9.1.2018

W.P.No.6367 of 2014