

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.02.2017
Delivered on : 10.02.2017

CORAM:

THE HON'BLE MR.JUSTICE **K.K.SASIDHARAN**
AND

THE HON'BLE MR.JUSTICE **V.PARTHIBAN**

Cont.P.No.3047 of 2014

S.Ramaa ... Petitioner

Vs.

1.Mr.Chetan B.Sanghi I.A.S.,
Chief Secretary to Govt.,
Government of Puducherry, Puducherry.

2.Mr.G.Ragesh Chandra, I.A.S.,
The Law Secretary,
Government of Puducherry, Puducherry.

3.Mr.M.Kannan
The Under Secretary (DP &AR)
Government of Puducherry, Puducherry.

4.Mr.E.Vallavan
The Director of School Education,
Puducherry. ... Respondents

Petition filed under Section 11 of the Contempt
of Courts Act to punish the respondents for violating
the order passed by this Court in W.P.No.18043 of
2012 dated 14.06.2013.

For Petitioner : Ms.R.Vaigai,
Senior Counsel for
Mr.Menon Karthik

For Respondents : Mr.Syed Mustafa
Special Govt.Pleader
(Pondicherry)

O R D E R**K.K.SASIDHARAN, J.**

The petitioner has come up with this contempt petition to punish the respondents for committing contempt of the order dated 14 June 2013 in W.P.No.18043 of 2012, whereby and where under, the Division Bench directed them to take into consideration her services from 11.04.1990 for the purpose of calculating the period of service for further promotion.

Background Facts

2. The petitioner filed Original Application in O.A.No.19 of 2011 before the Central Administrative Tribunal, to quash the communication dated 5 September 2007 issued by the Department of Personnel and Administrative Reforms, Puducherry and count her past service from 01.12.1980 to 15.06.1990 for the purpose of calculating the total period of service. The petitioner made a further claim to promote her as Stenographer Gr.II with effect from 15.06.1995 and again as Stenographer Gr.I with effect from 15.06.2000 and as Private Secretary with effect from 15.06.2003 with consequential seniority and arrears of pay.

3.The Tribunal rejected the prayer for counting her past service from 1980 to 1990. However, the Tribunal directed the respondents to consider her for further promotions taking into account her service in the regular establishment from 11.04.1990. The petitioner, dissatisfied with the order dated 28 March 2012 in O.A.No.19 of 2011 filed a writ petition in W.P.No.18043 of 2012.

4. The Division Bench concurred with the views expressed by the Central Administrative Tribunal that her past service from 01.12.1981 to 14.06.1990 as part time Stenographer and part time Clerk-cum-Typist could not be counted for further promotions. The Division Bench issued a direction to the respondents to take into consideration her services from 11.04.1990 for further promotion.

5. Since the respondents failed to take follow up action, pursuant to the order dated 14 June 2013 in W.P.No.18043 of 2012, the petitioner initiated the present proceedings for contempt.

6. When the contempt petition came up for hearing on 17.03.2016, the learned Special Government Pleader (Service) appearing for the Government of Puducherry took notice. The matter was adjourned by two weeks for filing affidavit of compliance.

Thereafter, the respondents passed orders in compliance of the direction given by this Court and filed a compliance report dated 28 March 2016. The petitioner on her part filed an affidavit contending that the order has not been complied with in its letter and spirit.

7. Since the petitioner was not satisfied with the compliance report filed by the third respondent on behalf of the respondents, the learned counsel on record was directed to prepare a chart to demonstrate that the respondents are yet to give her relief taking into account the order passed in W.P.No.18043 of 2012.

8. The learned counsel for the petitioner produced a chart indicating the directions in W.P.No.18043 of 2012, steps taken for implementation of the order by the respondents and the admitted facts disregarded by them and finally, entitlement of the petitioner.

9. The third respondent filed a reply affidavit explaining the action taken by the Puducherry Administration to grant benefits to the petitioner pursuant to the order dated 14 June 2013 in

W.P.No.18043 of 2012.

Submissions

10. Ms.R.Vaigai, the learned Senior Counsel for the petitioner contended that the respondents ought to have considered the petitioner for further promotion in the hierarchy of Stenographer by treating her appointment as Steno-cum-Typist as Stenographer Grade III. According to the learned Senior Counsel, the respondents were not correct in clubbing the post of Stenographer Grade III with the larger cadre of Lower Division Clerks working in the Government of Puducherry. The learned Senior Counsel further contended that taking into account the fact that the petitioner worked in the isolated post available in the office of the Government Pleader, Puducherry, the Government ought to have promoted her as Stenographer Grade III, which is now re-designated as Stenographer Grade II and thereafter as Private Secretary with effect from 15.06.1998. The learned Senior Counsel submitted that the respondents erred in deducting a portion of the amount towards TDS without understanding the legal position that there is no liability to pay tax on salary arrears spread over a point of time.

11. Mr.R.Syed Mustafa, learned Special Government Pleader (Service) appearing for the

respondents, contended that the respondents have complied with the order passed by the writ Court fully. The learned Special Government Pleader submitted that the petitioner was initially engaged as a Part-time Clerk-cum-Typist by the then Government Pleader. It was not a regular appointment. The Government have considered her case sympathetically and the same is evident by the order in G.O.Ms.No.155/90/LLD dated 11 April 1990, redesignating one post of Clerk as Steno-cum-Typist bearing the pre-revised scale of Rs.3050-4590, which is equivalent to the post of Lower Division Clerk and transferring the said post to the office of the Government Pleader, Chennai, to accommodate her. According to the learned Special Government Pleader, the petitioner was appointed as Steno-cum-Typist by order dated 15.06.1990 in the office of Government Pleader for Puducherry at Chennai. It is his contention that no post of Stenographer Grade III in the pre-revised scale had ever been created in the office of the Government Pleader for Puducherry at Chennai and as such, there is absolutely no merit in the claim made by the petitioner that she should be appointed in the post of Stenographer Grade III with effect from 11.04.1990.

12. The learned Special Government Pleader contested the arguments advanced on behalf of the petitioner on the basis of the finding in Paragraph 42 of the order in W.P.No.18043 of 2012. According to the learned Special Government Pleader, the said finding has to be read as a whole and it cannot be taken in isolation. He would contend that the only direction given by the Division Bench was to consider the services of the petitioner from 11.04.1990 for all practical purposes. The respondents while promoting the petitioner to the post of Stenographer Grade III on par with her juniors, ensured that appointment was reckoned from 11.04.1990 from the post of Steno-cum Typist, which was equivalent to the post of Lower Division Clerk. According to the learned Special Government Pleader, there is nothing to be complied with hereafter and as such, the contempt petition is liable to be dismissed.

Discussion

13. The factual matrix indicates that the petitioner was initially appointed as Part-time Clerk-cum-Typist with effect from 01.12.1981 pursuant to the Office Order No.48, dated 2 January 1989, issued by the Law Department, Puducherry. Thereafter, she was appointed as Part-time

Stenographer on a consolidated pay of Rs.1100/- per month with effect from 01.07.1988.

14. The Puducherry Administration taking into account the series of representations submitted by the petitioner re-designated one post of Clerk as Steno-cum-Typist carrying the pre-revised scale of Rs.3050-4590, which is equivalent to the post of Lower Division Clerk and transferred the said post to the Office of the Government Pleader, Puducherry at Chennai so as to accommodate her. As a follow up action, by order, dated 15 June 1990, the petitioner was appointed as Steno-cum-Typist in the Office of the Government Pleader, Puducherry at Chennai.

15. The reply affidavit filed by the third respondent shows that the petitioner accepted the regular post of Steno-cum-Typist and joined the said post on 15.06.1990. The request made by the petitioner to count her Part-time engagement as qualifying service was not considered favourably by the respondents, in the absence of rules to count such service.

16. The claim of the petitioner that she is entitled to the post of Stenographer Grade III, which is now re-designated as Stenographer Grade II in the pre-revised scale of Rs.4000-6000 was opposed by the

respondents by contending that no such post of Stenographer Grade III had ever been created in the Office of the Government Pleader, so as to make a justifiable claim by the petitioner for appointment to the said post. In fact, the respondents contended that the petitioner could not be appointed by direct recruitment, as she was not in possession of the required qualification of Typewriting in regional language i.e., Tamil. However, she was considered under promotion quota from among the Lower Division Clerks with three years of service, based on seniority-cum-merit with a condition that she should pass Speed Test in Shorthand at 80 words per minute. Even though the petitioner failed to appear for the Shorthand test at 80 words per minute conducted by the Department of Personnel and Administrative Reforms, Puducherry, which is mandatory for promotion from Lower Division Clerk to Stenographer Grade III, her qualification of Shorthand English Higher Grade has been taken into account as equivalent and thereby, she was given promotion as Stenographer Grade III vide Memorandum dated 21.03.2001. The promotion was given with a condition that she should pass Tamil Typewriting (Lower) within a period of two years. It was clearly indicated that failure on part

of the petitioner to pass the Tamil Typewriting Exam would result in reverting her back to the post of Lower Division Clerk. The petitioner accepted the said order dated 21.03.2001. According to the respondents, the petitioner never attempted to pass the required Typewriting Test in Tamil (Lower) either within the probation period or even thereafter. It is the contention of the respondents that the petitioner ought to have been reverted back to the post of Lower Division Clerk on account of her failure to pass the required Typewriting test in Tamil. However taking into account her age and service totally rendered, approval of Lt.Governor was obtained and thereby, she was exempted from passing the Typewriting Test in regional language vide order in G.O.Ms.No.7/2006 dated 19 May 2006.

17. The compliance report and the reply statement filed by the respondents clearly indicate that pursuant to the direction given by the Division Bench, the petitioner was granted promotion to the post of Stenographer Grade III, which is now re-designated as Stenographer Grade II vide memorandum dated 17 October 2014.

18. It is also a matter of record that based on <https://hcservices.ecourts.gov.in/hcservices/> the revised seniority, the petitioner has been

granted promotion to the post of Stenographer Grade II, which is now re-designated as Stenographer Grade-I with effect from 6 January 2006, vide proceedings dated 17 October 2014 with consequential monetary benefits.

19. The Office Order, dated 21 March 2016 issued by the Directorate of School Education, Puducherry indicates that the pay of the petitioner was revised and it was re-fixed at Rs.9300+ Rs.4200 (GP) in the pay scale of Rs.9300-34800+4200 with effect from 06.01.2006. The petitioner was paid a sum of Rs.1,99,365/- towards settlement of pay arrears after deducting a sum of Rs.22,150/- towards Income Tax.

20. In order to verify as to whether the order was complied with in its entirety, we have perused the entire materials available on record. We have also perused the order passed by the Tribunal in O.A.No.19 of 2011 and the order dated 14 June 2013 in W.P.No.18043 of 2012. We have taken note of the contentions advanced by the learned Senior Counsel for the petitioner and the reply given by the learned Special Government Pleader. We are convinced that the respondents have complied with the order passed by the Tribunal in all respects. There is no cause of action for the petitioner to make a grievance

henceforth that she has not been given due service benefits. In short, the petitioner has been given the entire benefits by taking into account her services from 11.04.1990. The matter should come to an end on account of the compliance reported by the respondents. Since whatever is due to the petitioner as per the direction of the writ Court in W.P.No.18043 of 2012 has been given to her, there is no cause for the petitioner hereafter to make a grievance that she is yet to receive certain benefits from the Government.

21. We therefore hold that the respondents have complied with the direction of this Court in its entirety and as such, they are not liable to be proceeded for contempt.

22. The learned Senior Counsel for the petitioner submitted that the respondents deducted tax from the amount payable to the petitioner, ignoring the legal position that the amount of past benefits being one spread over would not attract income tax. We give liberty to the petitioner to take up the issue with the jurisdictional income tax officer. The respondents are directed to provide necessary documents to the petitioner on demand, so

as to enable her to make a claim for refund of the tax deducted at source.

22. The contempt petition is disposed of with the above observation.

SD/
JOINT REGISTRAR(OS)

//Certified to be true copy//

Dated at Madras this the day of 2016.

COURT OFFICER(O.S.)

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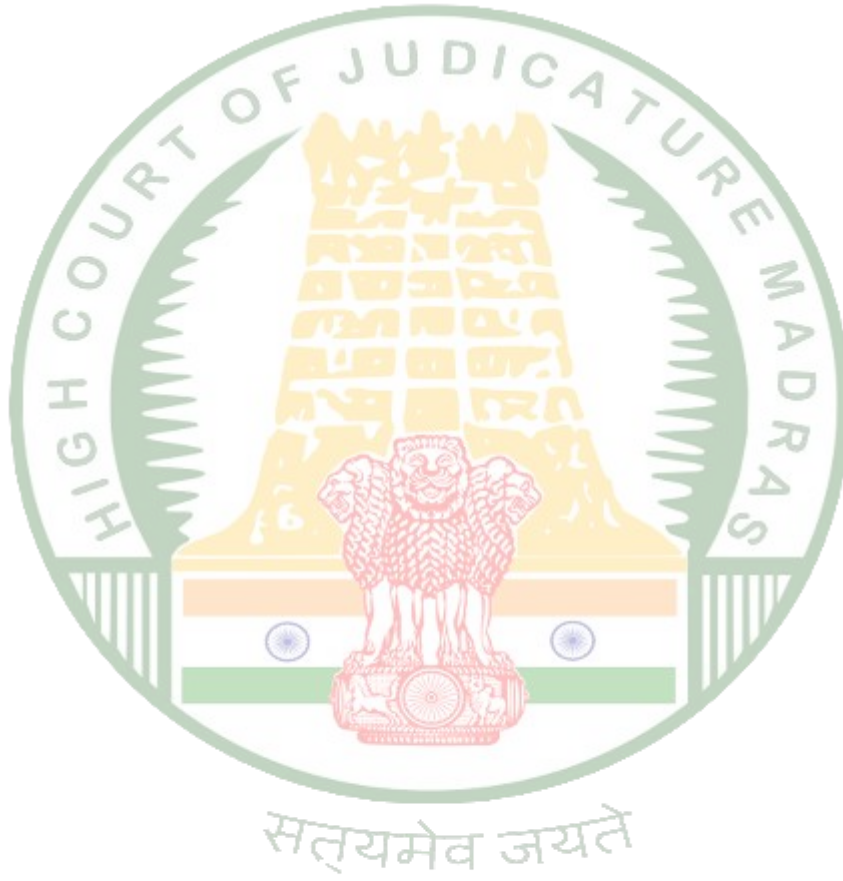
To

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Chief Secretary to Govt.,
Government of Puducherry, Puducherry.

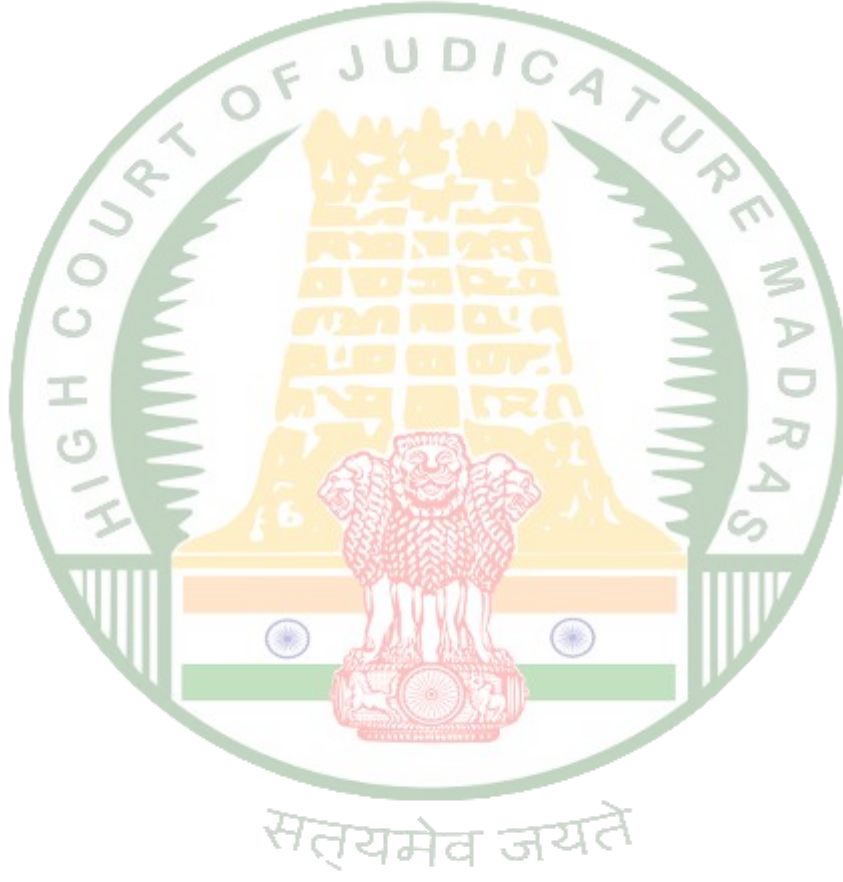
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