



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBBIAH**
AND
THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

W.P. [MD].No.14937 of 2015
and
M.P. (MD)No. 1 of 2015

R. Kamala : Petitioner
Vs.

- 1.The State of Tamil Nadu,
Rep. by the Secretary to Government,
Home (Courts) Department,
Fort St. George, Chennai -09.
2. The Registrar General,
High Court, Madras.
3. The Principal District Judge,
Madurai (FAC),
Madurai District. : Respondents

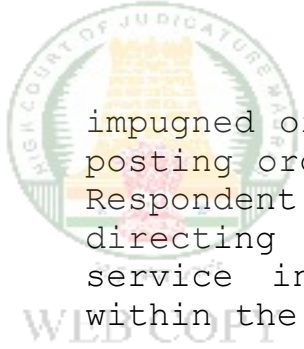
PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order of Reversion dated 14.07.2015 and the consequential posting order in A.No.191/2015 dated 14.07.2015 on the file of the Respondent No.3 and quash the same as illegal and consequently directing the Respondent No.3 to reinstate the petitioner in service in the post of Translator with all service benefits, within the time period stipulated by this court.

For Petitioner : Mr.T. Lajapathi Roy
For Respondent No.1 : Mr.N.S. Karthikeyan,
Additional Government Pleader
For Respondent No.2&3 : Mr.N.Mohideen Basha

O R D E R

[Order of the Court was made by **R.SUBBIAH, J.**]

The prayer in the Writ Petition is for a Writ of Certiorarified Mandamus, to call for the records pertaining to the



impugned order of Reversion dated 14.07.2015 and the consequential posting order in A.No.191/2015 dated 14.07.2015 on the file of the Respondent No.3 and quash the same as illegal and consequently, directing the Respondent No.3 to reinstate the petitioner in service in the post of Translator with all service benefits, within the time period stipulated by this Court.

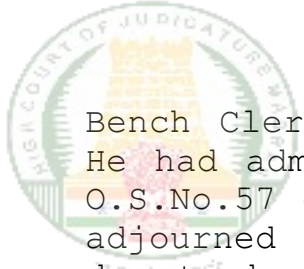
2.The petitioner herein was appointed as a Copyist on 27.09.1993 through the District Employment Exchange. Initially, she was posted at District Munsif Court, Tirumangalam. Thereafter, she was transferred to Periyakulam in Theni District. Subsequently, she was given promotion as Junior Assistant and transferred to Sub Court, Madurai. In the year 2006, she was given promotion as Assistant and in the year 2010, as Head Clerk and posted at Judicial Magistrate Court No.II, Usilampatti. Thereafter, she was posted back to Judicial Magistrate No.III, Madurai and then, on 16.09.2010, she was posted as Bench Clerk Grade II at the First Additional Sub Court, Madurai and on 10.11.2010, she was posted as the Bench Clerk Grade II at Additional Chief Judicial Magistrate Court, Madurai. Thereafter, she was promoted as Translator in the year 2012 and posted at the Second Additional Special Court for NDPS Act Cases, Madurai.

3. While so, on 03.08.2012, the Second Additional Sub Judge issued a memo dated 03.08.2012 calling for an explanation from the petitioner for the loss of the case bundle in O.S.No.57 of 2007 filed by one Mr.Kannaya before the Melur (Camp) Sub Court. She gave her explanation dated 13.08.2012 stating that while she was working as the Bench Clerk Grade II at the First Additional Sub Court, Madurai, for a short term from 16.09.2010 to 09.11.2010, she attended only 7 hearings at the Melur Camp Court and the said O.S.No.57 of 2007 was never listed for hearing. That apart, on a perusal of the Court diary and the hearing book maintained at the Camp Court, Melur, it came to be known that the said suit came up for hearing on 31.08.2010 and on that day, it was adjourned to 19.10.2010. But, in the hearing book on 19.10.2010, the said suit was not entered by the previous Bench Clerk, who was on duty on 31.08.2010.

4. While so, the third respondent issued a charge memo dated 03.01.2013 levelling a charge against the petitioner with regard to the missing of case bundle in O.S.No.57 of 2007. On receipt of the charge memo, the petitioner has sought for certain vital documents as well as legal assistance by submitting a representation dated 26.02.2013. After obtaining the copies of the vital documents, the petitioner attended the domestic enquiry conducted by the Fourth Additional Judge, Madurai, who was appointed as Enquiry Officer.

<https://hcservices.ecourts.gov.in/hcservices/>

5. In the said enquiry proceedings, one Ms.Parvathi, was enquired and on request, one S.Chandrasekar, who was working as



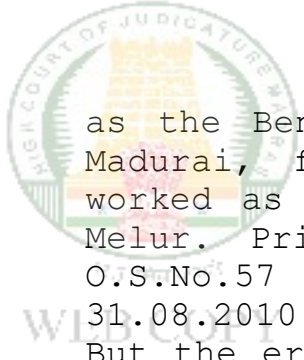
Bench Clerk at Melur Court before 16.09.2010, was also enquired. He had admitted in his cross-examination that he failed to enter O.S.No.57 of 2007 in the hearing book on 19.10.2010, after it was adjourned on 31.08.2010 to 19.10.2010. He has also admitted that due to hectic work load, he could not make necessary entries in the hearing book. In spite of such admission, the Enquiry Officer concluded the enquiry stating that the charge was proved as against the petitioner. In fact, the party has made a complaint on 02.02.2011, i.e., after the petitioner was transferred from the said post. However, the third respondent issued a second show cause notice to the petitioner giving her an opportunity of making further representation on the findings of the Enquiry Officer. The petitioner also gave her explanation on 10.11.2013 stating that the Enquiry Officer failed to make note of the admission made by Chandrasekar that he failed to make necessary entry in the hearing book on the particular date viz., 19.10.2010. However, without appreciating the same, the third respondent has passed the impugned order, reverting the petitioner from the post of Translator to Bench Clerk Grade II. Hence, the Writ Petition.

6. Today, when the matter was taken up for consideration, the learned counsel for the petitioner made his submission adverting to the averments made in the affidavit filed in support of the Writ Petition and submitted that the Enquiry Officer, without considering the admission made by the erstwhile Bench Clerk, by name Chandrasekar, to the effect that he failed to make entry about O.S.No.57 of 2007 in the hearing book, has come to the conclusion that the charge against the petitioner was proved. Based on the said finding, the impugned order of reversion came to be passed. Since the findings of the Enquiry Officer have not been supported by any proper evidence, the same is not sustainable in law. Hence, the impugned order is liable to be set aside.

7. The third respondent has filed a counter, in which, it is submitted that on the date of hearing on 19.10.2010, the petitioner was functioning as Bench Clerk Grade II in the I Additional Sub Court at Melur camp. Though it was stated by P.W.2/S.Chandrasekar in the enquiry that he failed to make an entry in the hearing book, it is the duty of the Bench Clerk, who was in-charge of the work on the date of calling to refer the fair diary and also to take the bundle, however, the petitioner failed to do so. Under such circumstances, the order passed by the third respondent cannot be found fault with. Moreover, absolutely, there is no violation of principles of natural justice in conducting the enquiry and as such, no interference is warranted.

8. Heard the learned counsel for the petitioner, the learned Additional Government Pleader for the first respondent as well as the learned counsel for the second and third respondents.

9. It is the case of the petitioner that while she was working



as the Bench Clerk Grade II at the First Additional Sub Court, Madurai, for a short term from 16.09.2010 to 09.11.2010, she worked as the Bench Clerk for seven hearings at the Camp Court, Melur. Prior to her, one Chandrasekar was working there. The O.S.No.57 of 2007 filed by one Kannaya came up for hearing on 31.08.2010 and on that day, the case was adjourned to 19.10.2010. But the erstwhile Bench Clerk failed to make entry in the hearing book on 19.10.2010 mentioning the said suit. That is the reason why, the petitioner could not list the case on the adjourned date. Therefore, absolutely, mistake is not intentional. Thus, the impugned order of reversion has to be set aside.

10. In reply, the learned counsel for the respondent submitted that though it was stated by S.Chandrasekar in the enquiry that he failed to make an entry in the hearing book about the said suit, it is the duty of the Bench Clerk, who was in-charge of the work on the date of hearing viz., 19.10.2010, to refer the fair diary and to take the bundle, which, the petitioner failed to do so. In such circumstances, the impugned orders cannot be found fault with. Furthermore, there is no violation of principles of natural justice in conducting enquiry and as such, no interference is warranted.

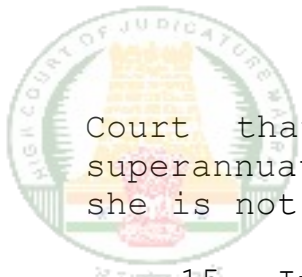
11. Admittedly, the petitioner was working as Bench Clerk only for a short period from 16.09.2010 to 09.11.2010. While she was working as such, O.S.No.57 of 2007 came up for hearing, but, he could not take the bundle on that day and the case was not called on that day. Hence, a charge memo was given to the petitioner. According to the petitioner, it is not her fault and the erstwhile Bench Clerk by name Chandrasekar has failed to make entry in the hearing book on 19.10.2010 about O.S.No.57 of 2007. That is the reason why, he had not called the case and that is not an intentional one. However, in spite of the admission made by Chandrasekar, the petitioner was imposed with the severe punishment of reversion from the post of Translator to the post of Bench Clerk Grade II. Furthermore, we are of the opinion that the charge memo was also issued with a delay of 3 years, i.e., on 03.01.2013.

12. For the foregoing reasons, we are of the view that the punishment of reversion from the post of Translator to the post of Bench Clerk Grade II appears to be disproportionate and on the higher side and hence, the same needs modification and the impugned orders are liable to be set aside.

13. Accordingly, the impugned order of reversion dated 14.07.2015 and the consequential posting order dated 14.07.2015 are set aside and the punishment imposed on the petitioner is

<https://hccourtsgov.in/services> one of censure.

14. At this juncture, it is brought to the notice of this



Court that the petitioner had already attained the age of superannuation and because of the pendency of the Writ Petition, she is not in a position to get the retirement benefits.

15. In view of the modification of punishment into one of censure, the petitioner is entitled to get the terminal benefits.

16. The Writ Petition is partly allowed in the above terms. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CSI)

/True Copy/

Sub Assistant Registrar

RR/SML

To

1. The Secretary to Government,
The State of Tamil Nadu,
Home (Courts) Department,
Fort St. George, Chennai -09.
2. The Registrar General,
High Court, Madras.
3. The Principal District Judge,
Madurai (FAC),
Madurai District.

+1cc to Mr.T.Lajapathi Roy, Advocate Sr.No. 4915

+1cc to Spl.Government Pleader Sr.No. 5025

JAM/07.03.17 /PM-PN/5P-6C

**Order made
in
W.P. [MD] .No.14937 of 2015
30.01.2017**