

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 18.04.2017****CORAM:**

WEB COPY

THE HONOURABLE MR.JUSTICE V.PARTHIBAN**W.P. (MD) .No.5258 of 2017**

Bala Rathinakumar

.. Petitioner

Vs.

1. The Commissioner,
Madurai Corporation,
Madurai.
2. The Law Officer,
Madurai Corporation,
Madurai.

.. Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the Respondents herein to disburse the monthly retainer fees for the months from 15.11.2011 to 15.06.2016 (Rs.7500 x 55 = 4,12,500/-) to the Petitioner for he served as the Standing Counsel for Madurai Corporation.

For Petitioner : Mr.S.L.Gurusamy
For R1 and R2 : Mr.R.Prabhu Ramachandran

ORDER

The prayer in the writ petition is for a Mandamus directing the respondents to disburse the monthly retainer fees for the months from 15.11.2011 to 15.06.2016 (Rs.7500x55=4,12,500/-) to the Petitioner for he served as the Standing Counsel for Madurai Corporation.

2.Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents.

3. According to the petitioner, he was appointed as Standing Counsel for Madurai Corporation by proceedings dated 15.11.2011 in Ma.sa.1/19873/2010 and monthly retainer fees was fixed at Rs.7,500/-. According to the petitioner, from 15.11.2011 to 15.06.2016 no amount was paid to him towards retainer fees. In spite of his representation to the Corporation, there was no action forthcoming. The facts as stated in the affidavit filed in support of the writ petition being not controverted or denied. Such being the case, no reason has been assigned by the Corporation for not paying the retainer fee for all these years.



Hence, the petitioner is before this Court seeking the relief stated supra.

4. The learned counsel appearing for the Corporation has made his submissions. However, he was unable to point out as to why the petitioner was not paid retainer fee for which he is entitled to as per the contract between the petitioner and the Corporation.

5. A counter affidavit has been filed on behalf of the Corporation, in which it is stated that the petitioner has given an undertaking on 12.07.2016 that he would not claim previous retainer fee and agreed to receive the retainer fee from 01.06.2016 onwards.

6. The undertaking given by the petitioner cannot be countenanced in law for the simple reason that the Corporation extracted the professional service from the petitioner for the period from 15.11.2011 to 15.06.2016 and hence, they cannot go back on their promise and deny the retainer fee payable to the petitioner in terms of the agreement. Inaction on the part of the Corporation for not paying retainer fees to the petitioner for all these years cannot be appreciated and the Corporation, being a public body, cannot drive its own Counsel to approach this Court seeking whatever due to him as per his entitlement in law. In this regard, it must be noted that the attitude of the Corporation must be deprecated for dragging its feet in settlement of retainer fee to the petitioner as per his entitlement.

7. When the matter was taken up for hearing earlier, it was suggested by this Court that the amount claimed by the petitioner may be paid atleast in installments. However, such suggestion was not agreed by the Corporation and therefore, this Court has no option except to grant the prayer sought for in this writ petition.

8. In the above circumstances, the Corporation is directed to make payment of Rs.4,12,500/- forthwith with interest at the rate of 9% payable from the date of contract till the date of realization. The Corporation is further directed to make payment within a period of two weeks from the date of receipt of copy of this order. In case, if there is further delay, the Corporation shall pay interest at the rate of 18% for the delayed period.

9. In the result, this writ petition is allowed. No costs.

Sd/-

Assistant Registrar



TO:

1. The Commissioner,
Madurai Corporation,
Madurai.

2. The Law Officer,
Madurai Corporation,
Madurai.

+1cc to Mr.R.Prabhu Ramachandran, Advocate Sr.No.52354
+ 1 CC TO M/S.POLAX LEGAL SOLUTIONS, IN SR No. 20521

cm/ia

vb/mms/sar4/04.05.2017/3p/5c

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