



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.01.2017

CORAM:

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

W.P.[MD].No.18707 of 2016

and

W.M.P(MD).No.13534 and 13535 of 2016

N.Mariappan

: Petitioner

Vs.

The Principal District Judge,
Sivagangai District, Sivagangai.

: Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records pertaining to the impugned order passed by the respondent in D.No.2963/2015/A1/Return, dated 23.03.2015 and quash the same.

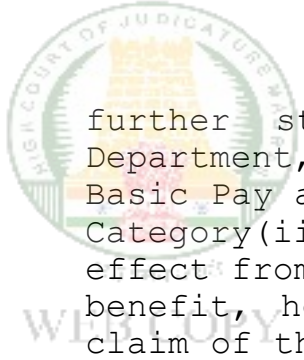
For Petitioner : Mr.R.V.Rajkumar
For Respondent : Mr.D.Sivakumar

O R D E R

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

This Writ Petition has been filed challenging the order of the respondent in D.No.2963/2015/A1/Return, dated 23.03.2015, in and by which, the claim of the petitioner seeking personal pay of 5% was rejected.

2. The case of the petitioner is that he joined as an Office Assistant in the District Court, Sivagangai, on 01.06.1993 and subsequently, he was promoted as Process/Server/Junior Baliff, on 01.11.1994 and thereafter, he was promoted as Senior Bailiff/Bailiff, on 04.09.2000. The grievance of the petitioner is that the Senior Bailiffs were neglected by the Government as regards IV-Pay Commission. Considering the fact that the High Court has recommended fixation of pay scale of Senior Bailiffs on par with Junior Assistants in terms of V-Pay Commission, there being no positive reply from the Government, W.P.No.6641 of 1991 and W.P.No.1187 of 1992 were filed. This Court directed the Government to fix the pay scale of Senior Bailiffs on par with Junior Assistants and the same was implemented by the Government, vide G.O.Ms.No.61, finance (P.C.) Department, dated 24.01.1996. It is



further stated that by way of G.O.Ms.No.664, Finance (P.C.) Department, dated 24.08.1992, the Government had granted 5% of the Basic Pay as personal pay to all categories of staff, who come under Category(ii) of para 4 of the above said Government Order with effect from 01.08.1992. Since the petitioner is entitled to the same benefit, he submitted a representation before the respondent. The claim of the petitioner was rejected by the impugned order. The said order is challenged in this Writ Petition.

3. We have heard the learned counsel appearing for the petitioner, the learned Standing Counsel appearing for the respondent and we have also perused the records carefully.

4. A similar issue came up for consideration before a Division Bench of this Court in **Tamil Nadu Judicial Senior Bailiffs' Association, District Centre, Virudhunagar, Vs. The State of Tamil Nadu, [Writ Petition (MD).No.8818 of 2008, dated 13.10.2009, wherein it has been held as follows:-**

"3.On notice, learned counsel appearing for the respondents fairly placed before this Court a Division Bench decision of this Court, dated 10.03.2006, made in W.P.No.20156 and 13143 of 2000, wherein this Court held that the omission of Selection Grade Head Clerks and Translators, etc. from the benefit of G.O.Ms.No.664 could not be sustained and there were no materials to support the said omission. Referring to the orders passed in W.P.No.928/1995, dated 15.04.1999, the Division Bench held that the said exclusion is violative of Article 14 of the Constitution of India and that equals were treated unequally and consequently the petitioners therein, who were serving as Head Clerks, were entitled to personal pay which is 5% of their Basic Pay.

4.Considering the order thus passed on a similar set of circumstances, we set aside the orders of the 1st respondent, dated 08.08.1999 and 08.09.1999, thereby allowing the writ petition granting the relief sought for and that the members of the petitioner Association are entitled to the benefit of G.O.Ms.No.664, Finance (P.C.) Department, dated 24.08.1992 as regards grant of 5% personal pay. Considering the recovery already made, we hold that it is a fit case where interest at the 6% per annum is to be paid from 01.08.1992. No order as to costs. Connected M.P.(MD) No.1 of 2008 is closed".

5. Yet another Division Bench of this Court had an occasion to consider the similar issue in **S.Sivagami Sundaram Vs.The Accountant General, [W.P. (MD).No.9459 of 2011 and batch, dated 01.03.2011, wherein at Paragraph Nos.2 and 3, it has been held as follows:-**

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2.Learned counsel for the petitioners Mr.K.Vellaisamy, Mr.G.Prabhu Rajadurai, learned counsel



appearing for the 1st respondents in both the writ petitions, Mr.P.Gunasekaran, learned counsel appearing for the Accountant General and Mr.M.Rajarajan, learned Government Advocate, appearing for Secretary to the Government, Finance Department, fairly submitted that the matter in issue is covered by the judgment of a Division Bench of this Court (Principal Bench) in W.P.Nos.20156 and 13143 of 2000, dated 10.03.2006. The said Judgment is also subsequently followed by another Division Bench (Madurai Bench) in W.P.(MD)No.8810 of 2008, dated 13.10.2009 and sustained the claim of similarly placed persons holding that the members of the petitioner Association therein, namely Tamil Nadu Judicial Senior Bailiffs' Association, are entitled to the benefit of G.O.Ms.No.664, Finance (P.C.) Department, dated 24.08.1992, as regards the grant of 5% personal pay. Learned counsel appearing for the Accountant General submitted that the Government has implemented the order of this Court vide their Letter No.34283/CMBC/2010, Finance CMBC Department, dated 10.09.2010.

3.In view of the above, both the writ petitions are disposed of in terms of the order passed by the Division of this Court in W.P.No.20156 and 13143 of 2000, dated 10.03.2006. Since no recovery was made, the question of granting any amount with interest does not arise in these case. The petitioners having been retired from service, their pensionary benefits shall be recalculated and paid to them within a period of three months from the date of receipt of a copy of this order. "

6. Following the above said decisions, the impugned order dated 23.03.2015 passed by the respondent is set aside and the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

The Principal District Judge,
Sivagangai District, Sivagangai.

+ 1 CC TO Mr.R.V.RAJKUMAR, ADVOCATE IN SR No. 4288

+ 1 CC TO Mr.D.SIVARAMAN, ADVOCATE IN SR No. 3579

NB

TE/CM-MSA : 09/02/2017 : 3P/4C

ORDER MADE IN

W.P.[MD].No.18707 of 2016 and

W.M.P (MD) .No.13534 and 13535 of 2016

23.01.2017