



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P(MD)Nos.13459 to 13461 of 2011

T.Mariappan ...Petitioner in W.P(MD)No.13459 of 2011
J.Masillamani ... Petitioner in W.P(MD)No.13460 of 2011
K.Esakkiappan ... Petitioner in W.P(MD)No.13461 of 2011

Vs.

- 1.The Principal District Judge,
Tuticorin District.
- 2.The Chief Judicial Magistrate,
Tuticorin.
- 3.The Registrar General,
High Court,
Chennai.
- 4.The Accountant General(A & E),
Tamil Nadu,
Chennai - 18. ... Respondents in all W.Ps.

Prayer in W.P(MD)No.13459 of 2011: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings of the first respondent in his reference A1.No.241/2011 dated 23.09.2011 and the impugned circular of the first respondent dated 24.09.2011 and the impugned letter of the third respondent dated 16.09.2011 issued in the reference No.1266/A/2011/G2 and quash the same and direct the respondents to pay the salary and other allowances, in the scale as has been paid hitherto, in the scale of 5700-175-9200.

Prayer in W.P(MD)Nos.13460 & 13461 of 2011: Writ Petitions are filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus calling for the impugned circular of the first respondent dated 24.09.2011 and the impugned letter of the third respondent dated 16.09.2011 issued in the



reference No.1266/A/2011/G2 and quash the same and direct the respondents to pay the salary and other allowances, in the scale as has been paid hitherto, in the scale of 5700-175-9200.

For Petitioner : Mr.K.Muthumalai
For R-1 to R-3 : Mr.D.Venkatesh
For R-4 : Mr.P.Gunasekaran

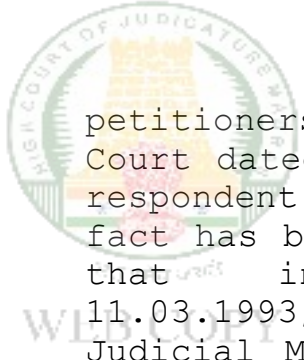
COMMON ORDER

(Common Order of the Court was made by T.S.SIVAGNANAM, J.)

Heard Mr.K.Muthumalai, learned counsel appearing for the petitioners, Mr.D.Venkatesh, learned counsel appearing for respondents 1 to 3 and Mr.P.Gunasekaran, learned counsel appearing for the fourth respondent.

2. The petitioners have filed these writ petitions challenging the common order passed by the first respondent/Principal District Judge, Tuticorin District, dated 23.09.2011 in and by which, recovery was ordered to be made from the salary of the petitioners on the ground that they have been wrongly fixed in higher scale of pay. This is the second round of litigation initiated by the petitioner in W.P(MD)No.13459 of 2011, who had approached this Court earlier by filing W.P(MD)No.1368 of 2009 along with two other persons, who had also filed W.P(MD)Nos.1366 and 1367 of 2009. In the said writ petitions the first petitioner challenged the order passed by the Principal District Judge, Tuticorin, dated 30.12.2008. By the said order, it was held that the petitioner's scale of pay was wrongly revised in the pay scale of 5700-175-9200 instead of 5000-150-8000 and steps should be taken to recover the excess payment. This Court considered the matter and in fact sought for clarification from the Registrar General, who clarified that scale of pay for the post of Head-Clerk in Judicial Magistrate Court has not been revised from the pre-revised scale. Similar stand was taken in respect of other Posts also. The Division Bench heard all the three writ petitions and was of the view that the petitioners had not been given opportunity to object to the recovery and no notice was issued and hence, allowed the writ petitions setting aside the order dated 30.12.2008 and remanded the matter back to the first respondent/Principal District Judge, Tuticorin District for fresh consideration and further directed to get a clarification in this regard from the High Court and opportunity was granted to the petitioners to raise all the points before the first respondent. Pursuant to which, the impugned order has been passed and clarification was sought for by the Principal District Judge as stated supra.

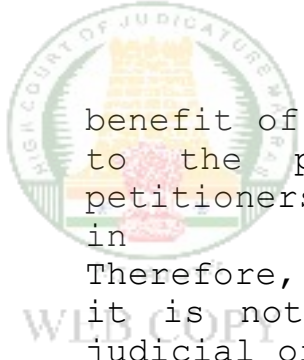
3. The short issue which falls for consideration in this case is whether the petitioners are entitled for the revised scale of pay to that of Superintendent. The only reason assigned in the impugned order is that the category of the post of the



petitioners have not been included in the proceedings of the High Court dated 20.07.1993. The counter affidavit filed by the first respondent is also to the said effect. However, one interesting fact has been mentioned in page No.12 of the counter affidavit is that in G.O.Ms.No.416 Home(Courts III) Department dated 11.03.1993, there is a reference to the Post of Head Clerk in Judicial Magistrate Courts. But in the proceedings of the High Court it is not there. Therefore, the same ought to have been taken as mistaken reference.

4. Thus, it has to be seen as to whether there was any justifiable cause in non-mentioning the posts at the relevant point of time, which are very much available in Thoothukudi District formerly known as Chidambaranar District. Before we do so, we have to necessarily state about G.O.Ms.No.416 Home (Courts III) Department dated 11.03.1993, wherein it has been stated that Tamil Nadu Judicial Ministerial Officer's Service Association represented to the Government for the upgradation of posts in category like Head Clerks in the District Munsif Court, Sub-Court, Judicial Magistrate Court, Record Keepers, Translators, Interpreters in Metropolitan Magistrate Court and Small Causes Court, Deputy Nazirs in the District Munsif Court and Superintendant of co-pyists in District Munsif Court to that of Superintendant in Ministerial Service and revision in the scale of pay. The said representation given by the Association was recommended by the High Court. Vide G.O.Ms.No.296 dated 16.02.1976, the Government accepted the proposal in principle. However, subsequently, vide letter dated 04.07.1984, the Government informed the High Court to refer the proposal of the High Court for upgradation and revision of scales to the IV Pay Commission. But the proposals were not considered by the IVth and Vth Pay Commission. During 1991-1992, the Tamil Nadu Judicial Ministerial Officers Association again submitted representations and ultimately, the Government considered the request of the Association and in the light of another Government Order in G.O.Ms.No.595 Finance(PC) dated 01.08.1992 and directed that 364 posts in the category of Head Clerks in Sub-Courts, District Munsif Court, Judicial Magistrate Court, Deputy Nazir, Record Keeper, Translator etc., be upgraded to the level of Superintendents in the Tamil Nadu Ministerial Service and 500 Posts of Junior Assistants were upgraded as Assistants and also directed that the upgradation of posts be implemented in two phases. However, this Government Order was implemented by the High Court vide R.O.C.No.391/91/G2 dated 20.07.1993, but in relation to the Posts, the Court of Chief Judicial Magistrate Courts, Judicial Magistrate Courts, were left out in respect of Chidambaranar District.

5. When the Government had already upgraded 364 categories of posts, which includes the Posts in the Chief Judicial Magistrate and Judicial Magistrate Courts, there is no reason as to why the



benefit of the above said Government Order, should not be extended to the persons, who are occupying the posts namely the petitioners. It appears to be a mistake or inadvertent omission in respect of Chidambaranar District. Therefore, this inadvertent mistake has to be rectified, though it is not done administratively, it can be done by way of a judicial order.

6. Thus, we are of the clear view that the order passed by the Principal District Judge granting higher scale of pay is perfectly legal and valid and non-mentioning of the relevant posts in the said Courts in the Chidambaranar District can be treated as an inadvertent error as these posts found place in G.O.Ms.No.416 dated 11.03.1993.

7. For all the above reasons, these Writ Petitions are allowed and the impugned order is set aside. No Costs.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar.

To

- 1.The Principal District Judge,
Tuticorin District.
- 2.The Chief Judicial Magistrate,
Tuticorin.
- 3.The Registrar General,
High Court, Chennai.
- 4.The Accountant General(A & E),
Tamil Nadu, Chennai - 18.

Copy to:

- 1 The Section Officer, Legal Cell, Madras High Court, Madras.
- 2 The Section Officer, Legal Cell,
Madurai Bench of Madras High Court, Madurai.

+3CC to M/S.K.Muthumalai, Advocate, SR.No. 51968
 +1CC to M/S.D.Venkatesh, Advocate, SR.No. 52189
 +1CC to M/S.P.Gunasekaran, Advocate, SR.No. 52170

W.P(MD)Nos.13459 to 13461 of 2011
12.04.2017