

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.12.2018

CORAM

THE HON'BLE MR JUSTICE M. VENUGOPAL
AND
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

W.P.No.13402 of 2011
and M.P.No.1 of 2011

Tamil Nadu Civil Court Junior Bailiff
(State Head Quarters) Association,
Rep by its State President,
Having Office at District Court Complex,
Villupuram

.... Petitioner

Vs

1. The State of Tamil Nadu,
Rep by Secretary to Government,
Home (Pay Cell) Department,
Fort St. George,
Chennai - 600 009

2. The Registrar General,
High Court, Madras - 104

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorari to call for the records in Letter No.96137/Cts V/2010-2 dated 05.04.2011 on the file of the First Respondent and quash the same.

For petitioner : Mr.A. Yogaraj for
Mr.Marudhachalamurthy
For R.1 : Mr.S.N. Parthasarathy
Govt. Advocate
For R.2 : Mr.R. Tholgappan

ORDER

(Order of the Court was made by M VENUGOPAL,J.,)

Heard both sides.

2. According to the Petitioner, the Association, represented by Senior Bailiffs has filed a Writ Petition in W.P.No.8818 of 2008 before the Madurai Bench of this Court and by Order dated 13.10.2009, the Hon'ble Division Bench was pleased to allow the Writ Petition and granted the relief sought for and directed the grant of 5% of Personal Pay together with interest at 6% to be paid from 01.08.1992.

3. The stand of the Petitioner/Association is that the duties and responsibilities of the Process Server/Junior Bailiff are on par with the duties and responsibilities of Amins/Senior Bailiffs. As a matter of fact, the Junior Bailiffs have a tough time to deal with the litigants and public during the time when they take possession of the property. In Execution matters, at times, they will have to risk their lives. Moreover, the duty of the Junior Bailiff per day is nearly 40 processes from High Court and Civil Courts and has to execute the 'Decree' received from other Courts also.

4. Apart from that, those, who are arrested in Civil Cases, are to be detained at Central Prison, Tiruchirappalli and this work is carried out by the Junior Bailiffs/Process Servers etc., Under these circumstances, the Petitioner/Association prayed for the benefit of 5% of basic pay granted to the Senior Bailiff, may also be extended to Junior Bailiff/Process Servers with effect from 01.08.1992.

5. The Petitioner/Association comes out with a plea that the Senior Bailiff Association before the Madurai Bench of this Court projected a Writ Petition in W.P No.8818 of 2008 and by Order dated 13.10.2009, the First Respondent's (therein) Order dated 08.08.1999, rejecting the order of the Government for grant of benefits to the Senior Bailiffs on par with the Junior Assistants in terms of V Pay Commission, was set aside by Madurai Bench of this Court.

6. The Petitioner/Association submitted a representation before the Respondents on 25.10.2010 and the same was received by the Respondents on 28.10.2010. Since no Reply was received from the Respondents, the Petitioner/Association filed a Writ Petition in W.P.No.28020/2010 before this Court and on 09.12.2010, this Court had directed the First Respondent therein to consider the representation of the Petitioner dated 25.10.2010 and take a decision on merits as expeditiously as possible and within a period of tree months from the date of receipt of copy of that Order.

7. The grievance of the Petitioner/Association is that the First Respondent/Government of Tamil Nadu, through its Letter No.96137/Cts V/2010 - 2, dated 05.04.2011, had stated that the

request of the Petitioner/Association is 'Non Feasible of Compliance'.

8. Being dissatisfied with the impugned Letter dated 05.04.2011, the Petitioner/Association has filed the present Writ Petition, seeking to call for the records of the First Respondent's letter dated 05.04.2011 and to quash the same.

9. The Learned Counsel for the Petitioner/Association submits that the impugned Order of the First Respondent in Letter No.96137/ Cts V/2010 - 2 dated 05.04.2011 is against Law and in fact, the First Respondent/Government of Tamil Nadu had failed to appreciate that

G.O.Ms.No.664 Finance (Pay Cell) Department dated 24.08.1992 does not discriminate between the staff members.

10. Advancing his argument, the Learned Counsel for the Petitioner/Association emphatically takes a plea that the First Respondent/Government of Tamil Nadu had failed to appreciate that G.O.Ms.No.497 dated 15.09.1998 had granted the benefits to all category of employees and rejection of the same insofar as the Petitioner/Association is concerned, is only a biased one.

11. The Learned Counsel for the Petitioner/Association proceeds to point out that the First Respondent/Government of Tamil Nadu had failed to note that the grant of 5% Personal Pay cannot be rejected since the scale of pay of the members of Petitioner's Association was revised.

12. The other plea taken on behalf of the Petitioner/Association is that there are no specific orders from the State Government to restrict the Personal Pay on 'Revision of scale of pay' and non consideration by the First Respondent on this aspect is an incorrect one.

13. While summing up, the contention of the Petitioner/Association is that the First Respondent/Government of Tamil Nadu had failed to appreciate in proper perspective that there cannot be two different yardstick in respect of 'Ministerial Staff' and 'Judicial Staff' and especially the Petitioner/Association.

14. In response, the Learned Government Advocate, appearing for the First Respondent/Government of Tamil Nadu submits that the Government in G.O.Ms.No.664, Finance (P.C) Department dated 24.08.1992 issued orders, granting 5% basic pay computed as on 01.08.1992 as Personal Pay to the following categories of Staff:-

(i) All categories of staff in the pre-revised scales of pay at Rs.475-775 moving over to the revised scale of pay of Rs.775-1030;

(ii) All categories of staff in the pre-revised scale of pay of Rs.610-1075 moving over to the revised scale of pay of Rs.950-1500 or Rs.975-1660;

(iii) All categories of staff in the pre-revised scale of pay of Rs.705-1230 moving over to the revised scale of pay of Rs.1200-2040;
and

(iv) All categories of staff in the pre-revised scale of pay of Rs.905-1545 moving over to the revised scale of pay of Rs.1600-2660.

Accordingly, the staff, drawing their pay in the pre-revised scale as in Column 1 and switched over to the Revised scale as on columns 2 and 3, were granted 5% Personal Pay, which runs as under:

PAY SCALES GETTING PERSONAL PAY

Pre-revised Scale under IV Pay Commission (Rs.)	Revised scale under V Pay Commission w.e.f.01.06.1988 (Rs.)	Revised scale under VI Pay Commission w.e.f.01.01.2006 (Rs.)
475-775	775-1030	2610-3540
610-1075	950-1500 975-1660	3200-4900
705-1230	1200-2040	4000-6000
05-1545	1600-2660	5300-8000

15. The Learned Counsel appearing for the First Respondent/Government of Tamil Nadu contends that the Government examined the request of the Junior Bailiffs Association dated 25.10.2010 and the scale of pay of Junior Bailiff (Process Servers) in the Judicial Department was revised from Rs.2650-4000 (pre-revised Rs.800-1150) to Rs.3050-4590 (pre-revised Rs.950-1500) only with effect from 11.01.2008 as per G.O.Ms.No.40, Home (Courts-V) Department, dated 11.01.2008.

16. Furthermore, the same scale of pay was given retrospective effect from 01.04.2003 in G.O.Ms.No.672, Home (Courts-V) Department, dated 27.07.2010. As such, it is the crystalline stand of the First Respondent/Government of Tamil

Nadu that the category of the Junior Bailiff/Process Server is not entitled for 5% Personal Pay, ordered in G.O.Ms.No.664, Finance (Pay Cell) Department, dated 24.08.1992. Besides this, the Second Respondent/Registrar General of High Court, Madras was also informed of the decision of the State Government through Letter No.96137/Cts.V/2010-2 dated 05.04.2011 to the effect that the request of the Tamil Nadu Junior Bailiff Association for grant of 5% Personal Pay granted to the Senior Bailiff with effect from 01.08.1992 is 'Non Feasible of Compliance'.

17. Expatiating his submission, the Learned Counsel for the First Respondent/Government of Tamil Nadu proceeds to point out that the Tamil Nadu Junior Bailiff Association has filed another Writ Petition in W.P.No.13402 of 2011 before this Court, seeking to quash the order issued in Government Letter No.96137/Cts.V/2010-2, dated 05.04.2011 and a prayer was made to direct the First Respondent to pay 5% Personal Pay to the members of the Petitioner/Association.

18. In this connection, the learned Government Advocate, appearing for the First Respondent/Government of Tamil Nadu submits that 5% of basic pay as on 01.08.1992 as Personal Pay was sanctioned to the categories, who were in the four kinds of scales of pay mentioned in G.O.Ms.No.664, Finance (Pay Cell) Department dated 24.08.1992. However, in the instant case, the scale of pay of the Junior Bailiff (Process Servers) in the Judicial Department was revised from 2650-4000 (Pre-revised Rs.800-1150 to Rs.3050-4590 (Pre-revised Rs.950-1500) only with effect from 11.01.2008 vide G.O.Ms.No.40, Home (Courts-V) Department, dated 11.01.2008. It cannot be gainsaid that the same was given retrospective effect from 01.04.2003, as per G.O.Ms.No.672, Home (Courts-V) Department, dated 27.07.2010.

19. The contention of the First Respondent/Government of Tamil Nadu is that the category of the Junior Bailiff is not entitled for 5% Personal Pay as ordered in G.O.Ms.No.664, Finance (PC) Department, dated 24.08.1992.

20. The Learned Counsel appearing for the Second Respondent/Registrar General, High Court, Madras submits that in an identical case, pertaining to the claim of Personal Pay in respect of Assistant Section Officer made in W.P.No.6754 of 2015, this Court, after analysing the rationale behind the policy decision underlying the grant of 5% Personal Pay to such of those categories in the scales of pay specified in G.O.Ms.No.664, Finance (Pay Cell) Department dated 24.08.1992, was pleased to dismiss the Writ Petition by Order dated 10.03.2017. As against the order dated 10.03.2017 in W.P.No.6754 of 2015, the Special Leave Petition was filed by one Y. Immanuel against the Government of Tamil Nadu and Others, which was

dismissed on 21.08.2017, after condoning the delay.

21. The Learned Counsel for the Second Respondent/Registrar General of High Court submits that the Writ Petition in W.P.No.3474 of 2013, filed by Readers/Examiners and Copyists was dismissed by this Court on 16.06.2017. Another Writ Petition in W.P.No.921 of 2017, filed by a Senior Bailiff, was dismissed by this Court on 10.04.2017 by following the earlier order made in W.P.No.6754 of 2015 dated 10.03.2017.

22. The clear cut stand of the Second Respondent/Registrar General, High Court is that the First Respondent/Government of Tamil Nadu had rejected the plea of the Process Servers in a consistent manner, based on the reason that the pre-revised/revised scale of pay for the post of 'Process Server' does not fall under any of the four categories specified in the aforesaid Government Order and decided that the post of 'Process Server' is not entitled to receive the additional benefit of 5% in accordance with the said Order.

23. To put it succinctly, the Learned Counsel for the Second Respondent takes a plea that the subject matter in issue, involved in the present Writ Petition is squarely covered by the Principles laid down in the earlier Orders passed on merits and therefore, the present Writ Petition is liable to be dismissed.

24. In the upshot of foregoings, on a careful consideration of respective contentions and also this Court, keeping in mind the Special Leave Petition, filed against the Order dated 10.03.2017 in W.P.No.6754 of 2015, was dismissed by the Hon'ble Supreme Court on 21.08.2017, after the delay being condoned and also in view of the fact that the Writ Petition in W.P.No.3474 of 2013 (projected by Readers/Examiners and Copyists) came to be dismissed by this Court on 16.06.2017 and another Writ Petition in W.P.No.921 of 2017 filed by a Senior Bailiff was also dismissed on 10.04.2017 (by following the earlier order in W.P.No.6754 of 2015 dated 10.03.2017) and in view of the crystalline stand taken by the First Respondent/Government of Tamil Nadu that the pre-revised/revised scale of pay for the post of Process Server does not fall under any of the four categories mentioned in the said Government Order, this Court comes to an irresistible and inescapable conclusion that the post of 'Process Server' is not entitled to be showered with the additional benefit of 5% 'Personal Pay' in accordance with the Government Order in question. Added further, when the subject matter, in issue, is squarely covered by the earlier orders passed by this Court and especially the order passed by the Hon'ble Supreme Court on 21.08.2017 in Special Leave Petition (filed against the order passed by this Court in W.P.No.6754 of 2015 dated 10.03.2017), this Court holds that the present Writ

Petition sans merits and the same is dismissed, leaving the parties to bear their own costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
State of Tamil Nadu,
Home (Pay Cell) Department,
Fort St. George,
Chennai - 600 009

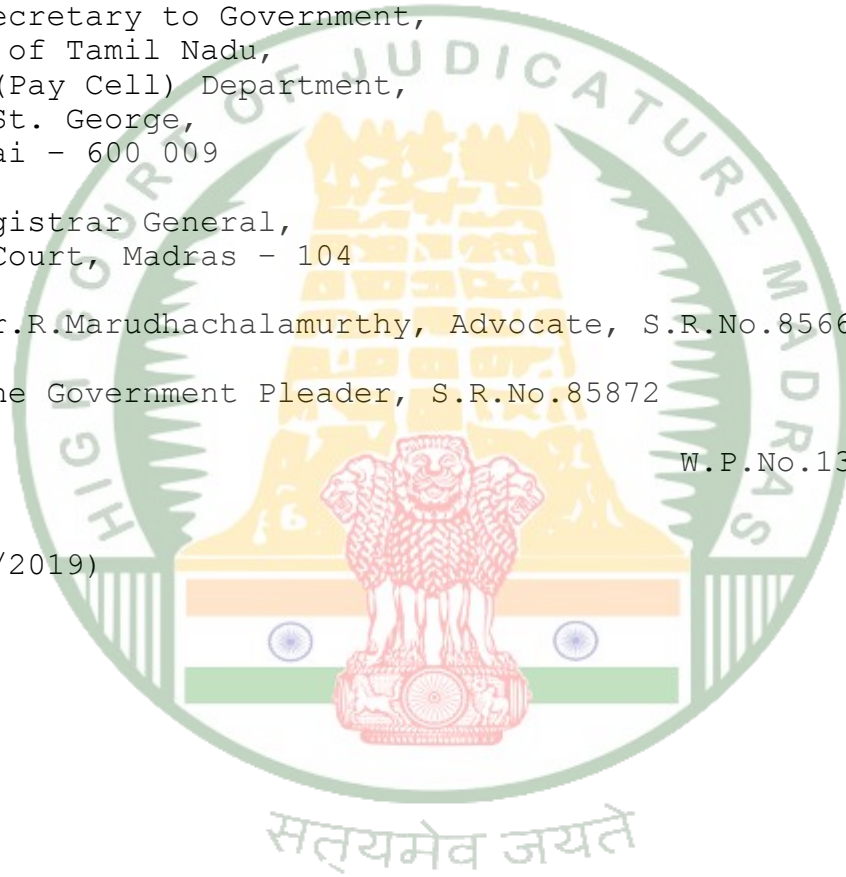
2. The Registrar General,
High Court, Madras - 104

+1cc to Mr.R.Marudhachalamurthy, Advocate, S.R.No.85662

+1cc to the Government Pleader, S.R.No.85872

W.P.No.13402 of 2011

RSI(CO)
GSP(09/01/2019)



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