

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.11.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE R.PONGIAPPAN

W.P.No.31071 of 2018

V.Subramanian

.. Petitioner

Vs.

1. The Registrar General,
High Court of Judicature at Madras,
Chennai - 104
2. The Chief Metropolitan Magistrate,
Allikulam Complex, Moore market,
Chennai - 03
3. The Accountant General,
Teynampet,
Chennai - 18

.. Respondents

Prayer: Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records of the 2nd Respondent in connection with the impugned order passed by her in Dis.No.1723/18 dated 12.10.2018 and quash the same and further direct the Respondents to fix the pay as per G.O.291 dated 26.08.2010 and to grant the revision of scale of pay and to revise the pension within reasonable time.

For Petitioner : Mr.S.Sivakumar

For Respondents : Mr.S.Thangavel for R1 and R2
Mr.Vijay Shankar for R3

O R D E R

[Order of the Court was made by M.VENUGOPAL, J.]

Heard both sides. No counter is filed on behalf of the Respondents 1 to 3.

2. According to the Petitioner, he entered into service as 'Record Clerk' on 13.04.1978 in the Judicial Ministerial Service and promoted as 'Junior Assistant' in the year 1989 and by merit and seniority, he was further promoted as 'Interpreter' on 23.07.2007 and attained the age of superannuation on 31.08.2010 and was permitted to retire from service. There was no adverse remark in his service career and further, he was meritorious through out.

3. The crystalline stand of the Petitioner is that the State Government had constituted an Official Committee to examine and make necessary recommendations for the Revision of Scales of pay and allowances of State Government employees based on the decisions of the Central Government on the recommendations of the 6th Central Pay Commission. Pursuant to the Government Order, the Official Committee had submitted his report on 27.05.2009 and decision was taken after careful examination and resultantly, the Government Order No.234 dated 01.06.2009 was issued, because of the numerous representations and petitions received from various persons, Heads of Departments and Associations stating that there is an anomaly while implementing the recommendations of the Official Committee for revision of scales of pay of certain categories, the Government had constituted a One Man Commission to examine the anomalies, if any and after careful examination, the Government had decided to accept the recommendations made by the said Commission and G.O.Ms.No.291 Finance (Pay Cell) Department dated 26.08.2010 came to be issued in respect of certain categories of Judicial Department. Pursuant to the aforesaid order, the Scales of Pay were revised in respect of certain post, which runs as under:

Sl.No	Name of the posts	Existing Scale of Pay + Grade Pay	Revised Scale of Pay + Grade pay
1.	Private Secretary	9300-34800+4700	15600-39100+5400
2	Interpreters	9300-34800+4700	15600-39100+5400
3	Overseer	9300-34800+4400	9300-34800+4600

4. The Learned Counsel for the Petitioner submits that in so far as the Judicial Department is concerned, the Government of Tamilnadu had issued the G.O.Ms.No.291 Finance (Pay Cell) Department dated 26.08.2010, but the Respondents had not chosen to extend the benefit till date. As a matter of fact, the Petitioner approached in-person and prayed to extend the benefit of the aforesaid G.O.Ms.No.291 Finance (Pay Cell) Department dated 26.08.2010 and to fix the Scale of Pay in terms of the said Government Order, but his endeavour has proved futile.

5. At this juncture, the Learned Counsel for the Petitioner brings to the notice of this Court that one Mrs.K.Srimathi [similarly placed person] approached this Court and projected W.P.No.12374 of 2018 wherein a prayer was sought for issuance of

a direction to the Respondents 2 and 3 therein to extend the benefit of G.O.Ms.No.291 Finance (Pay Cell) Department dated 26.08.2010 to her and to grant the revision of scale of pay and grade pay by considering her representation dated 04.11.2017 within a reasonable time. Indeed, the said W.P.No.12374 of 2018 was disposed of by this Court on 05.6.2018 whereby and whereunder at Paragraph No.9, this Court had observed as under:

"9. The primordial grievance of the Petitioner is that her Representation dated 04.11.2017 is to be considered by the Second Respondent as per G.O.Ms.No.291, Finance (Pay Cell) Department, dated 26.08.2010, so that she can avail the benefits showered upon by the State Government order etc., The request of the Petitioner in this regard, in the considered opinion of this Court, is well founded. Hence, this Court deems it fit and proper in directing the Second Respondent / Chief Metropolitan Magistrate, Allikulam Complex, Moore Market, Chennai - 03, to look into the Representation of the Petitioner, dated 04.11.2017, with all seriousness and earnestness and to pass appropriate orders in a fair, free, just and dispassionate manner within a period of three weeks from the date of receipt of copy of this order. It is open to the Second Respondent to provide an opportunity of hearing to the Petitioner, if she so desires/ situation so warrants and the Petitioner can avail the same."

and accordingly disposed of the said Writ Petition.

6. Expatiating his submission, the Learned Counsel for the Petitioner emphatically points out that pursuant to the order passed by this Court in W.P.No.12374 of 2018 dated 05.06.2018, the 2nd Respondent / Chief Metropolitan Magistrate, Allikulam Complex, Moore Market, Chennai - 3 had considered the claim of Mrs.K.Srimathi and determined her salary as per the Government Order vide Dis.No.5564/2018A dated 14.08.2018. However, in respect of the present Writ Petitioner, the 2nd Respondent / Chief Metropolitan Magistrate, Chennai - 3 had returned the Representation / Application of the Petitioner dated 01.10.2018 [forwarded by the Metropolitan Magistrate Court, Saidapet, Chennai in Dis No.7290/2018 dated 01.10.2018] assigning the reason to the following effect:

"It is further informed that on consideration of the above facts and as per the Order of the Hon'ble High Court, Madras directing the Chief Metropolitan Magistrate, Egmore at Allikulam Complex, Chennai - 3, to fix the pay to Tmt.K.Srimathi only. The individual Tmt.K.Srimathy's application was considered. Beyond the order of the Hon'ble High Court, Madras, the Chief

Metropolitan Magistrate, Egmore at Allikulam Complex, Chennai - 3 cannot consider the applications submitted by the individuals."

7. The substratum stand of the Petitioner is that the 2nd Respondent had failed to consider the subsequent Government Order No.176 dated 28.02.2018 whereby and whereunder the Government had sanctioned supporting staffs and the pay was fixed as Rs.15600-39100+ 5400 and when there is no ambiguity in the Government Order, then, it is the duty of the Respondents to implement the Government Order in true letter and spirit with a view to rectify the pay anomaly. To put it succinctly, the Learned Counsel for the Petitioner strenuously projects an argument that the 2nd Respondent / Chief Metropolitan Magistrate, Chennai had returned the request of the Petitioner in his representation dated 01.10.2018 without any tangible reason and as such, the Petitioner is left with no other option except to file the present Writ of Certiorarified Mandamus before this Court.

8. It must be borne in mind that as per Section 43 of the Indian Evidence Act, 1872, an Order / Judgment passed between the respective parties is binding on them. When the Petitioner is similarly situated like that of the Writ Petitioner in W.P.No.12374 of 2018, then, in the considered opinion of this Court, the representation of the Petitioner 01.10.2018 should have been considered by the 2nd Respondent in a real and proper perspective. Unfortunately, the 2nd Respondent has not resorted to such a recourse and the Petitioner was perforced to project the instant Writ Petition before this Court.

9. Be that as it may, in view of the fact that this Court in W.P.No.12374 of 2018 on 05.06.2018 had directed the 2nd Respondent / Chief Metropolitan Magistrate, Allikulam Complex, Moore Market, Chennai - 3 to look into the representation of the Petitioner therein dated 04.11.2017 with all seriousness, earnestness and to pass appropriate orders in a fair, free, just and dispassionate manner within a period of three weeks from the date of receipt of copy of this order etc., this Court, at this stage, simpliciter directs the 2nd Respondent to look into the representation of the Petitioner dated 01.10.2018 with all seriousness, earnestness, in a threadbare fashion and to pass a reasoned order in question in an unbiased, dispassionate manner within a period of two weeks from the date of receipt of a copy of this order.

Before passing the final orders in the subject matter in issue, it is open to the 2nd Respondent to provide an opportunity of hearing to the Petitioner, if he so desires / situation warrants and that the Petitioner can avail the same diligently. With the above said observations and directions, the Writ Petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Registrar General,
High Court of Judicature at Madras,
Chennai - 104
2. The Chief Metropolitan Magistrate,
Allikulam Complex, Moore market,
Chennai - 03
3. The Accountant General,
Teynampet,
Chennai - 18

W.P.No.31071 of 2018

nr 14/12/2018

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