

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2019

CORAM

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

Review Application No.117 of 2019
in
Writ Petition No.28091 of 2017

The High Court of Judicature at Madras,
Rep., by its Registrar General,
Chennai-600 104.

.. Petitioner/Respondent No.1

-VS-

1.V.Nallasenapathy,
S/o.M.Velusamy.

.. Respondent No.1/Petitioner

2.The State of Tamil Nadu,
Rep., by its Secretary to Government,
Home (Courts-IA) Department,
Fort St. George,
Chennai-600 009.

.. Respondent No.2/Respondent No.2

Review Application under Order 47, Rule 1 of Code of Civil
Procedure, 1908, to review the order dated 26.02.2018 passed in
W.P.No.28091 of 2017 on the file of this Court.

For Petitioner : Mr.M.Santhanaraman

For Respondent-1 : Mr.K.Doraisami, Senior Counsel,
for M/s.Kandan Doraisami

For Respondent-2 : Mr.Zahir Hussain

ORDER

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

This Review Application has been filed by the High Court, represented by its Registrar General, to review the order and direction dated 26.02.2018 passed in W.P.No.28091 of 2017.

2.The 1st respondent filed the Writ Petition praying for issuance of a Writ of Mandamus to direct the High Court and the Government of Tamil Nadu to fix the scale of pay at Rs.51550-1230-58930-1380-63070 for the post of Official Assignee on par with that of the District Judge (Entry Level) from the date of promotion of the 1st respondent/writ petitioner as Official Assignee.

3.The said Writ Petition has been disposed of by order dated 26.02.2018 and the operative portion of the order reads as follows:

"4. Learned senior counsel appearing for petitioner placed reliance on decision of this Court in WP.No.1534 of 2007 dated 15.06.2010 as also the revision of scale of pay, Madras High court Rules in

ROC.No.1915- /97-G2 dated 25.06.1998 to submit that the scale of pay envisaged for District Judge(Entry Level), Additional Registrars and the Chief Editor, Tamil Law Journal as also the Official Assignee, the post petitioner held, was placed at 15000-400-18600. Learned Senior counsel relied on G.O.Ms.No.1351/Home (Courts.IA) Department dated 18.12.2003 to submit that persons similarly placed had been granted the benefit sought by him and accordingly petitioner also ought to be granted relief.

5. Learned counsel for first respondent pointed out that the office of Official Assignee inter alia involved both Administrative and Judicial functions and the representation of the petitioner dated 10.02.2014 along with enclosures had been submitted for necessary orders of Government and further in communication dated 16.02.2017 in ROC.No.253/2014/RG/B2, first respondent had requested that necessary orders of Government may be obtained and communicated to the Registrar since the matter was pending for a long time.

6. Mr.M.Santhana Raman, learned counsel for first respondent has placed before us letter No.75904/Cts-I/2017-4 dated 11.01.2018 which informs the rejection of the request of the petitioner. Though in judgment in WP No.1534 of 2007 dated 15.06.2010 some distinction was sought to be drawn between Official Assignees of Madras High Court

drawn from the Judicial Services and those who were not from such service, we are of the view that such consideration does not stand in the way of this Court coming to the aid of the petitioner. We say so since revisional scale of pay informed in ROC. No.1915-A/97-G2 makes clear that District Judge (Entry Level) as also Official Assignee stand on the same footing and are entitled to parity of pay. Accordingly, the petitioner is eligible to scale of pay as applicable to District Judge (Entry Level) i.e., 51,550-1230-58,930-1380-63070.

7. Hence, we direct the second respondent to fix the scale of pay of the petitioner at 51,550-1230-58,930-1380-63070 from the date of his appointment as Official Assignee to the date of his retirement and issue appropriate orders, within a period of four weeks from the date of receipt of a copy of this order.

8. This Writ petition is ordered accordingly. No costs."

4. We find from paragraph 6 of the above order that the learned counsel for the High Court placed before the Division Bench a Government Letter dated 11.01.2018 by which, the Government has rejected the request of the 1st respondent/writ petitioner. For better appreciation, we quote the letter hereunder:

"Home (Cts-I) Department,
Secretariat, Chennai-9.

Letter No.75904/Cts-I/2017-4, dated 11.01.2018

From
Dr.Niranjani Mardi, I.A.S.,
Additional Chief Secretary to Government.

To
The Registrar General,
High Court,
Chennai-104 (w.e).

Sir,

Sub: W.P.No.28091 of 2017 filed by
Thiru V.Nallasenapathy-
Fixation of scale of pay on part with
District Judge-Regarding.

Ref: 1.Government letter No.75904/
Cts.I/2017-3, dated 22.11.2017.

2.Your Letter Roc No.14580/2017/B1
dated 22.11.17.

3. From the Special Government Pleader,
High Court of Madras letter dated
08.12.2017.

4. Order of the High Court of Madras dated
20.12.2017 in W.P.No.28091 of 2017.

I am directed to invite your attention to the references cited wherein it has been requested to restore the parity in the scale of pay for the post of Official Assignee which was maintained from First Pay Commission to Fifth Pay Commission and to extend the scale of pay of District Judge (Entry Level) to

Thiru V.Nallasenapathy, from the date of his promotion as Official Assignee, High Court of Madras as per the orders issued in G.O.Ms.No.393, Home (Courts-I) Dept., dated 15.07.2011 to one similarly placed person Thiru T.P.Parameswaran, Official Assignee (Retired), while implementing the orders of Division Bench of Hon'ble High Court on 15.06.2010 in W.P.No.1534/2007.

2.In this regard, I am directed to state that in G.O.Ms.No.393, Home, dated 15.07.2011, orders were issued to Thiru T.P.Parameswaran, the then Official Assignee (Retired), High Court, Madras, subject to the condition that the revision of scale of pay thereby ordered shall be applicable to the individual only and that case shall not be quoted as a precedent in any case in future and that was issued as per the orders of the High Court of Madras dated 15.06.2010 in W.P.No.1534/2007. Hence, the request of the petitioner Thiru V.Nallasenapathy to fix the scale of pay at Rs.51,550-1230-58,930-1380-63,070 for the post of Official Assignee on par with that of the District Judge (Entry Level) from the date of his promotion as Official Assignee is not feasible of compliance."

5.The representation given by the 1st respondent/writ petitioner had been forwarded by the High Court to the Government and there has been a direction in Writ Petition No.28091 of 2017, dated 20.12.2017 to dispose of the representation and the Government has passed the above order, rejecting the request of the 1st respondent/writ petitioner to fix his scale of pay on par with that of the District Judge (Entry Level).

6.To be noted that the prayer sought for is to grant the scale of pay as sought for by the 1st respondent/writ petitioner and the arguments advanced have been noted by the Division Bench in paragraph 4 of the order. However, on the date when the Writ Petition was disposed of, the representation has already been rejected. The question of treating both the posts as equivalent or not requires to be decided by the Government. Therefore, it is incumbent upon the 1st respondent/writ petitioner to question the Government decision dated 11.01.2018.

7.It is submitted by the learned Senior Counsel for the 1st respondent/writ petitioner that the Government letter dated 11.01.2018 was never communicated to the 1st respondent/writ

petitioner. In any event, this having been placed before this Court, at least additional grounds should have been raised challenging the order, because the Government proceeds on the basis that the benefit granted to Thiru.T.P.Parameswaran, the then Official Assignee (Retired) cannot be extended to the 1st respondent/writ petitioner, because the order passed by this Court in his case in Writ Petition No.1534 of 2007, dated 15.06.2010 states that it should not be treated as a precedent.

8.It is the submission of the learned Senior Counsel that it is not the only ground on which the 1st respondent/writ petitioner had approached this Court and there were several other contentions which have been stated in the Writ Petition and the present attempt of the High Court is to re-hear the entire matter, when the Court has recorded a finding in paragraph 6 of the above referred order dated 26.02.2018.

9.It is relevant to mention at this juncture that the order passed in the Writ Petition filed by Mr.T.P.Parameswaran, in W.P.No.1534 of 2007 has been reviewed in Review Application No.47 of 2013, dated 08.07.2013 and the order has been recalled and the order has attained finality. However, we are informed that the High Court has taken a

decision not to recover the monetary benefits paid to Thiru.T.P.Parameswaran. It is pointed out by the learned counsel appearing for the petitioner that in the order passed in Review Application No.47 of 2013, the Division Bench pointed out that there is nothing in the provisions of the Presidency Towns Insolvency Act, which necessitated the Official Assignee to pronounce an order, as is being done in the case of Judgment of Courts and also bearing in mind another fact that in strict sense of the term, he is not a Judicial Officer. It is further pointed out in the said order it has been held that when insolvent's property vests in his hand as "owner" though only for the benefit of others and in such a matter, he is only a litigant. Further, it is submitted that from the order passed in Review Application No.47 of 2013, to review the order in W.P.No.1534 of 2007, dated 15.06.2010, filed by Thiru.T.P.Parameswaran, it is clear that the Writ Petitioner on a misconception of fact, has been incorrectly mentioned as a Judicial Officer holding the post of Official Assignee equal to that of District Judge, from the year 1990 and therefore, he is entitled for extension of the same scale of pay on par with two individuals which is self-evident and in this regard, obviously an error apparent on the face of the record has crept in.

10.The learned Senior Counsel for the 1st respondent/writ petitioner submitted that the decision of the High Court of Bombay in ***Ms.Adeline Rodrigues and Others vs. The State of Maharashtra and Others*** [W.P.No.868 of 2008 dated 07.08.2013] fully supports the case of the 1st respondent and the said decision of the Bombay High Court has been affirmed, as the Special Leave Petition filed against the said decision in Special Leave to Appeal (Civil) No.33079 of 2013 was dismissed by the Hon'ble Supreme Court on 18.11.2013. In any event, these issues have to be argued, as these points have not been canvassed in the Writ Petition.

11.We find that the observations of the Court in Paragraph 6 of the above referred order dated 26.02.2018 is based upon Roc No.1915A/97-G2. Though it is observed that it makes clear that District Judge (Entry Level) as also Official Assignee stand on the same footing and are entitled to parity of pay, we are to note that the said Roc No.1915A/97-G2 deals with Revision of Scales of Pay Rule for Madras High Court Service issued on 25.06.1998. We find that much has happened thereafter and there has been subsequent revisions of scales of pay and the latest of which being in Roc No.16686/2017/G2. From the said notification, which has been issued by the Judicial

Department in exercise of the powers conferred by Article 229 of the Constitution of India, we find that revised scales of pay have not been fixed up to the post Assistant Registrar (e-Court), as all of them are serving Judicial Officers. The scales of pay to Registrar (Admn.), Registrar (Management), Registrar-cum-Special Officer (Liaisoning), Additional Registrar (IT & Statistics), Official Assignee, Registrar-cum-Private Secretary to the Hon'ble the Chief Justice have been revised. The post of Official Assignee is shown as Sl.No.25 in the said notification. The pre-revised scale of pay was 37400-67000+8800 and the revised scale of pay as per the 7th Pay commission Government Order is 123400-216300.

12.Insofar as the Tamil Nadu State Judicial Service is concerned, pay revision was recommended by Hon'ble Justice Shetty Commission. Subsequently, the Hon'ble Supreme Court by order dated 28.04.2009, appointed One Man Commission headed by Hon'ble Mr.Justice E.Padmanabhan (Retd.) to determine the scale of pay of all the Judicial Officers working and retired throughout the country. The Commission submitted its report and based on the report, the Hon'ble Supreme Court gave directions to implement the revision of scales and accordingly, the Government had issued G.O.Ms(Ms) No.648, Home

(Courts.I) Department, dated 19.07.2010. In the said Government Order, the revision of scale of pay has been directed to be implemented for nine categories of posts, in which District Judge (Entry Level) is Sl.No.7. Revised scale of pay of District Judge (Entry Level) is 51550-1230-58930-1380-63070. Therefore, the 1st respondent/writ petitioner if seeks for a larger relief, the challenge to the proceedings should be at a different level and we are of the *prima facie* view that the grounds raised in the writ petition are insufficient to meet the contentions which have been now placed before us. However, taking note of the fact that the Government letter dated 11.01.2018 has not been communicated to the 1st respondent/writ petitioner, we direct the same to be communicated and give liberty to the first respondent/writ petitioner to file a comprehensive writ petition, if he is so advised, raising all contentions.

13.In the result, the Review Application is allowed and the order dated 26.02.2018 is set aside.

14.The petitioner/High Court is directed to communicate the Government letter dated 11.01.2018 to the 1st respondent/writ petitioner within a period of ten days' from the date of receipt of a

copy of this order. On receipt of the same, the petitioner is at liberty to proceed further in the matter in terms of the above observations. No costs.

(T.S.S., J.) (N.S.K., J.)
01.07.2019

Index : Yes/No
Speaking/Non-Speaking Order

abr

To

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



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T.S.Sivagnanam, J.
and
N.Sathish Kumar, J.

(abr)



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