

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2019

CORAM:

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

W.P.No.30090 of 2018
and W.M.P.No.35101 of 2018

M.Mary Kala Jayanthi

.. Petitioner

Vs.

1. Office of Hon'ble Chief Metropolitan Magistrate,
Egmore at Allikulam Complex,
Chennai-600 003.
2. The Government of Tamil Nadu,
Rep. by its Hon'ble Secretary,
Law Department,
Fort St.George, Chennai-600 009.
3. The Registrar General,
Madras High Court,
Chennai-600 104.

(Third Respondent impleaded vide Court
Order dated 21.12.2018 passed in
W.M.P.No.39578 of 2018 in W.P.No.30090
of 2018)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records culminating in the impugned Official Memorandum bearing Reference Number Dis.No.1102/2018.Con, dated 31.10.2018 issued by the Chief Metropolitan Magistrate and quash the same.

For Petitioner : Mr.V.Prakash,
Senior Counsel for M/s.RRN Legal

For Respondents : Mr.D.Kanagasundaram for RR-1 and 3
Mr.S.N.Parthasarathy, Govt.Advocate for R-2

ORDER

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

The Petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorari to call for the records culminating in the impugned Official Memorandum bearing Reference Number Dis.No.1102/2018.Con, dated 31.10.2018 issued by the Chief Metropolitan Magistrate, Chennai and quash the same.

2. Heard the Learned Senior Counsel for the petitioner, the Learned Counsel for Respondents 1 and 3 and the Learned Government Advocate for the Second Respondent.

3. According to the Learned Senior Counsel for the Petitioner, the petitioner joined in Government Service as Steno Typist in Metropolitan Magistrate's Court, Chennai on 08.12.1981 and on 01.02.2007, she was promoted as Assistant and thereafter, she had been working as Interpreter from 10.05.2012 to 05.06.2013 before XIV Metropolitan Magistrate's Court, Chennai and lastly on 06.06.2013, she got promoted as Head Clerk and was working in the Office of the Administrator General and Official Trustee of Tamil Nadu and attained superannuation on 30.04.2016. Further, the Petitioner is receiving the pension as per the Tamil Nadu Pension Rules, 1978.

4. At this stage, the Learned Senior Counsel for the Petitioner submitted that the Petitioner, on 20.06.2018, has received an Official Memorandum from the Office of the First Respondent to submit her explanation in regard to the complaint, dated 18.12.2013, lodged by one R.Chinnaraju before the Third Respondent/Registrar General of this Court, questioning the reason for not transferring the case records in C.C.Nos.19494 to 19496 of 2005 on the file of the XIV Metropolitan Magistrate, Egmore, Chennai to Fast Track Court at Magisterial Level No.2, Egmore, Chennai.

5. The Learned Senior Counsel for the Petitioner further proceeds to point out that the learned XIV Metropolitan Magistrate, Chennai, has submitted a Report before the Third Respondent/Registrar General of this Court, stating that all the above said three case bundles along with the other cases filed under Section 138 of the Negotiable Instruments Act, were sent to the Fast Track Court No.2, Magistrate Level, Egmore, Chennai, on 21.11.2012 and the three case bundles were returned on 28.11.2012 with the following comments:

- (a) C.C.No.19494 of 2005 - duly not indexed;
- (b) C.C.No.19495 of 2005 - P.W.1 is missing, and
- (c) C.C.No.19496 of 2005 - Ex.P-1 is missing.

6. Further, it is projected on the side of the Petitioner that the learned XIV Metropolitan Magistrate had sent the above three case bundles on 09.07.2014 with the report that the case in C.C.No.19494 of 2005 is duly indexed, the two documents, i.e. Deposition of P.W.1 in C.C.No.19495 of 2005 and Ex.P-1 in C.C.No.19496 of 2005 were unable to be traced out, and the Fast Track Court No.2, Magisterial Level, Egmore, Chennai, received the above three case bundles without such documents.

7. The Learned Senior Counsel for the Petitioner brings to the notice of this Court that the Petitioner submitted her explanation to the First Respondent on 18.07.2018 stating that she was working as an Interpreter before the XIV Metropolitan Magistrate's Court, Egmore, Chennai, from 10.05.2012 to 04.06.2013 and from 2011, as the posts of Bench Clerk and Interpreter were vacant, the Petitioner joined the Office of the XIV Metropolitan Magistrate, Egmore, Chennai on 10.05.2012 and she came to know that the Interpreter and Bench Clerk posts were vacant for more than a year, and therefore, the Learned XIV Metropolitan Magistrate, Egmore, Chennai and other Courts concerned, functioned with the help of FIR Clerk and Record Clerk.

8. At this juncture, the Learned Senior Counsel for the petitioner points out that the Petitioner had given a reply on 16.11.2018 to the First Respondent/ Chief Metropolitan Magistrate, Egmore, Chennai, wherein the Petitioner had taken a plea that the Official Memorandum in Dis.No.1102/2018.Con, dated 20.06.2018 and the Official Memorandum in Dis.No.1102/2018, dated 31.10.2018 were issued in violation of Rule 9 of the Tamil Nadu Pension Rules, 1978 and the entire transactions pertain to an event alleged to have taken place on 21.11.2012 and the complaint of the said R.Chinnaraju, dated 18.12.2013, was lodged and in terms of Rule 9(2)(b)(ii) of the Tamil Nadu Pension Rules, no proceedings can be instituted in respect of an event which took place more than four years before such institution. Furthermore, the Petitioner got superannuated on 30.04.2016 itself, and as such, the threat of the proceedings under Rule 9 (1)(a) of the Tamil Nadu Pension Rules is wholly without jurisdiction.

9. Yet another argument of the Learned Senior Counsel for the Petitioner is that the impugned Official Memorandum, dated 31.10.2018, of the First Respondent, is unilateral and arbitrary one, and the same is passed without application of mind.

10. Per contra, it is the submission of the Learned Counsel for the Respondent Nos.1 and 3 that the Petitioner submitted her explanation on 18.07.2018 in respect of the Official Memorandum issued by the First Respondent on 20.06.2018 and the said

explanation was perused and found to be not satisfactory by the First Respondent, and hence, the Petitioner received another Official Memorandum on 31.10.2018 from the First Respondent calling for Written Reply in that regard to be submitted on or before 19.11.2018 to proceed further in accordance with Rule 9 (1) (a) of the Tami Nadu Pension Rules, 1978.

11. The Learned Counsel for the Respondent Nos.1 and 3 points out that the Petitioner submitted a 'Written Reply' on 16.11.2018 itself to the First Respondent (for the Official Memorandum, dated 31.10.2018) and that the First Respondent will pass necessary orders within a period of four weeks from the date of receipt of a copy of this order in regard to the continuance or otherwise of the 'Disciplinary Proceedings'.

12. In view of the above submissions of the Respondent Nos.1 and 3, the First Respondent/Chief Metropolitan Magistrate, Chennai, is directed to pass necessary reasoned and speaking order on the Reply, dated 16.11.2018 of the Petitioner, in qualitative and quantitative terms (by meeting out both factual and legal pleas) within the time granted by this Court. In the event of the First Respondent passing necessary orders in the subject matter in issue in respect of the 'Written Reply' of the Petitioner, dated 16.11.2018, and if the Petitioner is Aggrieved/Dis-satisfied with the same, it is open to her to assail the same before the Competent Forum, of course, in the manner known to Law and in accordance with Law, if she so desires/is she is so advised.

13. With the above observations and directions, the Writ Petition is disposed of. No costs. Consequently, W.M.P. is closed.

s/d-
Assistant Registrar

True Copy
सत्यमेव जयते
Sub-Assistant Registrar

CS
To

1. The Chief Metropolitan Magistrate,
Egmore at Allikulam Complex,
Chennai-600 003.
2. The Secretary,
The Government of Tamil Nadu, Law Department,
Fort St.George, Chennai-600 009.

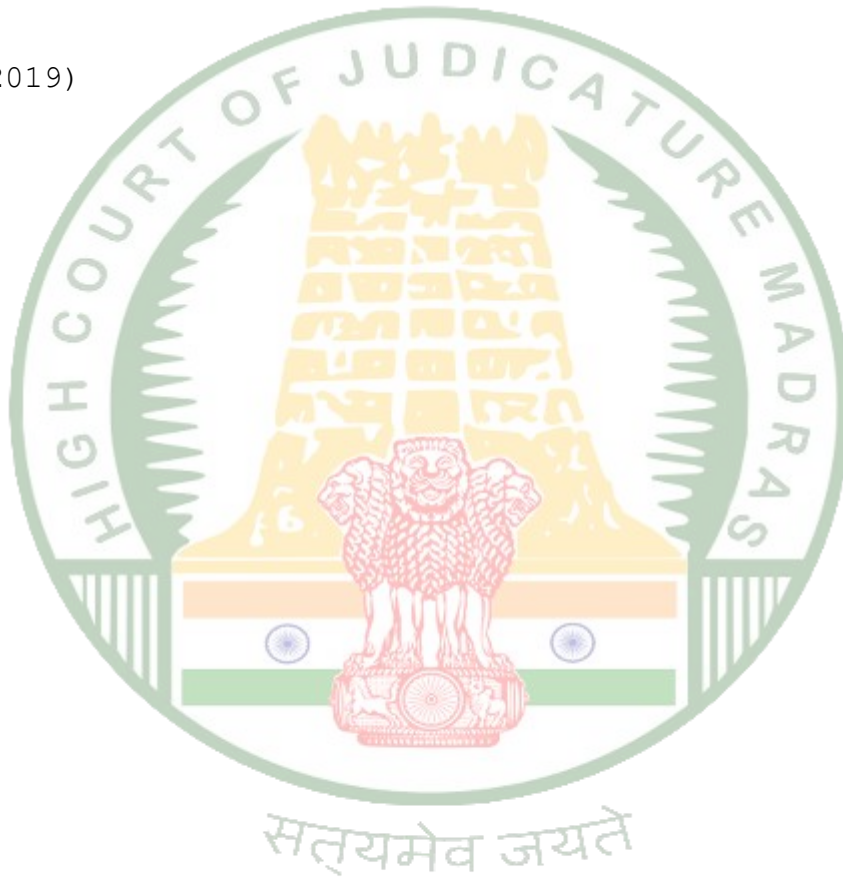
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3. The Registrar General,
Madras High Court,
Chennai-600 104.

+1 CC to M/s. RRN Legal, Advocate sr 5760.
+1 CC to Govt. Pleader sr 6029.

W.P.No.30090 of 2018

SVI (CO)
SP (08/02/2019)



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