

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.02.2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ
W.P.No.39374 OF 2005

A.Vamadevan

... Petitioner

Vs.

The Vice Chairman and
Chief Executive Officer
Tamil Nadu Maritime Board
Chennai-600 017

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the respondent to pay back wages to the petitioner for the period 01.08.1998 to 31.10.2001.

For Petitioner : Mr.P.Rajendaran

For Respondent : Mr.P.Chinnadurai
Additional Government Pleader

O R D E R

Petitioner was selected through the Employment Exchange by Port Department, Government of Tamil Nadu following the regular selection procedure and was appointed as Port Officer on 15.02.1982. He completed his probation on 14.02.1984. By G.O.Ms.No.921, Transport Department dated 06.08.1984, Poompuhar Shipping Corporation was directed to take over employees running ferry service from the main land to Vivekananda Rock Memorial. Accordingly, petitioner along with other 12 persons was deputed to Poompuhar shipping Corporation on foreign service terms and conditions. Later Poompuhar Shipping Corporation had terminated the said transportation task and therefore made a request to the Government to issue directions to surrender back the 13 persons deputed to its service. It appears that the Government has also had taken a decision that those employees should be taken back and absorbed in Government service. But however, on later date the Poompuhar Shipping Corporation on the advice of the respondent terminated the services of the petitioner. Aggrieved over the same, he filed a writ petition which was transferred to

Tamil Nadu Administrative Tribunal and decided in his favour. A direction was issued to the respondent to reinstate the petitioner service to pay all arrears of back wages and monetary benefit. The order of the Tribunal was passed on 31.07.1998 against which the Government preferred an Writ petition No.6088 of 1999. This Court by its order dated 20.08.2001 had dismissed the writ petition and observed that the period spent from 31.07.1998 the date on which the judgment passed by the Tribunal and date of judgment passed by this Court in W.P.No.6088 of 1999 dated 20.08.2001 shall be decided separately. The petitioner made a representation on 21.04.2005 for payment of salary for period between 1998 and 2001. In the meanwhile, the respondent had settled the entire arrears upto the date of the order passed by the Tribunal.

2. Controverting the facts, the respondent filed detailed counter affidavit. Learned Government Advocate placed his arguments on the basis of the statement made in the counter. According to him, the petitioner was permitted to retire on voluntary retirement basis with effect from 31.01.2005 and all the pensionary benefits were settled taking to account the entire service rendered by him including the periods mentioned as per the directions of this Court. Since the direction is issued by this Court the period between 1998 to 2001 will be decided separately, it was not paid and it has to be decided.

3. I considered the rival submissions.

4. Admittedly, the Tribunal by its order dated 31.07.1998 has given a positive direction directing the respondent to reinstate the petitioner into Government service and to pay all monetary benefits including the arrears of pa. Infact, the respondent has complied with the same and paid all the back wages and regularised the service. It only need to pay the remaining salary between 1998-2001 during which period the writ petition was pending. From the factual circumstances, it is seen that the petitioner was all along willing to join the services of the respondent. It is only the respondent, who prevented him from joining the service. Admittedly, the writ petition was dismissed on merits. In those circumstances, it is clear that but for filing of the writ petition, the petitioner would have been taken into service and all his wages could have been paid. Since the petitioner was willing to join service, but was prevented by the respondent on account of pendency of writ petition, no fault can be attributed to the petitioner and he is entitled to get salary for that period. In the result, a direction is issued to the respondent to pay the salary for the period between 31.07.1998 to 20.08.2001 as prayed for by the petitioner.

5. In the result, writ petition is allowed and the respondent is directed to comply with this order within a period of six weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Vice Chairman and
Chief Executive Officer
Tamil Nadu Maritime Board
Chennai-600 017

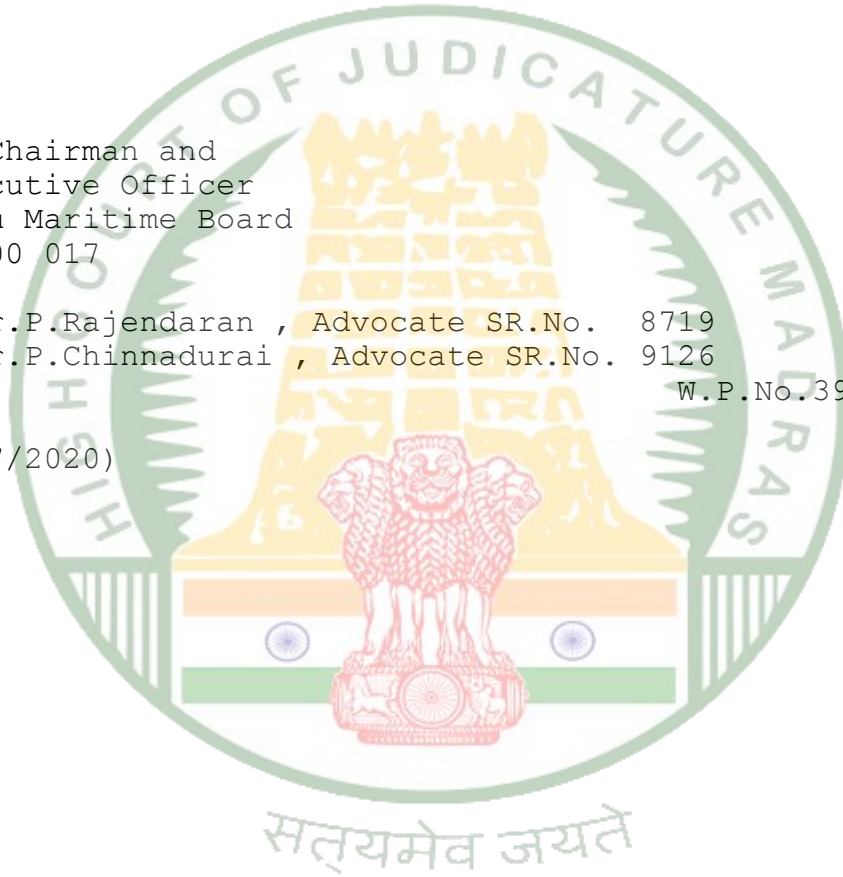
+1cc to Mr.P.Rajendaran , Advocate SR.No. 8719

+1cc to Mr.P.Chinnadurai , Advocate SR.No. 9126

W.P.No.39374 of 2005

pvs

A.SK(28/07/2020)



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