



W.A.(MD)No.979 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2024

CORAM:

THE HONOURABLE **MRS.JUSTICE V.BHAVANI SUBBAROYAN**

AND

THE HONOURABLE **MR.JUSTICE K.K. RAMAKRISHNAN**

W.A.(MD)No.979 of 2017

and

C.M.P.(MD)No.6655 of 2017

The Commissioner,
Madurai City Municipal Corporation,
Madurai – 625 002.

...Appellant

/Vs./

1.J.Vijayakumar

2.The State of Tamil Nadu,
Rep. By its Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat,
Chennai – 9.

3.The Commissioner of Municipal Administration,
Chepauk,
Chennai – 5.

...Respondents



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PRAYER:- Writ Appeal - filed under Clause XV of Letters Patent Act, to allow the writ appeal and to set aside the order passed by this Court in W.P.(MD)No.9355 of 2017 dated 30.05.2017.

For Appellant : Mr.S.Vinayak
For Respondents : Mr.R.Alagumani (R1)
Mr.A.K.Manikkam (R2 & R3)
Special Government Pleader

JUDGMENT

(Judgment of the Court was made by **V.BHAVANI SUBBAROYAN, J.**)

This writ appeal has been filed against the order of the writ Court dated 30.05.2017 passed in WP(MD)No.9355 of 2017, which was filed challenging the order of the third respondent dated 31.03.2017 with a consequential direction to the respondents to allow the writ petitioner to retire from service on attaining the age of superannuation with effect from 31.03.2017 and also to settle all the retirement benefits.

2. The case of the writ petitioner is that while he was working as an Assistant in the third respondent Corporation, he was issued with a

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memo dated 05.01.2017 levelling charges against him that he failed to hand over the file of the year 2009. The writ petitioner submitted his explanation stating that then custodian of records is no more and hence, the files could not be traced out. Not satisfied with the explanation, a charge memo was again issued, for which also the writ petitioner submitted an explanation. However, enquiry was conducted and he submitted his explanation. While that being so, an order was passed by the third respondent suspending the writ petitioner in the eve of his retirement at 09.40 p.m., which was challenged in the writ petition.

3. The learned Single Judge of this Court, by considering the G.O.Ms.No.144, Personnel and Administrative Reforms Department, dated 08.06.2007, wherein certain guidelines were issued not to resort to the last minute suspension of the government servants and by also considering the judgment of this Court in WP.No.16957 & 16958 of 2014 dated 18.12.2014, allowed the writ petition directing the respondents to allow the writ petitioner to retire from service on attaining the age of superannuation and also to settle all the retirement benefits to the writ



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petitioner with all consequential benefits including the writ petitioner's promotion. Challenging the same, the Municipal Corporation / employer of the writ petitioner is before this Court.

4. The learned counsel appearing for the appellant submits that without even giving an opportunity to the appellant to put forth their defence, the writ petition was allowed at the admission stage itself. The direction given for the relief of settlement of benefits including promotion is beyond the scope of the writ petition and allowing the writ petition by relying upon G.O.Ms.No.144 is not proper in the case on hand. He further submits that only based on the gravity of the irregularities committed by the writ petitioner, he was placed under suspension. Hence, he prayed to allow this writ appeal by setting aside the order passed in the writ petition.

5. The learned counsel appearing for the first respondent submits that the disciplinary authority should not resort to the last minute suspension ie., on the date of his retirement. The said attitude of the



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appellant is highly arbitrary and unsustainable in law. Hence, he seeks for dismissal of this writ appeal.

6. Heard the rival submissions made on either side and perused the materials placed before this Court.

7. On perusal of the records, it is seen that only after conduct of enquiry, punishment of stoppage of increment without cumulative effect for one year was imposed on the writ petitioner / first respondent on 11.09.2017. When there were charges levelled against him, such an order directing the authorities to permit the writ petitioner / first respondent to give him all the retirement benefits with all consequential benefits including promotion is not valid. Further, an order of interim stay was made absolute by this Court pending this appeal and hence, the appellant and the official respondents are directed to proceed with the enquiry on merits and in accordance with law.



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8. In this view of the matter, there is no infirmity in the order passed by the learned Single Judge of this Court and the same does not warrant any interference. Accordingly, this writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(V.B.S.J.) & (K.K.R.K.J.)
11.03.2024

NCC :Yes/No
Index :Yes/No
Internet :Yes
sm



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TO:-

- 1.The Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat,
Chennai – 9.
- 2.The Commissioner of Municipal Administration,
Chepauk,
Chennai – 5.



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and
K.K. RAMAKRISHNAN, J.

sm

Judgment made in
W.A.(MD)No.979 of 2017

Dated:
11.03.2024



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V.BHAVANI SUBBAROYAN, J.,
and
K.K.RAMAKRISHNAN, J.,

(Order of the Court was made by **Mr.K.K.RAMAKRISHNAN, J.**)

When the matter was taken up for hearing today under the caption for “being mentioned” at the instance of the learned counsel appearing for the appellant, the learned counsel submitted as follows:

2.The learned counsel for the appellant would submit that this Court after elaborate hearing of both side allowed the writ appeal and the same also appeared in the case status of the High Court web-site. Further, in the case bundle also it is stated that writ appeal was allowed. The finding in paragraph No.7 of the order also reflects the same. Inadvertently, in paragraph No.8, it is stated as writ appeal dismissed with observation, that there is no infirmity in the order of the learned Single Judge. Therefore, he seeks to rectify the said inadvertent mistake.



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3.Thiru.Alagumani, learned counsel for the respondent would submit that the said argument of the learned counsel for the appellant to change paragraph No.8 under the caption for being mentioned is not maintainable. The appellant has to file a review petition before this Court to correct the said mistake. The said submission of the learned counsel for the appellant to rectify the said mistake is liable to be rejected based on the various following precedents:

- (i)AIR 1966 ALL 221
- (ii)AIR 1988 SC 371
- (iii)1994 Online Mad 45
- (iv)1995-2-L.W.456
- (v)1996-1-L.W. 77
- (vi)1997 -1- L.W.77
- (vii)1997 -1- L.W. 646
- (viii) 1998 SCC online Mad 1612

He would further submit that there would be injustice to the respondent if the said request of the appellant counsel is entertained.

4. This Court considered the rival submission made by both the parties.

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5. The writ Court allowed the writ petition at the admission stage. This Court after considering the elaborate argument, passed the following finding in paragraph No.7:

7.On perusal of the records, it is seen that only after conduct of enquiry, punishment of stoppage of increment without cumulative effect for one year was imposed on the writ petitioner/first respondent on 11.09.2017. When there were charges levelled against him, such an order directing the authorities to permit the writ petitioner/first respondent to give him all the retirement benefits with all consequential benefits including promotion is not valid. Further, an order of interim stay was made absolute by this Court pending this appeal and hence, the appellant and the official respondents are directed to proceed with the enquiry on merits and in accordance with law.

and allowed the writ appeal. The said open Court dictation was also incorporated in the Court bundle as “allowed” and the same was also uploaded in the web-site relating to the case status, which reads as



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follows:

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Case Status of	WA(MD).No.979/2017		
Registration No.	WA(MD).No.979/2017	Sr/Filling No.	WA(MD)-25981/2017
Stage	<i>Disposed (Allowed) on 11/03/2024</i> by HONOURABLE MRS JUSTICE V.BHAVANI SUBBAROYAN, HONOURABLE MR. JUSTICE K.K. RAMAKRISHNAN		
Filing Date	29/06/2017	CNR No.	HCMD011116582017
Petitioner	THE COMMISSIONER, MADURAI CITY MUNICIPAL CORPORATION, MADURAI-625 002.		
Respondent	J.VIJAYAKUMAR, S/O.JAMES PAULRAJ, 25, PAULRAJ COMPOUND, VATHIYANATHAPURAM, MADURAI-10. R-2 THE STATE OF TAMILNADU REP.BY ITS PRINCIPAL SECRETARY TO GOVERNMENT, MUNICIPAL ADMINISTRATION AND WATER SUPPLY DEPARTMENT, SECRETARIAT, CHENNAI-9. R-3 THE COMMISSIONER OF MUNICIPAL ADMINISTRATION, CHEPUAK, CHENNAI-5		
Petitioner Counsel	M/s.S.VINAYAK DT.31/08/2023 SR29947		
Respondent Counsel	M/S.G.ELANCHEZHIAN R.ALAGUMANI FOR R1 COURT NOTICE ----- R-2 THE STATE OF TAMILNADU REP.BY ITS PRINCIPAL SECRETARY TO GOVERNMENT, MUNICIPAL ADMINISTRATION AND WATER SUPPLY DEPARTMENT, SECRETARIAT, CHENNAI-9. R-3 THE COMMISSIONER OF MUNICIPAL ADMINISTRATION, CHEPUAK, CHENNAI-5		
Subject	WRIT APPEAL (Under Sec.15 of Letters Patent)		

From the above, it is clear that this Court has dictated the order in the Open Court with specific reason in paragraph No.7. Therefore, in the

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penultimate paragraph No.8 instead of mentioning that the writ appeal is allowed, the Personal Assistant due to her work pressure and the accumulation of work due to the staff inadequacy in the Madurai Bench of Madras High Court committed the said inadvertent mistake as “writ Appeal is dismissed”.

6.As per Roster, this Bench has disposed cases from 19.02.2024 till 31.03.2024. After the expiry of the roster time, one of us, was posted before the Principal Bench of Madras High Court and one of us was retained in the Madurai Bench. Subsequently, the order copy was signed by us separately. Thereafter, one us was posted in another Bench and there was no opportunity to list the matter. Therefore, the case was posted today on the basis of the letter circulated by the learned counsel for the appellant after serving the same to the learned counsel for the respondent.

7. It is clearly mentioned in the disposal list maintained by the Registry and also in the case status that the case was allowed. The finding of this Court is also in the same line. Only in the result portion, it



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is mentioned as “dismissed” instead of “allowed”. As already mentioned above, this Madurai Bench, have disposed more than 95,000 cases last year in spite of inadequacy 362 of staff. Each staff of this Bench burdened with more works. In this situation, this type of inadvertent mistakes find to occur. To rectify such mistake under the caption for being mentioned there is no legal bar. More particularly, the finding in Paragraph No.7, it is stated that the writ Court order is not in accordance with law. Therefore, the result should be in the line of the finding. Under the caption for being mentioned, is not altering the core finding in paragraph No.7. Only an inadvertent mistake has occurred in the conclusion paragraph that instead of stating “allowed” it is stated as “dismissed”. After the roster, each day both of us were allotted another port folio and both of us were constrained to work in different places, namely, one of us in the Principal Bench and another was in the Madurai Bench. In view of the above circumstances, this Court finds no mistake on anybody. Therefore, this case comes under the exceptional circumstances as stated in the precedents relied by the learned counsel for the respondent himself.



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8. Therefore, this Court is inclined to amend Paragraph No.8 of the order dated 11.03.2024 as follows:

“In view of the above matter, this Court finds that there is infirmity in the order passed by the learned Single Judge of this Court and the same warrants interference. Accordingly, this writ appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is closed”.

9. Accordingly, this Court accepts the learned counsel for the appellant's submission and amend the order dated 11.03.2024 in W.A. (MD).No.979 of 2017 in the following terms:

“In view of the above matter, this Court finds that there is infirmity in the order passed by the learned Single Judge of this Court and the same warrants interference. Accordingly, this writ appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is closed”.



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10. Registry is hereby directed to incorporate the above paragraph No.8 and issue fresh order copy.

**[V.B.S.,J] &
[K.K.R.K.,J]
28.10.2024**

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V.BHAVANI SUBBAROYAN, J.,
and
K.K.RAMAKRISHNAN, J.,

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28.10.2024