

In the High Court of Judicature at Madras

Reserved on : 29.06.2015

Dated : 07.07.2015

Coram:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI  
and  
The Hon'ble Mr.Justice M.VENUGOPAL

W.A.No.4 of 2015

Maheswari ... Appellant/ Petitioner

Vs.

1. The Corporation of Chennai  
rep. By its Commissioner,  
Rippon Buildings,  
Chennai - 600 003
2. The Superintendent of Engineer,  
Electrical Department,  
Corporation of Chennai,  
Chennai - 600 003  
Municipal Administration ... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent Act, against the order dated 14.11.2011 made in W.P.No.23958 of 2011 by the learned Single Judge of this Court. Petition under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus directing the respondents herein to pay all terminal benefits such as gratuity, arrears of pay, GPF, family pension, arrears of family pension and Group Insurance Scheme amount to the petitioner with 18% interest.

For Appellant : Mrs.N.Beulah John Selvaraj

For Respondents : Mr.A.Nagaraj  
Standing Counsel for Corporation

J U D G M E N T

[Judgment of the Court was Delivered By  
M.VENUGOPAL, J.]

The Appellant/Petitioner has projected the instant intra Writ Appeal as against the Order dated 14.11.2011 in W.P.No.23958 of 2011 passed by the learned Single Judge.

2.The Learned Single Judge while passing the Impugned Order dated 14.11.2011 in W.P.No. 23958 of 2011 in Paragraph Nos. 4 and 5 had observed the following and consequently dismissed the Writ Petition without costs.

"....4. But, according to the learned counsel for the petitioner, as per the communication of the Local Fund Audit, dated 15.03.2000, the benefit of the award had been extended to another deceased employee by name Krishnan. Consequently, the petitioner's husband is also entitled to the benefit of the said award.

5. I am not able to accept this argument of the learned counsel for the petitioner for the reason that as rightly pointed out by the learned counsel for the respondents, as per the award of the Industrial Tribunal passed in I.D.No.70 of 1990, permanent status has not been accorded to those who died prior to the date of the award. The date of the award is 29.03.1993 and the petitioner's husband, even according to the learned counsel for the petitioner, died on 22.12.1991. Consequently, on the date of the award passed by the Industrial Tribunal, the petitioner's husband was not alive and as per the operative portion of the award, extracted above, he is not entitled to conferment of permanent status. As far as Krishnan, referred to by the petitioner, is concerned, even as per the letter of the Local Fund Audit dated 15.03.2000, he died on 17.04.1993, ie., subsequent to the passing of the Award by the Industrial Tribunal. Therefore, the benefit of the award as well as other consequential benefits was given to the said Krishnan. Whereas, in the case of the petitioner, her husband was not conferred permanent status by virtue of the award of the Industrial Tribunal and the said award is also not under challenge. In such circumstances, the petitioner is not entitled to the relief sought. The Writ petition is accordingly dismissed. No costs".

3.Challenging the dismissal Order dated 14.11.2011 in W.P.No.23958 of 2011 passed by the Learned Single Judge, the Learned Counsel for the Appellant/Petitioner contends that the Learned Single Judge had failed to appreciate that the Writ Petition was filed by the Appellant/Petitioner for payment of her husband's terminal benefits such as Gratuity, Family Benefit Fund, Special G.P.F., E.P.F., Group Insurance Scheme and Family Pension.

4.The Learned Counsel for the Appellant urges before this Court that the Learned Single Judge had committed an error in dismissing the Writ Petition in limine on the ground of latches.

5.The Learned Counsel for the Appellant comes out with a plea that nonpayment of terminal benefits and pension is a continuing cause of action and in this regard, there can be no latches.

6. According to the Learned Counsel for the Appellant, similarly placed workers like the Appellant/Petitioner's husband was paid the terminal benefits on 09.07.1998. Further, it is represented on behalf of the Appellant that the dependents of similarly placed workers like the Appellant/Petitioner's husband were appointed on compassionate ground by an Order dated 21.07.2000. However, this vital fact was not taken into account by the Learned Single Judge at the time of passing the Impugned Order in a proper and real perspective.

7. On behalf of the Appellant, an argument is raised before this Court that the Learned Single Judge had failed to take into account the plea of similarly placed workers pursuant to the Orders of this Court dated 09.07.1998 in W.P.No.5152 of 1995 and in fact there is a corresponding obligation on a Court of Law to treat similarly placed workers in the same manner irrespective whether they had approached the Court or not.

8. Finally, it is a stand of the Appellant that the Learned Single Judge had failed to appreciate that the Impugned Order is a non speaking one.

9. Conversely, it is the submission of the Learned Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents that the deceased, V. Mani was employed as 'Temporary Casual Labour' in Electrical Department of the Corporation of Chennai from 02.06.1986 and further, he was not employed continuously. As a matter of fact, he was employed on 'Daily Wage Basis' and the tenure of service was only for a period of 90 days and automatically got ceased on the expiry of 90 days. In reality, he died while he was in the same category.

10. Continuing further, the Learned Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents contends that the 'Temporary Casual Labours' are not entitled to Gratuity, Family Benefit Fund, Special G.P.F, E.P.F., Group Insurance Scheme and Family Pension. Furthermore, no Temporary Casual Labour was given the claimed benefits during the year 1998 and other periods. Also that during the year 2000 and other periods no dependence of Temporary Casual Labours were appointed on compassionate grounds. In short, there is no discrimination against the Petitioner and infact, the Appellant/Petitioner's husband, Mani was not employed as "Class IV Employee".

11. It comes to be known from the affidavit filed by the Appellant/Writ Petitioner in W.P.No.23958 of 2011 that in W.P.No.22593 of 1993 and W.P.No.5152 of 1995, this Court on 09.07.1998 in Paragraph No.14 had observed the following:-

"....14. In view of the dismissal of the Writ Petition filed by the Corporation against the award the writ petition will have to allowed and it will be on the following terms.



(i) The Corporation will consider the claim of the first petitioner to get appointment on compassionate grounds in the place of his deceased father L.Krishnan, subject to his having the requisite qualification; and

(ii) The Corporation will consider payment of DCGR contribution to the second petitioner, subject to availability of the money and the second petitioner satisfying the corporation about her eligibility to claim the same. The Corporation will have to complete the exercise within a period of twelve weeks from the date of receipt of the order in the writ petition."

12.Further, it is the stand of the Appellant/Petitioner that by means of an Order dated 21.07.2000, son of L.Krishnan was provided with a compassionate appointment and all the dues were settled. Likewise, the dependents of two other co-workers by name, Govindasami, V.Babu and Elumalai who also had the benefits were also settled and provided with compassionate appointment.

13.According to the Appellant/Petitioner, the following amounts are payable to her.

|                      |                |
|----------------------|----------------|
| (i) Pay difference   | -Rs. 452       |
| (ii) Gratuity        | -Rs. 1,000     |
| (iii) Family Pension | -Rs.2,00,000   |
| (iv) Group Insurance | -Rs. 60,000    |
|                      | -----          |
| Total                | -Rs.2,61,452/- |
|                      | -----          |

Since the Respondents had not paid the due amount in question to the Appellant/Petitioner, the Writ Petition was filed seeking disbursement of terminal benefits such as Gratuity, Arrears of Pay, G.P.F, Family Pension, Arrears of Family Pension and Group Insurance Scheme amount with 18% interest.

14.At this stage, this Court pertinently points that the Deputy Director of Local Fund Audit, Chennai and Corporation Audit Chennai -3 had addressed a communication in ஓ.மு.எண். 1481.ஈ/2000 dated 15.03.2000 to the 2<sup>nd</sup> Respondent/Superintending Engineer, Electrical Department, Corporation of Chennai, Chennai - 3 whereby and whereunder, it was stated that as per the Order of the High Court in W.P.No.22593 of 1993 and W.P.No.5152 of 1995 dated 09.07.1998, the Corporation of Chennai ought to implement the Award passed by the Industrial Tribunal dated 29.03.1993 and according to that, Permanent Employment ought to be given to 130 employees, those who worked from 01.07.1987 on daily wages.

15. Further, it was also stated that out of the 130 employees mentioned in the said order, one Mr.L.Krishnan, who expired on 17.04.1993 was also included and his employment also should be regularised from 01.07.1987 and his services had to be regularised from 01.07.1987 and after his death the Family Retirement Benefits should be disbursed. In this regard, a proposal was to be sent to

16.It is to be pointed out that the Audit Officer on behalf of the 1<sup>st</sup> Respondent/Commissioner of Corporation, Chennai in proceedings பொது ந.க. எண் பி2-32736-2000 dated 21.07.2000 had sanctioned a sum of Rs.74,153/- as Family Pension Benefits to one Gangammal wife of late L.Krishnan in respect of the period 18.04.1993 to 31.12.1995 and 01.04.1988 to 09.06.2000.

17.On behalf of the Appellant/Petitioner, it is further brought to the notice of this Court in that in W.A.No.2573 of 2001 filed by Rani V. Corporation of Chennai and another, the Division Bench of this Court on 04.08.2005 in Paragraph No.2 had passed the following Order:-

".....2. The appellant is a widow and she is claiming retiral benefits of her husband. We are surprised that although her husband died almost six years ago, she has not yet been paid retiral benefits of her husband. We dispose off this Writ appeal with a direction to the respondents to pay all the retiral benefits to the appellant in accordance with the relevant rules along with 10% per annum interest from the date on which it was payable. This payment will be made within two months from today."

18.Apart from that, it is the plea of the Appellant/Petitioner that as per Note in Pi.Thu.Na.No.8/5594/98 dated 08.10.1998 of the 1<sup>st</sup> Respondent/Corporation of Chennai (Electrical Department) addressed to the 2<sup>nd</sup> Respondent/Superintendent Engineer (Electricity), it was mentioned that as per Government Order No.259/Municipal Administration and Water Supply (Ma.Na.No.3) Department dated 14.10.1996, 113 excess workers post in the pay scale of Rs.750/- were created and in those posts 113 temporary employees were already working were appointed and an Order was passed to regularise them from 01.07.1990 etc.,

19. Moreover, in the aforesaid Note dated 08.10.1998 of the 1<sup>st</sup> Respondent/Corporation of Chennai, it was interalia stated that the Deputy Director, Municipal Finance Auditing vide his letter, Corporation of Chennai Auditing Na.Ka.No.E2/7871/97 dated 04.12.1997 had mentioned that the aforesaid employees, who were appointed in the Additional Employment are entitled to get retirement benefits from 01.07.1990 and therefore, those who are appointed in the excess posts, are working in various zones and this situation was to be considered and that the respective zonal officers were to be informed.

20.As far as the present case is concerned, the Appellant/Petitioner in W.P.No.23958 of 2011 seeks for passing of an Order by this Court in directing the Respondents/Respondents to pay all Terminal Benefits such as Gratuity, Arrears of Pay, GPF, Family Pension, Arrears of Family Pension and Group Insurance Scheme Amount to her with 18% Interest. Her further case is that her husband, V.Mani died on 22.12.1991 while he was in service and even before he could receive the benefits of the Award in I.D.No.70 on 29.03.1993 by the Industrial Tribunal, Chennai.

21.A glance of the Award dated 29.03.1993 in I.D.No.70 of 1990 filed by the Workmen Represented by the Secretary, Madras Corporation, Desiya Minsara Paniyalargal Sangam, Chennai 12, refers to the G.O.D.No.148 of the Labour and Employment Department for adjudication of the following issue:

"Whether demand of the Union that the permanency to the following Workmen should be granted is justified if not, to what relief they are entitled?

Further in the said reference, the Appellant/Petitioner's husband's name finds a place in Sl.No.56 as 'V.Mani'.

22.In fact, the Tribunal while passing the Award had directed the Management of Corporation of Madras, Madras - 3 to confer permanent status to the Petition mentioned workmen (except those who were already deceased) with effect from 01.07.1987 and to give all service benefits to those workmen arising from such permanent status.

23.Indeed, the Appellant/Petitioner on 13.09.2011 had addressed a Representation to the 1<sup>st</sup> Respondent/Commissioner, Corporation of Chennai stating that she was legally wedded wife of Late V.Mani, who worked as Temporary Casual Labour at Zone SubStation VIII (Class IV) in the Electricity Department of the Chennai Corporation and further that he expired on 22.12.1991, while he was in service and ultimately prayed for settling the Family Pension, Gratuity and all other benefits.

24.The Workmen, represented by its Secretary in I.D.No.70 of 1990 had stated that 130 workers mentioned in the annexure to the Government Order (D) No.148 dated 09.08.1998 of the Labour and Employment Department, Government of Tamilnadu under reference were working as Temporary Casual Labourers in the Electricity Department of the Management of Corporation of Chennai and that each one of them had put in more than 240 days of continuous service in every year etc.,

25. At this juncture, a cursory perusal of the Proceedings of 1<sup>st</sup> Respondent/Corporation of Chennai in E.D.C.A.No.A5/11300/82 dated 28.10.1996 points out the names of employees, who were to be regularised from 01.07.1990. Unfortunately, the Appellant/Petitioner's husband's name does not find a place.

26. Be that as it may, at the risk of repetition it is to be pointed out that in view of the fact when the Award passed by the Industrial Tribunal in I.D.No.70 of 1990 dated 29.03.1993 had directed the Management of Corporation of Chennai (Respondent) to confer permanent status to the petition mentioned workman (except those who were already deceased) with effect from 01.07.1987 and give all service benefits to those workman arising from such permanent status, this Court is of the considered opinion that the Petitioner's husband, V.Mani had expired on 22.12.1991 and was not conferred with the permanent status by means of the Award in issue.



Moreover, the Award in I.D.No.70 of 1990 dated 29.03.1993 passed by the Industrial Tribunal had become final and conclusive.

27.Viewed in that perspective, the Impugned Order of the Learned Single Judge in W.P.No.23958 of 2011 dated 14.11.2011 in dismissing the Writ Petition filed by the Appellant/Petitioner is free from legal infirmities and material irregularities in the eye of law. As such, the said Order in the considered opinion of this Court does not call for any interference in the hands of this Court at this stage of Writ Appeal. Consequently, the Writ Appeal fails.

In the result, the Writ Appeal is dismissed leaving the parties to bear their own costs. Resultantly, the Order passed by the Learned Single Judge in W.P.No.23958 of 2011 dated 14.11.2011 is confirmed by this Court for the reasons assigned in this Writ Appeal.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ssd  
To

1. The Corporation of Chennai  
rep. By its Commissioner,  
Rippon Buildings,  
Chennai - 600 003
2. The Superintendent of Engineer,  
Electrical Department,  
Corporation of Chennai,  
Chennai - 600 003  
Municipal Administration

+1cc to Mr.A. Nagarajan, Advocate, S.R.No.33735  
+1cc to Mrs. N. Beulah John Selvaraj, Advocate, S.R.No.33855

LRS (CO)  
EU(21/07/2015)

W.A.No.4 of 2015