

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:14.07.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Petition No.23852 of 2016
and
WMP Nos.20468 and 20469 of 2016

1.K.Saravanan
2.Sridevi
3.S.Lavanya

...Petitioners

Vs.

1.The Registrar General,
Madras High Court,
Chennai - 104.

2.The Principal District Judge/
Disciplinary Authority,
Namakkal.

3.The Enquiry Officer/
The Chief Judicial Magistrate,
Namakkal.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the respondent in connection with the orders passed by the respondents 2 and 1 in their Proceedings in ROC No.7289/A/2009 dated 23.11.2009 and ROC No.128/2010/C1 dated 03.10.2013 respectively and quash the same and direct the respondents 1 and 2 to pay all the service and terminal benefits to the first petitioner including the family pension from the date of the death of the first petitioner's wife late Tmt.Pushpalatha and the arrears of salary from the date of late Tmt.Pushpalatha's dismissal including the compassionate appointment to the second petitioner.

For Petitioner : Mr.R.Singaravelan, SC for
M/s.M.Srividhya

For Respondents : Mr.C.T.Mohan

ORDER

(Order of the Court was made by HULUVADI G. RAMESH,J.)

The petitioners have filed this writ petition to quash the proceedings of respondents 1 and 2 dated 03.10.2013 and 23.11.2009 respectively and consequently, to direct respondents 1 and 2 to pay all the service and terminal benefits including family pension to the first petitioner and compassionate appointment to the second petitioner, in view of the death of one Pushpalatha.

2. The case of the petitioners is that they are the husband and children of the deceased Pushpalatha, who passed away on 28.12.2012 due to cancer, while she was in service as Junior Assistant in the District Munsif Court, Namakkal. While the deceased Pushpalatha was working in the Sub Court, Namakkal, she was charged along with two other persons for malpractices, fabrication and forging of two cheques, resulting in misappropriation of money to the tune of Rs.4,44,190/- to the Government. However, one of the persons was exonerated from the charges. In respect of the deceased Pushpalatha and another person, an enquiry was conducted by the third respondent and the charges were held to be proved against them. Based on the enquiry report, the second respondent/disciplinary authority passed an order dated 23.11.2009 dismissing the deceased Pushpalatha from service. Challenging the same, the deceased Pushpalatha preferred an appeal before the first respondent, who in turn passed an order dated 03.10.2013 confirming the order passed by the second respondent, even after the death of the deceased Pushpalatha on 28.12.2012. Challenging the said proceedings, the legal heirs of the deceased Pushpalatha have approached this Court with the present writ petition for the above stated relief.

3. Learned counsel for the petitioners raised various contentions against the proceedings passed by respondents 1 and 2. He ultimately submitted that as per G.O.Ms.No.751 dated 08.10.1991, the disciplinary proceeding gets abated on the death of the delinquent. In the present case, during the pendency of the appeal, the delinquent Pushpalatha had died and hence, the proceedings pending against her abates, whereas, the first respondent/Appellate Authority has dismissed the appeal, confirming the order of dismissal passed by the second respondent. According to the learned counsel, as the appeal filed by the delinquent abates, it has to be presumed that on the date of her death, the deceased had been in service and consequently all the benefits ought to have been paid to her legal heirs i.e., the petitioners herein, who are unemployed and are suffering from financial expenses.

4. Learned counsel for the respondents fairly concedes that the first respondent has passed the order, dismissing the appeal filed by the delinquent and confirming the order of dismissal passed by the second respondent, after the death of the delinquent Pushpalatha.

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

6. The facts made available herein would go to show that by the order of the second respondent/disciplinary authority dated 23.11.2009, the deceased Pushpalatha was dismissed from service based on the enquiry report submitted by the third respondent. Challenging the same, the deceased Pushpalatha preferred an appeal before the first respondent/Appellate Authority. Pending appeal, the said Pushpalatha died on 28.12.2012 due to cancer. Thereafter, the first respondent/Appellate Authority passed the order dated 03.10.2013 confirming the order of dismissal passed by the second respondent/disciplinary authority. Therefore, in our opinion, the order so passed by the first respondent/Appellate Authority is non-est in law, as the appeal filed by her abates, in view of the death of the delinquent. On this score alone, the order of the first respondent is liable to be set aside.

7. Accordingly, the proceedings dated 03.10.2013 passed by the first respondent is set aside and the appeal is remanded to the first respondent for passing afresh order. While reviewing the appeal filed by the deceased Pushpalatha, it is for the first respondent/Appellate Authority to consider the representation submitted by the legal heirs of the deceased Pushpalatha dated 21.04.2016 and take a decision in accordance with law, after providing an opportunity of personal hearing to the petitioners. As the delinquent had died, the first respondent is directed to take a lenient view.

8. The Writ Petition is disposed of with the above directions. No costs. Consequently, connected Miscellaneous Petitions are closed.

rk

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Registrar General,
Madras High Court,
Chennai - 104.

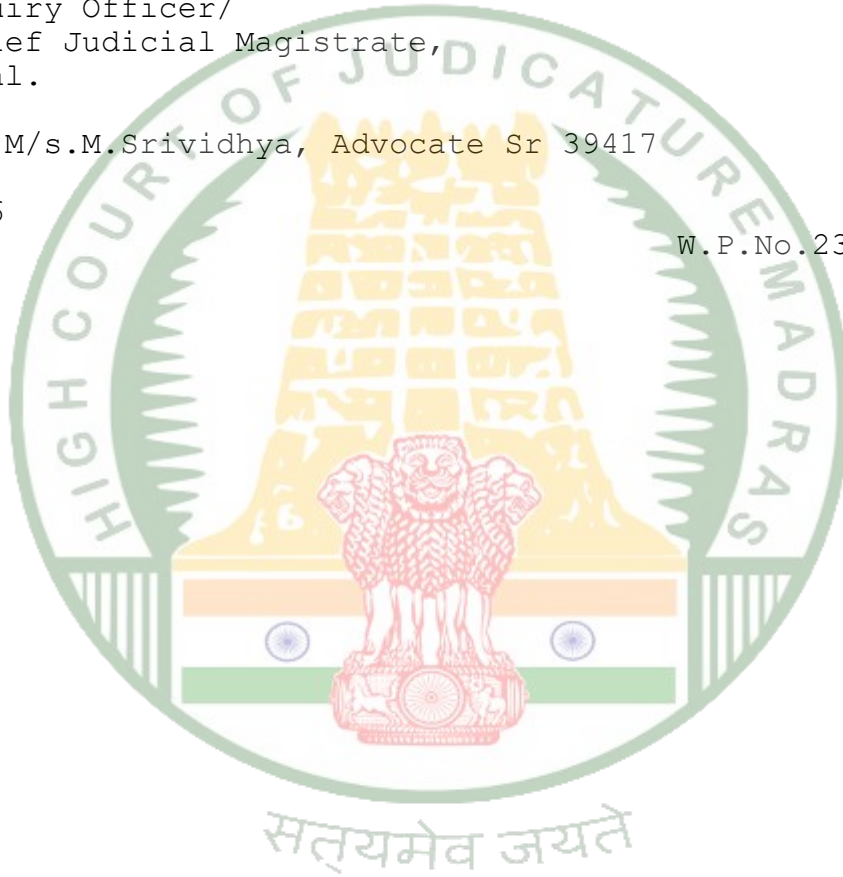
2.The Principal District Judge/
Disciplinary Authority,
Namakkal.

3.The Enquiry Officer/
The Chief Judicial Magistrate,
Namakkal.

+ 1 cc to M/s.M.Srividhya, Advocate Sr 39417

KR/11/8/16

W.P.No.23852 of 2016



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