

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.800 of 2017
and
C.M.P.No.11095 of 2017

Bakialakshmi ... Appellant

-vs-

- 1.The Secretary to Government,
Home Department,
Fort St.George, Secretariat Complex,
Chennai-9.
- 2.The Director,
Fire Service and Rescue Department,
No.17, Rukmani Lakshmipathy Salai,
Egmore, Chennai-8. ... Respondents

Appeal filed under Clause 15 of the Letters Patent, against the order passed by this Court in W.P.No.27341 of 2011 dated 12.04.2017 praying to call for the records relating to impugned order viz, Na.Ka.No.3064/E3/2007 dt.1.3.2007 and quash the same, and for family pension.

For Appellant :: Mr.K.H.Ravikumar

For Respondents:: Mr.V.Jayaprakash Narayanan,
Special Government Pleader

JUDGMENT

(Judgment of the Court was delivered by
RMT.TEEKAA RAMAN, J.)

The appellant herein is the writ petitioner. This writ appeal has been filed challenging the dismissal of the writ petition filed by the appellant / writ petitioner in W.P.No.27341 of 2011 on 12.04.2017.

2.The brief facts of the case are that on 30.08.1973, the appellant's husband joined in the State Fire and Rescue

Department at Chennai under the control of the Superintendent, Office of the Divisional Fire Officer, Madras City, South Division. He successfully completed his probation on 29.08.1975. On 22.10.2005, the appellant's husband died due to illness. The appellant made a representation on 14.09.2006 to the authorities requesting to disburse the terminal benefits of her husband to her. She was informed that even during the year 1996, her husband has been terminated from service for unauthorised absence. By proceedings of the Director of Fire Service in Na.Ka.No.3064/E3/2007 dated 01.03.2007, she was informed that since her husband had been removed from service based on the punishment awarded to him, his legal heirs are not entitled for any service benefits. Aggrieved by the same, W.P.No.27341 of 2011 has been filed and the same was dismissed on the ground that the termination order has not been challenged by the writ petitioner and further that the writ petitioner had not approached the Court within the reasonable time.

3.The learned counsel for the appellant has drawn the attention of this Court to the ratio laid down by the Hon'ble Supreme Court in Mahinder Dutt Sharma v. Union of India and Others, reported in (2014) 11 SCC 684, and submitted that considering the fact that deceased husband of the appellant was suffering from mental illness and though the appellant is not entitled for terminal benefits and family pension since her husband had been terminated from service, the claim for compassionate allowance could be considered as per Rule 40 of the Tamil Nadu Pension Rules.

4.Heard the learned Special Government Pleader on the submissions made by the learned counsel for the appellant.

5.In view of the factual matrix of the case as narrated above, we are of the considered view that the dictum laid down by the Hon'ble Supreme Court in Mahinder Dutt Sharma v. Union of India and Others, reported in (2014) 11 SCC 684 is applicable to the instant case and therefore, we set aside the order dated 12.04.2017 passed by the learned single Judge in W.P.No.27341 of 2011, with a direction to the respondents to consider the case of the appellant / writ petitioner in a sympathetic manner as envisaged under Rule 40 of the Tamil Nadu Pension Rules and pass appropriate orders in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this judgment.

6.The writ appeal is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,
Home Department,
Fort St.George, Secretariat Complex,
Chennai-9.

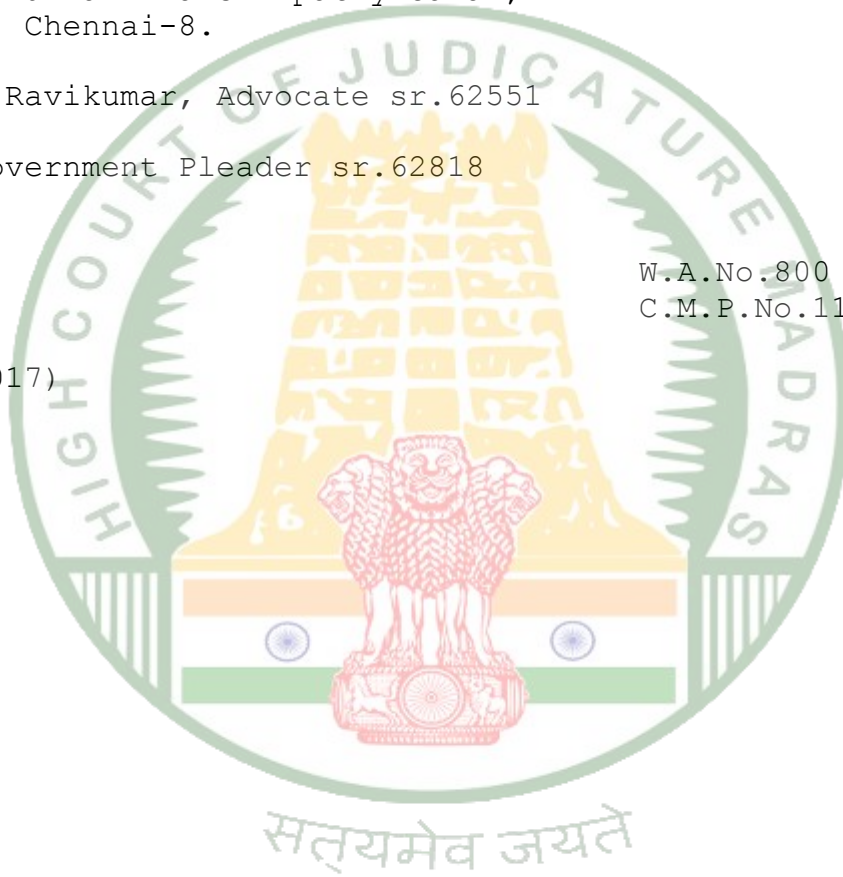
2.The Director,
Fire Service and Rescue Department,
No.17, Rukmani Lakshmipathy Salai,
Egmore, Chennai-8.

+1cc to H.Ravikumar, Advocate sr.62551

+1cc to Government Pleader sr.62818

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ss(19/9/2017)



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