

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.7312 of 2013

V.Shanmugalakshmi

.. Petitioner

Vs.

1.The Secretary to the Government of Tamil Nadu,
Municipal Administration and Water Supply
Department, Fort St. George,
Chennai.

2.The Director of Town Panchayat,
Kuralagam, Chennai - 108.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records/proceedings of the first respondent G.O.(Ten years) No.228 Municipal Administration and Water Supply (TP 4) Department dated 15.09.2012 and confirming the order passed by the second respondent in N.K.No.23009/2004/E4 dated 05.05.2008 and quash both the orders and consequently direct the respondents to pay the arrears of wages and also sanction family pension and other terminal benefits to the petitioner consequent on the death of her husband with effect from 10.02.2011.

For Petitioner

.. Mr.N.Balamuralikrishnan

For Respondents

.. Mr.A.Zakkir Hussain,
Addl. Govt. Pleader

ORDER

The petitioner has approached this Court seeking the following relief:

to issue a writ of certiorarified mandamus to call for the records/proceedings of the first respondent G.O.(Ten years) No.228 Municipal

Administration and Water Supply (TP 4) Department dated 15.09.2012 and confirming the order passed by the second respondent in N.K.No.23009/2004/E4 dated 05.05.2008 and quash both the orders and consequently direct the respondents to pay the arrears of wages and also sanction family pension and other terminal benefits to the petitioner consequent on the death of her husband with effect from 10.02.2011.

2.The petitioner is the wife of the deceased Government employee. The petitioner's husband was appointed as Office Assistant in the year 1981 in the Town Panchayat service. He was physically challenged person with crippled polio stricken leg, which disability suffered from the time of his birth. The Government had reorganised the town panchayats and many panchayats were upgraded as third grade municipalities and in view of the restructuring of the panchayats/municipalities, several transfers were necessitated in respect of the employees working in various positions.

3.In view of the imminent transfer of the petitioner's husband, a request was made on his behalf that he may not be transferred to any place in view of his physical disability. However, he was transferred on 08.10.2004 to the office of the Assistant Director of Town Panchayats, Kancheepuram District. According to the petitioner, the office was located in the third floor in Kancheepuram District. The petitioner's husband felt aggrieved by the transfer since he could not undertake long journey from Chennai to Kancheepuram and attend the third floor office. In the said circumstances, he requested the authorities once again for considering the order of transfer. In the said circumstances, the petitioner could not obey the transfer and join the transferred post.

4.While matter stood thus, the petitioner's husband was placed under suspension on 30.03.2005. Following the suspension order, a charge memo was issued on 13.02.2006 containing four articles of charges. The substance of the charge memo was that he did not join the transferred post and he did not obey the orders passed by the superiors. No other charge was alleged against the petitioner's husband. Subsequently, the suspension order came to be revoked on 18.10.2006 and after revoking the suspension, the petitioner's husband was further transferred to the office of the Assistant Director of Town Panchayats, Erode. The petitioner's husband originally had some grievance against his transfer to Kancheepuram was once again transferred to far away place in Erode. Since he was left with no option as he was facing disciplinary action, he joined the transferred post at Erode on 27.10.2006.

5.While joining the post in Erode, the petitioner's husband was unable to function effectively in view of the extreme physical disability suffered by him and moreover he also developed cardiac problem and in the said circumstances, he had to apply long leave in order to take medical treatment.

6.In the meanwhile, the enquiry was conducted into the charges on 13.02.2006 and without serving proper notice on the petitioner's husband, the enquiry was completed. The petitioner's husband appeared for enquiry and it appears that the petitioner's husband had demanded for supply of certain documents which were not ultimately furnished. Eventually, the disciplinary authority passed an order on 05.05.2008 dismissing the petitioner's husband from service. Aggrieved by the same, the petitioner's husband preferred an appeal to the first respondent on 01.07.2008. When the appeal was pending consideration before the authority, the petitioner's husband passed away on 10.02.2011. However, the appeal was pursued by the petitioner herein by filing a writ petition in W.P.No.11881 of 2012. This Court by order dated 25.04.2012 disposed of the writ petition directing the first respondent to dispose of the appeal within the stipulated time. Thereafter, an order was issued on 15.09.2012 rejecting the appeal, which is impugned in the present writ petition.

7.Mr.N.Balamurali Krishnan, learned counsel appearing for the petitioner would submit that non-joining of the petitioner's husband in the transferred post was due to the extreme physical disability suffered by him and the same was not intentional or wanton. In fact, the petitioner's husband had made fervent appeal to the authorities concerned to consider the disability and retain him in the same place where he was originally posted. However, the said representation was kept pending and no orders were passed for considerable time. Since he was awaiting positive response from the authorities concerned, he could not join the transferred post and obey the lawful orders of the superiors. Unfortunately, the authorities have considered that as intentional disobedience and wanton absence and initiated disciplinary action against the petitioner's husband.

8.Even in the enquiry, which was conducted into the charges, no proper opportunities were afforded to the petitioner for explaining his position vis-a-vis the charge memo. Without furnishing all the relevant documents demanded by the petitioner, the departmental enquiry was concluded. On the basis of the enquiry report, the disciplinary authority imposed a penalty of dismissal from service without even considering the physical disability of the petitioner's husband. The appellate authority has mechanically passed the order without even

considering the fact that the petitioner's husband had passed away during the pendency of the appeal and the family was placed in indigent circumstances in view of the snatching away of the livelihood of the family. The order passed by the appellate authority rejecting the appeal is bereft of compassionate justice and the same cannot be countenanced in law. This is more so when the charges framed against the petitioner's husband were not serious in nature and not involving any irregularities or discrepancies in discharge of the duties of the petitioner's husband. The charges are only with regard to the non-joining of the petitioner's husband in the transferred post. The petitioner's husband had legitimate explanation for not joining the transferred post which was not considered by the authorities concerned at the appropriate time.

9. Upon notice, Mr. A. Zakkir Hussain, learned Additional Government Pleader entered appearance on behalf of the respondents and filed counter affidavit. He would submit that the order of penalty was issued on the basis of proved misconduct and therefore the same does not call for interference.

10. In the above circumstances, the imposition of harsh penalty of dismissal from service on the petitioner's husband is shockingly disproportionate as this Court is unable to comprehend as to what kind of mindset both the disciplinary authority and the appellate authority have while disposing of the disciplinary case pending against the petitioner's husband. As stated above, the mind of the authorities is completely barren without any sensitivity or compassion and such a rigid approach by the authorities does not advance the cause of good and just administration. Since this Court is of the clear view that the punishment imposed on the petitioner's husband is shockingly disproportionate and at the same time is of the view that the matter at this distance of point of time could not be sent back for substitution of any other penalty in the place of dismissal from service.

11. In the said circumstances, the impugned order in G.O. (Ten years) No. 228 Municipal Administration and Water Supply (TP4) Department dated 15.09.2012 is set aside and the punishment of dismissal from service is substituted by the punishment of compulsory retirement from service. The petitioner's husband is deemed to have compulsorily retired from service with effect from the date when he was dismissed from service. The petitioner is also entitled to all the consequential benefits on such modification of the penalty including the arrears of pension and also family pension as payable to the petitioner. The authorities are directed to pass orders to this effect within a period of one month from the date of receipt of a copy of this order.

12.With these directions the writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to the Government of Tamil Nadu,
Municipal Administration and Water Supply
Department, Fort St. George,
Chennai.
2. The Director of Town Panchayat,
Kuralagam, Chennai - 108.

+1cc to the Government Pleader Sr. 69813

+1cc to Mr.V.Vijayshankar, Advocate Sr. 69795

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AR(V)
VR(01/11/2017)

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