



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 04.04.2017

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD).No.12821 of 2016
and
W.M.P (MD)No. 9696 of 2016

S.Vijayalakshmi

...Petitioner

Vs.

1.The Chief Secretary/Special Commissioner,
Okuvathi, Chennai - 113.

2.The District Scheme Officer,
Sivagangai District,
Sivagangai.

3.The Child Development Scheme Officer,
Singampuneri,
Sivagangai District.

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in the impugned rejection order passed by the second respondent in Na.Ka.No.1981/A3/2012 dated 08.04.2013 and quash the same and consequently direction to the respondents to provide the monetary benefits of the petitioner's mother's death namely Dhanam was working as a Anganwadi Assistant at Ayyapatti Anganwadi, Singampuneri Circle, Sivagangai District.

For Petitioner
For Respondents

: Mr.M.Ramu,
: Mr. C.Selvaraj,
Special Government Pleader.

ORDER

The writ petition has been filed by the petitioner challenging the impugned order of rejection passed by the second respondent in Na.Ka.No.1981/A3/2012 dated 08.04.2013 and consequently to direct the respondents to provide the monetary benefits namely family welfare fund on account of the death of petitioner's mother who was working as a Anganwadi Assistant at Ayyapatti Anganwadi, Singampuneri Circle, Sivagangai District.



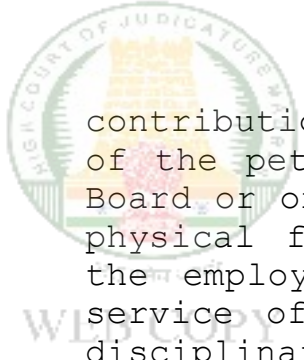
2. Heard Mr.M.Ramu, learned counsel appearing for the petitioner and Mr. C.Selvaraj, learned Special Government Pleader for the respondents.

3. The petitioner's mother was appointed as Anganwadi Assistant, Ayyapatti, Singapureri Union in the year 1993. When the petitioner's mother was working as the Anganwadi Assistant, she became ill and permitted to take leave on medical ground from 25.10.2011 to 27.03.2012. The petitioner's mother also appeared before the Medical Board on 16.02.2012 and she was relieved from service on 28.02.2012 based on the medical report dated 17.02.2012 on her fitness. Immediately, thereafter the petitioner's mother also expired on 13.03.2012 at the age of 54 years.

4. It was in these circumstances, the petitioner approached the respondent to give the retirement benefits/other monetary benefits to the petitioner. However, the second respondent, finally by the impugned proceedings dated 08.04.2013 rejected the petitioner's claim for the monetary benefits stating that the petitioner is not entitled to any monetary benefits as her mother was dismissed from service.

5. The question before this court is whether the petitioner is entitled to the retirement benefits on account of the death of the petitioner's mother who was relieved from service on the basis of the medical report of the Medical Board regarding her physical unfitness. The 3rd respondent filed a counter affidavit, specifically stating that the request of the petitioner is not sustainable as the petitioner's mother was removed from service and she was not working or serving in the department at the time of her death. It was specifically admitted in the counter affidavit that the petitioner's mother was on medical leave from 25.10.2011 to 27.03.2012 and that she appeared before the Medical Board constituted by the Joint Director of Medical Service on 16.02.2012. It is also admitted in the counter affidavit that the medical board after thoroughly examining the petitioner's mother gave a certificate to the effect that the petitioner's mother is not fit for duty due to her permanent disability, which was assessed as 60%. It was in those circumstances, the second respondent, stated to have passed the impugned order holding that the petitioner's mother who was removed from service is not entitled to get any monetary benefits.

6. Except relying upon the Government letter, the learned Government Pleader has not produced any other regulation or rule or any Government Order preventing the government employees from getting the monetary benefits or retirement benefits if an employee is relieved from service on account of the medical unfitness or permanent disability on medical grounds. The Government Pleader produced a letter of the Child Development Project Officer of Singampunari, stating that the Government



contribution cannot be granted to dismissed employee. The removal of the petitioner's mother from service on the advice of Medical Board or on the recommendations of the Medical Board regarding the physical fitness of the employee or the permanent disability of the employee cannot be treated in par with termination of the service of an employee or dismissal of an employee pursuant to disciplinary proceedings or on account of serious misconduct or conviction by a criminal court. The fact that the petitioner's mother could not continue due to her medical unfitness and permanent disability is not in dispute. In such circumstances, the respondent in this case cannot ignore the service benefits of the petitioner's mother corresponding to her period of service and the entitlement of the legal heirs of Government employee who was relieved from service on medical ground. In this regard, it is relevant to consider S.47 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which read as follows:

"Sec.47. Non-Discrimination of Government employment.-

(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits.

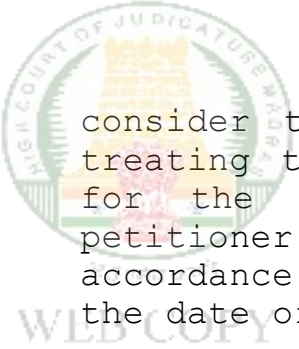
Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

7. The term 'establishment' is defined to cover every organization and department of Government. Removal of petitioner's mother is therefore illegal and for the purpose of retirement benefits, the removal alleged in this case cannot be allowed to operate as termination of service to deny the retirement benefits.

8. In that view of the matter, this court is inclined to allow the petitioner's claim for service benefits. Hence, the impugned order passed by the respondent by proceedings vide Na.Ka.No.1981/A3/2012 dated 08.04.2013 is set aside and the second respondent is directed to



consider the application of the petitioner purely on merits by treating the petitioner's mother as an employee died in service for the purpose of giving the retirement benefits to the petitioner and other legal heirs of the deceased employee, in accordance with law on merits within a period of eight weeks from the date of receipt of a copy of this order.

9. Accordingly, this writ petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (C.O)

/True Copy/

Sub-Assistant Registrar

To

1. The Chief Secretary/Special Commissioner,
Okuvathi, Chennai - 113.

2. The District Scheme Officer,
Sivagangai District,
Sivagangai.

3. The Child Development Scheme Officer,
Singampuneri,
Sivagangai District.

+One cc to Mr. M. Ramu, Advocate, SR.No.50366

KM/MR

RL/5C/4P/MR/SAR2/24.4.2017

ORDER MADE IN
W.P. (MD) .No.12821 of 2016

04.04.2017