

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN  
AND  
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A.No.1187 of 2014

&

M.P.No.1 of 2014

The Executive Officer,  
Marakkanam Town Panchayat,  
Marakanam,  
Villupuram District. .... Appellant

...Vs...

1. Tmt.Muruvammal
2. State of Tamil Nadu,  
Rep. by its Secretary,  
Finance Department,  
Fort St. George,  
Chennai-600 009. .... Respondents

Prayer:- Writ Appeal filed under Clause 15 of Letter Patent Act,  
to set aside the order dated 07.09.2009 passed in W.P.No.39437  
of 2005.

WP 39437 of 2005 : Writ petition filed under Article 226 of the  
Constitution of India, seeking writ of mandamus, directing the  
respondents to pay Rs.1 00 000/- as per G.O.Ms.No.326, Finance  
(Pension) Department dated 23.6.1997 to the petitioner with  
interest.

For Appellant : Mr.J.Raja Kalifulla  
Senior counsel

For Respondents : Mr.K.M.Ramesh (R1)  
Ms.A.Srijayanthi (R2)  
Special Government Pleader

J U D G M E N T

(Judgment of the Court was delivered by K.K.SASIDHARAN, J.)

The Writ Petition filed by the first respondent claiming  
the benefits of the Government Order in G.O.Ms.No.326, Finance

(Pension) Department dated 23 June 1997 on account of the death of her husband during the course of his employment was allowed by the learned single Judge with a direction to the appellant to pay the amounts payable under the Group Insurance Scheme. The order is under challenge at the instance of the local body primarily on the ground that the liability is only on the Government and not on the Village Panchayat, in view of the conditions incorporated in G.O.(Ms).No.326, Finance (Pension) Department dated 23 June 1997.

2. We have heard the learned Senior Counsel for the appellant. We have also heard the learned counsel for the first respondent and the learned Special Government Pleader on behalf of the second respondent.

3. The Government earlier introduced a Group Insurance Scheme for the aided schools, aided colleges, aided technical educational institutions and employees working under the Nutritious Meal Programme. The scheme was not made applicable to the employees of the Village Panchayat. The Government issued an Government Order in G.O.(Ms) No.326 dated 23 June 1997 bringing the employees of the Village Panchayats into the Group Insurance Scheme.

4. The husband of the first respondent was an employee of the Marakanam Town Panchayat. He met with an accident during the course of his employment. The Commissioner for Workmen's Compensation directed the appellant to pay compensation under the Workmen's Compensation Act. Thereafter, the first respondent submitted a representation to the appellant to grant her compensation in the light of the Government Order in G.O. (Ms).No.326 Finance (Pension) Department dated 23 June 1997. Since, action was not taken by the appellant, a Writ Petition in W.P.No.39437 of 2005 was filed claiming the insurance amount. The learned single Judge allowed the Writ Petition and a Mandamus was issued to the appellant to pay the amount. Feeling aggrieved, the appellant has come up with this intra court appeal, challenging the liability.

5. The Government Order in G.O.(Ms).No.326 Finance (Pension) Department dated 23 June 1997, proceeded as if there was a liability on the part of the employee to pay contribution, in case, he wanted to avail the benefits of the Group Insurance Scheme. Similarly, there is a liability on the part of the local body to pay the employers contribution. The amount was directed to be credited to the head of the account "0075.00 Miscellaneous General Services- 800 other Receipts - AW. contribution under Group Insurance Scheme for employees of Local Bodies, aided Schools, Aided Colleges and Aided Technical Institutions - 10 Employees of Local Bodies - Panchayat

Assistant/ Part-time Clerks and Panchayat Employees like Sanitary Worker, Over Head/Power Pump Operators."

6. It is clear that the employees who are employed by the Village Panchayat are eligible for the benefits of the Group Insurance Scheme.

7. The core question is as to whether there is any statutory liability on the part of the appellant to pay the Insurance amount to the employee.

8. In the Government Order in G.O.(Ms).No.326 Finance (Pension) Department dated 23 June 1997 there is a clear indication that the liability is on the part of the Government to make payment to the Legal Representatives of the deceased employee in case he is a member of the Group Insurance Scheme. In case the liability is on the part of the employer, the Government Order would provide that the employer would keep the amount in a separate account and pay the amount to the Legal Representatives, in case of death of the employee during the course of employment. The Government Order clearly provides that the amount would be credited to a separate amount opened by the Government for payment of the Insurance amount to the employees who are covered under the Group Insurance Scheme. We are therefore, of the view that the learned single Judge was not correct in directing the appellant to pay the amount to the first respondent.

9. The liability to make payment is not under challenge. The question is whether the payment should be made by the appellant or the second respondent at the first instance.

10. After hearing the learned counsel for the parties and on a perusal of the Government Order in G.O.(Ms)No.326 Finance (Pension) Department, we are of the considered view that the amount must be paid only by the Government and not by the local body.

11. The other question is as to whether the first respondent should be relegated to the Government for payment.

12. The first respondent is the widow of the employee, who worked as a Pump Operator. We are therefore, of the view that the principle "Pay and Recover" should be invoked in the subject case. We therefore, direct the appellant to pay the compensation awarded by the learned single Judge to the first respondent, within a period of six weeks from the date of receipt of a copy of this Judgment. In case, the amount is not paid within a period of six weeks, it would carry interest @ 9% per annum. We give liberty to the appellant to claim the amount

from the Government, after paying the amount to the first respondent.

13. The order passed by the learned single Judge is modified to the above extent.

14. The intra Court appeal is allowed to the extent indicated above. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

arr

To

The Secretary to Government,  
Finance Department,  
Fort St. George, Chennai-600 009.

+1cc to Mr.J.Jayendra Krishnan, Advocate SR.No.19061

+1cc to Mr.K.M.Ramesh, Advocate SR.No.18708

+1cc to Government Pleader SR.No.19286

W.A.No.1187 of 2014

NRL (CO)  
GN (16/03/2018)

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