

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.2783 of 2015

1.P.R.Sathiyapriya

D/o. Late L.N.K.Surendranathan

2.L.N.S.Praveenkumar

S/o. Late L.N.K.Surendranathan

... Petitioners

Vs

Tamil Nadu Water Supply and
Drainage Board,
rep. by its Managing Director,
Chepauk,
Chennai-600 005.

... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records of the respondent in Proc.No.32101/Esst.(DP)/A1/2014 dated 27.11.2014 and quash the same and direct the respondent Board to settle the terminal benefits of our deceased father.

For Petitioners : Mr.Kandhan Duraisamy

For Respondent : M/s.S.Thamizharasi

O R D E R

Heard Mr.Kandhan Duraisamy, learned counsel for the petitioners and Ms.S.Thamizharasi, learned Standing Counsel appearing for the respondent Board.

2. The petitioners have approached this Court, seeking the following relief:-

"To issue a writ of Certiorarified Mandamus, calling for the records of the respondent in Proc.No.32101/Esst.(DP)/A1/2014 dated 27.11.2014 and quash the same and direct the respondent Board to settle the terminal benefits of our deceased father."

3. The case of the petitioner is as follows:-

The petitioners are the legal representatives of one Surendranathan, who was working as Assistant Executive Engineer in the Respondent Board. While he was working as Assistant Executive Engineer, he was issued with a charge memorandum for certain acts of irregularities committed by him in respect of the construction project. Thereafter, he was called upon to give his explanation to the findings of the enquiry officer and ultimately, he was dismissed from service on 06.11.1998. The said dismissal order was subject matter of the writ petition in W.P.No.18034 of 1998 and the said writ petition was dismissed by this Court on 19.02.2003. The dismissal of the writ petition has become final and no appeal was preferred by the writ petitioner.

4. It appears that subsequently, one Mr. Jayasankar, who was similarly charge sheeted, had approached this Court in W.P.No.28413 of 2007. The said writ petition was allowed on 28.10.2010 and thereafter, he was reinstated in service. Eventually, the father of the petitioners died on 20.05.2012 and after his dismissal from service, he did not choose to approach the Board for raising any ground of grievance.

5. As against the order passed in writ petition filed by the said Jayasankar, a Writ Appeal was also preferred before this Court by the respondent and the same was also dismissed by judgment, dated 13.02.2013 and thereafter, by communication dated 30.05.2013, the dismissal order passed as against the said Jayasankar, came to be cancelled and reinstated in service. On coming to know the said judgment, a representation was made by these petitioners on 16.12.2013, to the respondent Board seeking for similar cancellation of dismissal order as done in the case of the said Jayashankar and for terminal benefits. Since no order is passed in response to the said representation, these petitioners had approached this Court in W.P.No.22667 of 2014. The said writ petition was disposed of by this Court, by order dated 05.09.2014, directing the respondent to consider the representation of the petitioner, dated 16.12.2012, on merits and in accordance with law, within a period of six weeks.

6. In pursuance of the direction of this Court, the respondent by proceedings dated 27.11.2014, rejected the claim of the petitioners by passing a detailed order which is reproduced below in full:-

"Thiru L.N.K.Surendranathan while working as Assistant Executive Engineer in Gudalur Section of HADP Division, Ooty was in charge of execution of construction of retaining wall in Koranchal WSS in Gudalur

Union. The above work had been completed in all respects and the total value of work done was Rs.69,884/- and the bill had been passed for net amount of Rs.56,906/- on 30.03.93 and the payment had also been made to the contractor on 26.5.93 vide Cheque No.837112 dated 26.5.92 by the E.E., HADP Division, Ooty.

Based on the reference received from the Government, the Vigilance Cell, TWAD Board inspected the work on 10.11.97 & 11.11.97. During the inspection of site of the above work, it had been noticed that the retaining wall said to have been constructed by the contractor Thiru P.P.Yacob was not actually existing there. It was found that the retaining wall had not been constructed but payment had been made to the contractor as if the work had been completed in all respects. Hence, charges were framed against Thiru L.N.K.Surendranathan, formerly A.E.E. Under Regulation 9(b) of TWAD Board Employees' (Discipline and Appeal) Regulations, 1972 in M.D.'s Charge Memo No.118045/Estt.(DP.II)97-2 dated 03.12.97 for recording false measures.

The enquiry officer conducted the enquiry and held all the charges framed against him as "proved". The findings of Inquiry Officer was communicated and further defence statement was obtained on 31.08.98.

Based on his further defence statement, he was called upon for a personal hearing by the M.D. On 02.11.98. After the personal hearing only, the final order of dismissal from service was issued in M.D's Proc.No.118045/Estt.(DP.II) A3/97-18 dt.06.11.98.

Thiru L.N.K.Surendranathan, formerly A.E.E. Has filed a W.P.No.18034/98 against the order of Dismissal from Service in High Court. The Hon'ble High Court in its order dated 19.02.2003 has dismissed the W.P.

Ms.P.R.Sathyapriya and
L.N.S.Praveenkumar, Daughter and son of Late

L.N.K.Surendranathan, have submitted a representation/dt.25.09.14 along with copy of High Court order/dt.05.09.2014 passed on W.P.No.22667 of 2014 filed by them. The High Court order dated 05.09.2014 has ordered "to consider the petitioners representation dated 16.12.2013 on merits and in accordance with law, within a period of six months from the date of receipt of copy of order".

Now the Legal heirs of the deceased one Ms.P.R.Sathyapriya and L.N.S.Praveenkumar, have claimed that since an another Assistant Engineer by name Thiru N.A.Jayshankar was also involved in the same kind of charge-memo, and after legal battle' he is been now re-instated into service, the same benefit be extended to their deceased father Thiru L.N.K.Surendranathan, also.

The Legal heirs of Thiru L.N.K.Surendranathan are son and daughter of the deceased who are now aged about 38 and 34 years respectively, and the deceased Thiru L.N.K.Surendranathan having kept quiet for over 14 years, when he was alive, did not challenge the order of dismissal of his W.P.No.18034 of 1998. Particularly when the Writ Petition filed by Thiru N.A.jayashankar was allowed on 28.10.2010 in W.P.No.28413 of 2007 Thiru L.N.K.Surendranathan was alive, and he did not take any steps citing the same.

As on the date of death Thiru L.N.K.Surendranathan, i.e. On 20.05.2012 he accepted the order of dismissal of service and did not take any steps to cancel the same. No legal proceedings were also pending regarding his dismissal from service against the TWAD Board. Hence, the same cannot be now pursued by his legal heirs.

The final outcome of the Writ Petition filed by Thiru N.A.Jayashankar in W.P.No.28413 of 2007, came to be disposed only 13.02.2013, after the death of Thiru L.N.K.Surendranathan. Hence, the said Judgement cannot be applied posthumously to the deceased Thiru L.N.K.Surendranathan,

when the deceased is not party to the proceedings.

Hence, the cancellation of order of dismissal served to an ex-employee who is dead as of now is not tenable, and lacks merits.

The representation of the petitioner dated 16.12.2013 is considered in detail and because of the above said reasons the Board is not in a position to comply the request of the petitioner in respect to the terminal benefits of their deceased father, as per rules."

7. Upon notice, M/s.S.Thamizharsi, learned counsel entered appearance and a detailed counter affidavit has been filed reiterating the reasons set forth in the communication dated 27.11.2014 which is impugned in the present writ petition towards rejection of the claim of the petitioners.

8. Learned counsel for the petitioners would submit that there should be a parity of treatment in the matter of disciplinary action and once a similarly placed employee had been reinstated in service, such benefit ought to have been extended to the father of the petitioners. He would submit that the cancellation of dismissal order would remove the stigma cast upon the deceased Government employee. The petitioners who are the legal representatives of the deceased employee would be benefited monetarily in the event of cancellation of the dismissal order. This Court is unable to appreciate the said argument in view of the basic fact that the order of dismissal was the subject matter of the earlier proceedings filed by the father of the petitioners in W.P.No.18034 of 1998 and the same was dismissed by this Court on 19.02.2003. Admittedly, the said order has become final as the father of the petitioners did not choose to prefer any appeal. As rightly held by the respondent Board in its impugned proceedings, even after the disposal of the writ petition dated 28.10.2010, filed by the said Jayashankar, there was no attempt by the deceased employee to take the issue to the Board, since he was alive at that time. The petitioners, having kept quiet for 14 years and having allowed the order passed in the writ petition to become final even without subjecting the same for any appeal, the petitioners who were Legal representatives of the deceased employee, cannot now be allowed to reopen the issue afresh. In the garb of writ petition, the petitioners are indirectly seeking to revoke the order of dismissal from service and to enable them to reap the benefit of terminal benefits payable to the deceased employee.

Such legal course of action is unheard of and the same is unsustainable under any circumstances. A decision taken in respect of other employee particularly, disciplinary action, cannot be applied equally in respect of another employee as it would always depend upon the factual matrix of each case. It is not open to the petitioners herein to draw parallel to the order passed by the learned Single Judge as well as the Division Bench in respect of the said Jayashankar and the same cannot be taken as a precedent for reopening the case of the petitioners which was disposed of in 2003 itself.

10. In view of the above, this Court has no hesitation in dismissing the writ petition as devoid of merits and substance. Therefore, the writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

Tamil Nadu Water Supply and
Drainage Board,
rep. by its Managing Director,
Chepauk,
Chennai-600 005.

+1cc to Mr.Muthumani Doraisami, Advocate, S.R.No.40263

+1cc to Mrs.S.Thamizharasi, Advocate, S.R.No.40112

W.P.No.2783 of 2015

GSP(24/07/2018)

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