



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.06.2018

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THE HONOURABLE MR.JUSTICE **M.DURAISWAMY**
and
THE HONOURABLE DR.JUSTICE **ANITA SUMANTH**

W.A. (MD) No.367 of 2018
and
C.M.P. (MD) No.2255 of 2018

1. The Commissioner of
Municipal Administration,
Chepauk,
Chennai - 5.
 2. The Commissioner,
Manaparai Municipality,
Manaparai.
 3. The State of Tamil Nadu,
Represented by the Secretary to Government,
Municipal Administration &
Water Supply Department,
Secretariat,
Chennai - 9.
- ...Appellants/Respondents

Vs.

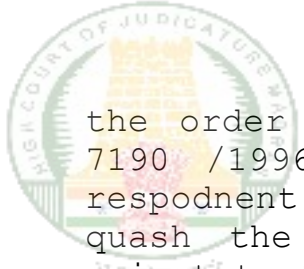
R.Swaminathan (Died)

- 1.S.Kumudha
 - 2.S.Mahalakshmi
 - 3.Ramanathan
 - 4.Janaki Ammal
- ...Respondents/Petitioners

PRAYER: Writ Appeal is filed under Order XV of the Letters Patent Act against the order passed by this Court made in W.P.(MD). No.9354 of 2006 dated 20.01.2014.

Prayer in WP(MD). 9354/ 2006 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to call for the records on the file of the 2nd respondent in connection with the orders passed by him in proce. No. 3701/92/C2 dated 06/03/95 and the subsequent proceedings in Rc, No. 3701/92/C2 dated 18/04/95 and



the order passed by the first respondent in his Proc. Roc. no. 7190 /1996/H2 dated 21/02/05 and the order passed by the 3rd respondent in letter no. 24962/NaPa.1/05-3 dated 01/03/06 and quash the same and consequently to direct the respondents to reinstate the petitioner with all monetary benefits.

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For Appellants : Mr.A.K.Baskarapandian,
Special Government Pleader

For Respondents : Mr.M.Muthu Geethayan
for R.1, R.2 & R.4

JUDGMENT

(Judgment of the Court was delivered by **M.DURAISWAMY., J**)

Challenging the order passed in W.P.(MD)No.9354 of 2006, the respondents in the writ petition have filed the above Writ Appeal.

2. The respondents / petitioners filed the writ petition in W.P.(MD)No.9354 of 2006 to issue a Writ of Certiorarified Mandamus to call for the records on the file of the second respondent in connection with the order passed by him, dated 06.03.1995 and the subsequent proceedings dated 18.04.1995 and its connected order passed by the first respondent in his proceedings dated 21.02.2005 and consequential order passed by the third respondent in letter dated 01.03.2006 and quash the same and consequently direct the respondents to reinstate the petitioner with all monetary and service benefits.

3. It is the case of the respondents/petitioners that they are the wife, daughter and parents of one Swaminathan, who suffered an order of termination from service for serious charges of fabrication of documents, breach of trust, misappropriation and unauthorised absence for committing certain acts unbecoming of Government Servant. The delinquent was issued with a charge memo dated 03.05.1994 and on his failure to submit any explanation for the charges, he was subjected to departmental enquiry and in the course of which, statements were obtained by the enquiry officer. According to the enquiry officer's report, the delinquent admitted his guilt in respect of the charges framed against him. However, according to the delinquent, his signatures were forcibly obtained in blank papers by the then Commissioner and the same were misused for creating statements to the effect that he admitted the charges framed against him. Based on the enquiry report, a show cause notice was issued to the delinquent regarding the proposed punishment of termination of service, for which, the delinquent filed an explanation raising serious objections and in spite of the same, the delinquent was imposed the punishment of termination



of service for the charges held to be proved against him. Aggrieved over the same, the delinquent has preferred an appeal before the appellate authority. The first respondent, viz., the appellate authority, rejected the appeal preferred by the delinquent, against which, the delinquent has filed writ petition.

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4. During the pendency of the writ petition, the delinquent had passed away and his legal representatives, viz., the respondents 1 to 4 were brought on record. During the pendency of the writ appeal, the third respondent, who is the father of the delinquent, had also passed away. According to the learned Counsel appearing for the respondents/petitioners, the legal representatives of the deceased third respondent are already on record as respondents 1, 2 and 4. The submission made by the learned Counsel appearing for the respondents/petitioners is also recorded.

5. Before the learned Single Judge, the learned Counsel appearing for the respondents/petitioners submitted that in view of the death of the delinquent, the respondents/petitioners are not interested in getting back wages, but interested in getting reinstatement of the delinquent with service benefits, in order to get pensionary benefits.

6. The learned Counsel appearing for the respondents/petitioners submitted that in view of the judgment of this Court in **G.Vani v. Registrar, High Court, Chennai** reported in **(2008) 1 MLJ 1127**, the respondents/petitioners are entitled to get the relief granted in the writ petition.

7. In paragraph Nos.6 & 7 of the above judgment, the Division Bench of this Court held as follows:-

"6. Learned counsel for the petitioner has contended that, in view of Rule 54-B-1(2) of the Fundamental Rules, since the disciplinary proceedings had not been concluded and the officer concerned died before such disciplinary proceedings, the family members were entitled to full pay and allowances for that period to which the employee would have been entitled had he had not been suspended, subject to adjustment of subsistence allowance already paid. In this context, learned counsel for the petitioner submitted that even though as per Rule 54-B(2) entire salary should have been paid, in view of the earlier decision of the High Court, obviously such amount has not been paid. However, that does not mean that the entire period should not be counted for the purpose of calculating pension. Learned counsel for the petitioner further submitted that as a matter of fact on a reading of the decision of the Division Bench in WP.No.4735 of 2001, it would be apparent that the Court actually



intended that the persons concerned would be entitled to receive the entire pension and the only thing is that they would be deprived of the salary for that period.

7. We find sufficient force in the above submissions. A departmental proceeding is deemed to be pending until it culminates in imposition of punishment or exoneration, as the case may be. Obviously, such order of punishment or exoneration has to be passed by a competent authority. Since the order of punishment was found to be invalid having been passed by an authority not competent to pass such order, it must be taken that such order of punishment was non est in the eye of law. (In this connection, reference can be made to the decision of the Supreme Court in *Baradakanta Mishra v. High Court of Orissa* and another, AIR 1976 SC 1899 : (1976) 3 SCC 327. Thus, it must be taken that the departmental proceedings had not been finalised during the life time of the concerned officer. Rule 54-B-1(2) is a specific provision applicable to such a case."

8. The learned Single Judge, after taking into consideration the case of both parties, set aside the impugned orders and directed the appellants/respondents to notionally reinstate the delinquent with continuity of service, however, without back wages and disburse the retirement cum monetary benefits, due to the respondents/petitioners, who are the legal representatives of the deceased delinquent.

9. It is settled position that on the death of a delinquent, the departmental proceedings initiated against the delinquent would abate.

10. In such view of the matter, the learned Single Judge has rightly set aside the impugned orders and granted the reliefs without back wages.

11. We do not find any ground to interfere with the order passed by the learned Single Judge. The Writ Appeal is liable to be dismissed and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed. The second appellant viz., the Commissioner, Manaparai Municipality, Manaparai, is directed to complete the exercise within a period of eight weeks from the date of receipt of a copy of this judgment.

Sd/-

Assistant Registrar(RTI)

/True Copy/



To

The Commissioner,
Manaparai Municipality,
Manaparai.

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+ 1 cc TO The Special Government Pleader in SR No. 70339
+ 1 cc TO Mr.M.Muthu Geethaiyan , Advocate in SR No. 70125

ssl/gk

AE/SKN RSK/SAR1/06.07.2018/5P/4C

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C.M.P. (MD) No.2255 of 2018
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