



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.13888 of 2011

and

M.P (MD) No.1 of 2011

Uchimahali

... Petitioner

Vs.

1.The Commissioner,
Thoothukudi Panchayat Union,
Pudukottai,
Thoothukudi District.

2.The District Collector,
Thoothukudi.

3.The Local Fund Audit,
4th Floor,
Kuralagam Buildings,
Chennai - 108.

(R3 is impleaded as respondent by
order dated 05.04.2013 made in
M.P (MD) No.1 of 2013)

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the second respondent's impugned letter No. 63/1523/2010 dated 4.8.2010 and quash the same so far as what was communicated in column 4 and 5 of the impugned order is concerned and to direct the respondents to regularize the service of the petitioner's husband and to pay the family pension to the petitioner from the date of death of the petitioner's husband on 1.10.1972 at the rate Rs.3,050/- p.m., and direct the respondents to pay the compensation for the death of the petitioner's husband and also consequential arrears arising thereon together with 9% interest till the date of realization.

For Petitioner : Mr.M.Muthumalai

For Respondents : Mr.R.Sethuraman
Spl. Govt. Pleader

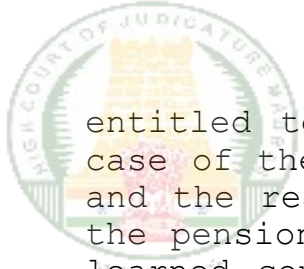
O R D E R

The order of rejection issued by the second respondent in proceedings dated 04.08.2010 is under challenge in this writ petition. Further direction is sought for to grant the benefit of regularization to the deceased husband of the writ petitioner and consequently, sanction family pension and other consequential benefits including death compensation along with interest.

2.The learned counsel for the petitioner states that the husband of the writ petitioner, namely, Late Thiru.Kuppusamy was appointed as 'Watchman' in Panchayat Union Office, Pudukkottai, Tuticorin District on 05.08.1964. At the time of performing his duty as Watchman, the husband of the writ petitioner passed away on account of electrocution on 01.10.1972. He further states that the premature death of the husband of the writ petitioner caused great mental agony to the family of the writ petitioner. Under those circumstances, the writ petitioner submitted an application seeking family pension by regularizing the services of her husband. However, the request of the writ petitioner was not considered and finally an order of rejection was passed stating that the husband of the writ petitioner was appointed as 'Night Watchman' and his salary was paid from the contingency fund and he was serving from 04.02.1964 to 01.10.1972. Further, the services of the deceased employee was not regularized and he was employed only under the contingency fund. Therefore, as per the Rules, the family pension cannot be granted to the writ petitioner. He further states that the persons, who have served five years, were granted family pension in other cases. This apart, the death compensation amount also has not been paid and therefore, the writ petitioner is constrained to move the present writ petition.

3.The learned Special Government Pleader appearing for the respondents opposed the contention of the writ petitioner by stating that the deceased employee was in service from 05.08.1964 to 01.10.1972 and he was serving for about eight years as contingent employee and his services was not regularized. Since he was serving as a temporary employee, the writ petitioner is not eligible for family pension.

4.This Court is of an opinion that when the writ petitioner's husband died on account of electrocution, while he was on duty, at least the case of the writ petitioner ought to have been considered for the purpose of death compensation. Death compensation shall be considered based on the Government scheme in respect of the death occurred on account of electrocution. In this regard, it is left open to the writ petitioner to submit representation before the competent authorities and the competent authorities are bound to consider the same in accordance with the procedure and the scheme in respect of such death occurring on account of electrocution. However, in respect of family pension, this Court is of an opinion that the services of the deceased employee was not regularised. The temporary employee receiving salary from the contingent fund is not



entitled to get pension. Such being the factum of the case, the case of the writ petitioner for family pension cannot be considered and the reasons stated in the impugned order is in accordance with the pension rules in force. In respect of regularization also, the learned counsel for the petitioner states that the services of the deceased employee ought to have been regularised during the relevant point of time. However, the fact remains that the services were not regularised even at the time of the death of the deceased employee. Now this Court cannot grant any retrospective regularization in respect of the services of the deceased employee, in view of the Judgment of the Honourable Supreme Court of India. Now regularization, retrospective regularization or permanent absorption cannot be provided contrary to the recruitment Rule in force. This being the legal principles now settled, question of granting retrospective regularization more specifically after the death of the deceased employee can never be considered at all. Accordingly, the writ petitioner is at liberty to submit representation in respect of death compensation to the competent authority for consideration. In respect of regularization and grant of family pension, this Court is not inclined to consider the claim made in the present writ petition.

5. Accordingly, this writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (Crl.Side)

/True Copy/

Sub-Assistant Registrar

To

1. The Commissioner,
Thoothukudi Panchayat Union,
Pudukottai, Thoothukudi District.

2. The District Collector, Thoothukudi.

3. The Local Fund Audit, 4th Floor,
Kuralagam Buildings, Chennai - 108.

+One cc to Mr.M.Muthumalai, Advocate, SR.No.48458

+One cc to The Special Government Pleader, SR.No.48857

skn

RL/6C/3P/JC/SAR1/27/2/2018

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