

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 27.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

WP.No. 7515 of 2019
and
WP.MP.Nos.8179 & 8180 of 2019

1.S.Nandhini,

2.Minor.S.Vasanth,

Represented by her guardian and
next friend Mrs.Saroja.

... Petitioners

Vs

1.The Secretary to Government,
Municipal Administration & Water Supply Department,
Fort St.George, Chennai-600 009.

2.The Director of Municipal Administration,
Chepauk, Chennai 600 005.

3.The Director of Local Fund Audit,
Integrated Complex for Finance Department,
Animal Husbandry Hospital Campus,
Nandanam, Chennai 600 035.

4.The Commissioner,
Namakkal Municipality,
Namakkal & District.

5.The Assistant Director of Local Fund Audit,
(Municipal Pension Verification)
Integrated Complex for Finance Department,
Animal Husbandry Hospital Campus,
Nandanam, Chennai 600 035.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for an issuance of Writ of Certiorarified Mandamus, calling for the records in pursuant to the impugned order passed by the 5th respondent in proceedings Mu.Mu.No.13693/Na.O.Sa(2)/2015 dated 07.09.2015 and quash the same and consequently direct the respondents to grant family pension and other pensionary benefits to the petitioners under the Tamil Nadu Pension Rules 1978 with interest.

For Petitioners : Ms.Swadhi Subramaniam

For Respondents : Mr.S.Suresh Kumar, GA for RR 1 to 3 & 5

: Mr.M.Rajamathivanan, SC for R4

ORDER

The father of the petitioners namely M. Selvaraj (late) had joined the services of the fourth respondent/Municipality initially on 10.03.1995. By order dated 09.11.2001, the petitioners' father's service was regularized on 02.11.2001 after completion of three years of service. While the petitioners' father was in service, he expired on 06.07.2012. The petitioners' mother had pre-deceased her husband and the petitioners' alone are the legal representatives of the late M.Selvaraj. When they had made an application, seeking for family pension, the same came to be forwarded to the fourth respondent, who had recommended for family pension through his letter, dated 17.04.2015. However, the fifth respondent had now passed an order dated 07.09.2015, stating that the petitioners' father's service ought to have been regularized from 23.02.2006

only, since he had joined the service on 12.06.1998 and in view of the G.O.Ms.No.166 Municipal Administration & Water Supply Department, dated 31.12.2001, the petitioners' request for family pension cannot be granted. The said order dated 07.09.2015 is under challenge in the present Writ Petition.

2.I am unable to agree with the justification given by the fifth respondent in the impugned order for the following reasons.

3.It is not in dispute that the petitioners' father's service was regularized by the fourth respondent with effect from 02.11.2001 after completion of three years. After regularization of his service, the petitioners' father had expired on 06.07.2012 and over the period of 11 years, the regularization was not questioned. Only after three years of his death, the fifth respondent has now come forward with the reasoning that the services was wrongly regularized. It is seen that the fifth respondent had placed reliance on the Government Order in G.O.(MS). No.166, Municipal Administration & Water Supply Department, dated 31.12.2001, which came to be passed after the petitioners' father's service was regularized and he has also been enjoying the benefits of regularized servant. In normal circumstances, if the regularization

is to be questioned, the employee would be put on notice to offer his explanation as to why the regularization should not be cancelled.

4. In the instant case, the employee had expired while the regularization orders were in force. From the date of his death, he would automatically become entitled for a family pension. As such, the fifth respondent may not be justified in finding fault with the proceedings of the fourth respondent in regularizing the services of the petitioners' father in the year 2001. Hence, the proceedings dated 07.09.2015 cannot be sustained and consequently, the petitioners, who are the legal heirs of the deceased M.Selvaraj, would be entitled for family pension.

5. In the light of the foregoing discussions, the order dated 07.09.2015 passed by the fifth respondent herein is quashed and consequently, the fifth respondent is directed to favourably process and disburse the entire pensionary benefits of late Mr.Selva Raj and to grant family pension to the petitioners herein, with effect from the date of death of the employee, along with arrears of pension. Such an exercise shall be completed within a period of eight weeks from the date of receipt of copy of this order. Accordingly,

the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

27.03.2019

Index:Yes/No

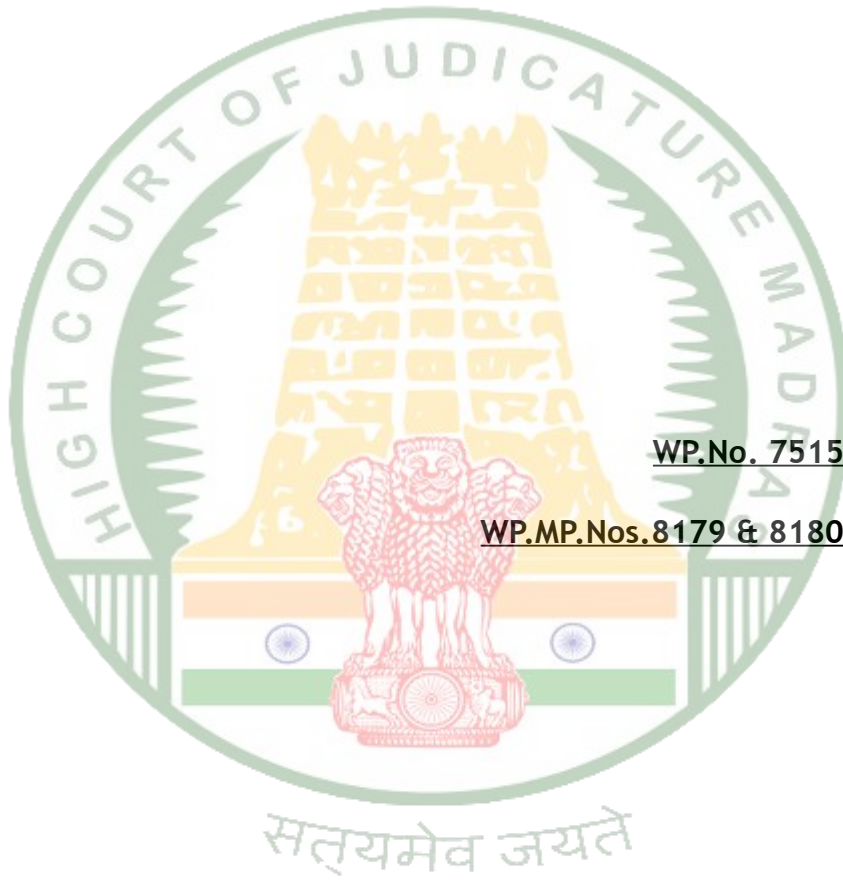
Speaking order/Non-speaking order
jrs

To

- 1.The Secretary to Government,
Municipal Administration & Water Supply Department,
Fort St.George, Chennai-600 009.
- 2.The Director of Municipal Administration,
Chepauk, Chennai 600 005.
- 3.The Director of Local Fund Audit,
Integrated Complex for Finance Department,
Animal Husbandry Hospital Campus,
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- 4.The Commissioner,
Namakkal Municipality,
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(Municipal Pension Verification)
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M.S.RAMESH.,J

jrs



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