



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 07.06.2019

CORAM:
THE HONOURABLE MR.JUSTICE **S.M.SUBRAMANIAM**

WEB COPY

W.P.(MD)No.18534 of 2013
and
M.P.(MD)No.1 of 2013

Sameema

... Petitioner

-Vs-

The Divisional Forest Officer,
Varushanadu Soil Conservation Division,
Theni-625 531.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the respondent herein in his proceedings in Pa/05/2013 dated 18.02.2013 and consequential impugned order passed by the respondent by his proceedings in Pa/3633/2013 dated 21.10.2013 and quash the same as illegal and consequentially to direct the respondent to treat the period of suspension of petitioner's husband between 17.08.2010 and 28.04.2011 as spent on duty in conformity with Rule 54-B1(2) of Fundamental Rules within the period that may be stipulated by this Court.

For Petitioner	: Mr.H.Mohamed Imran
	for Ajmal Associates
For Respondent	: Mr.S.Dhayalan
	Government Advocate

ORDER

The order of rejection dated 21.10.2013 rejecting the claim of the writ petitioner in respect of treating the period of suspension engaged by her deceased husband as leave is under challenge in the present writ petition.

2. The husband of the writ petitioner was employed as Driver in Forest Department and on account of certain allegations a criminal case was registered against the husband of the writ petitioner in Crime No.828 of 2010 under Section 294 (b) and 506 (i) IPC and Section 4 of Tamil Nadu Woman Harassment Act. The writ petitioner was placed under suspension. During the period of suspension, the writ petitioner passed away on 16.03.2012 by committing suicide.



3. The writ petitioner states that once an employee dies during the period of suspension the legal heir / wife is entitled to get the mandatory benefits of treating the entire period of suspension as duty for all purpose. In this regard, the learned counsel for the petitioner relies on Rule 54-B1 (2) of Fundamental Rules, which reads thus:-

"Notwithstanding anything contained in Rule 53, where a Government servant under suspension dies before the disciplinary or the Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death, shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid."

4. When the provision of the Fundamental Rules are unambiguous that if the Government servants dies before the disciplinary or Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death, shall be treated as duty for all purposes and his family shall be paid the full pay and allowances and for that period, to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

5. This being the provision the purpose the authorities competent after the death of the deceased employee ought to have treated the entire period of suspension as duty period for all purpose and disburse the salary by adjusting the subsistence allowance already been paid to the employee. However, the said exercise had not done by the competent authority and the impugned order itself passed by the respondent is in violation of the Fundamental Rules cited supra.

6. Accordingly, the impugned order passed by the respondent in proceedings Pa/05/2013 dated 18.02.2013 as well as the consequential impugned order passed in Proceedings Pa/3633/2013 dated 21.10.2013 are quashed. The respondents are directed to treat the period of suspension of the deceased employee as duty period for all purpose and calculate the mandatory benefits and disburse the same to the writ petitioner within a period of twelve weeks from the date of receipt of a copy of this order.



The writ petitioner is also at liberty to submit a fresh representation enclosing all documents enabling the authorities to pass orders without any further delay. The writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)

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To

The Divisional Forest Officer,
Varushanadu Soil Conservation Division,
Theni-625 531.

+ 1 CC to M/s.Ajmal Associates, SR.No.67925

+1CC to The Special Government Pleader SR.No.67617

W.P. (MD) No.18534 of 2013

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