

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2020

CORAM :

The Hon'ble Mr.AMRESHWAR PRATAP SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.P.Nos.21948, 21955 and 21061 of 2019
WMP Nos.21174, 21178, 21184, 21190, 21193
and 21194 of 2019

W.P.No.21948 of 2019

1. K. Paramasivam (deceased)
2. P. Dhanalakshmi
3. P. Mehala
4. P. Dhivya
5. P. Balakrishna

(Petitioners 2 to 5 are substituted as
LRs of the deceased 1st petitioner as
per Order dated 06.11.2019 made in
WMP No.30848/2019)

..... Petitioners

W.P.No.21955 of 2019

M. Selvaraj

..... Petitioner

W.P.No.21961 of 2019

C. Kumar

..... Petitioner

vs

The Principal District Judge,
Namakkal

... Respondent in all the writ petitions

W.P.No.21948 of 2019:

Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus to call for the records on the file relating to the Pro.ROC.No.8061/A/2018 dated 22.02.2019 to quash the same and issue directions to the respondents to grant all retirement and pensionary benefits without any deductions and to release the withheld amounts with 12% interest on all such delayed disbursement of the benefits.

W.P.No.21955 of 2019:

Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus to call for the records on the file relating to the ROC No.6786/A/2018 dated 22.02.2019 of the respondent to quash the same and to issue directions to Respondent to grant all retirement and pensionary benefits without any deductions and to release the withheld amounts with 12% interest on all such delayed disbursement of the benefits.

W.P.No.21961 of 2019:

Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus to call for the records on the file relating to the Pro.ROC No.7882/A/2018 dated 22.02.2019 to quash the same and issue directions to respondent to grant all retirement and pensionary benefits without any deductions and to release the withheld amounts with 12% interest on all such delayed disbursement of the benefits.

For Petitioner in all : Mr.M. Ravi
the
writ petitions

For Respondent : Mr.C.T. Mohan

COMMON ORDER

(Delivered by The Hon'ble Chief Justice)

These writ petitions have been filed by three retired employees of the District Court, Namakkal, challenging the charge memos issued to them and disciplinary proceedings initiated in respect of allegations of neglect in duty and otherwise causing financial loss.

2. The charges are practically common against all the three employees. The substance thereof is that one Mr.N. Ganesan, Typist had been suspended on account of involvement in a criminal case and a show-cause notice was also issued to him. He had filed a writ petition before this Court against the show-cause notice, being W.P.No.27427 of 2009, where, an Interim Order had been passed in his favour that came to be vacated on 14.08.2014 which was communicated to the office of the Principal District Court, Namakkal on 21.08.2014. The writ petition was finally disposed of on 22.09.2014 and a copy of the order of the

disposal of the writ petition was received by the office aforesaid on 27.10.2014.

3. On 01.12.2014, the said Typist Mr.N.Ganesan is stated to have moved a representation, but, it is at this stage, that the foundation of charge has been laid against three employees, narrating that no steps were taken during their spells when they were in-charge in the office to bring the said fact to the notice of the Principal District Judge.

4. We may point out at this stage that the Office Memo dated 13.11.2014 had been issued by the Principal District Judge, Namakkal to Mr.N. Ganesan calling upon him to submit his representation or explanation as to why further action for imposing any penalty cannot be taken against him. The representation came to be submitted by Mr.N. Ganesan on 01.12.2014, but, the same is alleged to have not been brought to the notice of the concerned Judge.

5. The inference that we can draw from the aforesaid narration of facts is that the said fact of movement of file after receipt of information came to be statedly forestalled and the proceedings were not undertaken against Mr.N.Ganesan immediately thereafter.

6. Mr.N. Ganesan, after almost four years, filed a Writ Petition in W.P.No.5181 of 2018. That came to be disposed of 09.03.2018 with a direction to dispose of his representation dated 04.12.2017 within one week since the employee was going to attain the age of superannuation on 31.03.2018 and also observed that any order of punishment in the year 2004 shall remain unaltered, but the period of suspension from the year 2009 alone is to be taken into account.

7. The petitioner and other officers who had taken over charge in the year 2015 had not brought to the notice of the concerned Judge the fact of the representation of Mr.Ganesan as a result whereof no further action was taken against him and, who by that time, had withdrawn Rs.12,58,748/-. The charge therefore, in essence was that had the facts been brought to the notice of the authorities, the release of payment could have been curtailed. But not bringing the said fact to the notice of the authorities, in effect, amounted to neglect on the part of the petitioners and that it facilitated the payment that was received by Mr.N. Ganesan. The facts actually were informed after the order dated 09.03.2018 in close proximity whereof Mr.Ganesan was allowed to retire on 31.03.2018.

8. In this background, all the three employees were charged with similar charge memos, the contents whereof are almost

similar in nature. All the three employees have filed the present writ petitions, primarily for quashing of the charge memos and also for consequential retiral benefits, including gratuity that has been withheld.

9. With regard to withholding of retirement benefits of the deceased employee, we had called upon the learned counsel to assist the Court viz., as to the legality of the continuance of the proceedings in the event of death of such employee as the petitioner in W.P.No.21948 of 2019 viz. K. Paramasivam died during the pendency of the writ petition and has been substituted by his heirs. We, therefore, posed a question as to whether the proceedings can still continue, keeping in view the fact that the allegation and the charge was with regard to neglect of duty resulting in allegation of loss of revenue. The doubt that we had in our mind was the issue of non-processing of file of Mr.N. Ganesan while under the charge of the petitioners, particularly when the petitioner K. Paramasivam had died. Accordingly can that charge be actually defended by his wife or heirs, as they would not be in a position to orally explain as to what had either prevented the movement of file or the movement had been brought to the notice of the authorities. This doubt was on account of the fact that the employee being dead, it was he who could inform the enquiry proceedings about his role in the matter and custody of the file.

10. Learned counsel for the petitioners has vehemently argued that in fact, on a perusal of Rule 54(B)(2) of Fundamental Rules, any such proceedings should be deemed to have been abated in as much as the Rules makes it mandatory for release of salary and other benefits in the event of death of an employee, from the date of his suspension till the date of death. In fact, the argument is that the

proceedings could not continue against the employee at all when Rule itself mandates and obligates the State to make full payment.

11. The second limb of the argument is based on the doubt expressed by us that heirs of the deceased petitioner in W.P.No.21948/2019 cannot be compelled to proceed with, in the absence of a dead employee, as in order to press into service any evidence or its appreciation or even examining the person, would almost be impossible due to the death of the employee.

12. The third limb of the argument is that as a matter of fact, assuming that the fact that has been brought on record are taken into account and Mr.N. Ganesan, who was facing a criminal trial and was suspended, came to be ultimately acquitted, was he entitled in law to all payments that he had received and as

such, the consequential apprehension expressed in the charge of loss caused to the Government is totally out of question. In such a situation, the very framing of charge loses its efficacy. He therefore contends that the charge memo in the above situation should not only be quashed in respect of the petitioner in W.P.No.21948 of 2019 but also in respect of the other petitioners also.

13. The fourth limb of the argument is that the respondent could not have possibly, under the Rules applicable, withheld the payment of gratuity and other benefits, to which the petitioners or heirs are entitled in accordance with law. This being, not within the domain of the respondent, the prayer made in this regard deserves to be accepted and therefore, the entire process be quashed with a direction to the respondent to release all such benefits that are due to the petitioners.

14. Learned counsel for the petitioners has invited the attention of this Court to the Division Bench Judgment in the case of G. Vani vs Registrar, High Court, Chennai reported in (2008) 1 MLJ 1127, more particularly to paragraphs 5 and 6 of the judgment. The aforesaid submission was with regard to one of the deceased petitioners viz., K. Paramasivam, represented through his heirs.

15. Replying to the said contentions, learned counsel for the respondent has placed before us a compilation of the following judgments to urge that the death of an employee does not terminate the proceedings and rather being beneficial for the legal heirs, have been held to be a proceeding liable to be continued in order to enable the employer to discharge the liability in the event any benefits are available to the legal heirs of the deceased employee. He, therefore, submits that there is no occasion for the heirs of the deceased petitioner viz., K. Paramasivam to automatically receive the benefits inasmuch as Rule 54(B)(2) does not envisage any such relinquishment or termination of proceedings, if the same has been initiated in accordance with law. His contention is that in the absence of such recital in the said Rule empowering the authority to abate the disciplinary proceedings on the death of an employee, any assumption of automatic abatement of the proceedings as urged on behalf of the petitioner cannot be countenanced. He relied on the following case laws:

1. (A.M. Amin vs First Labour Court) reported in
II L.L.N 703

2. (State Bank of Mysore vs Smt.Saroja) reported in
(1998) (3) L.L.N 689

3. (Rameshwar Manjhi vs Management of Sangramgarh Colliery) reported in AIR 1994 SC 1176
4. (U.P.State Sugar Corporation Ltd and Others vs Kamal Swaroop Tondon) reported in (2008) 2 SCC 41
5. On-line decision of (Mrs.Padmini Nandakumar Nair vs High Court of Bombay) (W.P.No.2820 of 2019)
6. (K.P. Marimuthu and Others vs Govt. of Tamil Nadu and Dept.of Police) reported in 1986 (1) L.L.J 229

16. He further submits that the question of evidence either way arises only if the proceedings continue and there cannot be any doubt that the proceedings can be continued with whatever evidence is available including documentary evidence with regard to the movement of the file of Mr.Ganesan or the alleged inaction on the part of the deceased employee. He further submits that unless the petitioners, even through their legal heirs, are able to establish that they are lawfully entitled to the payments to which the deceased employee was entitled to, then, without any such adjudication or continuance of disciplinary proceedings, the same may not be possible. It is therefore urged that in view of the fact that evidence is still available and which can be assessed in the disciplinary proceedings, a termination of the same at this stage is not envisaged nor should it be resorted to. The charge memo as per its contents cannot be quashed and other allegations can still be tested in the disciplinary proceedings.

17. We have considered the submissions raised and have also perused the authorities cited at the Bar.

18. The first issue is about the consequence of the death of one of the deceased employees. The judgments that have been cited and relied on by the learned counsel for the respondent, and even by the learned counsel for the petitioner, leave no room for doubt that they have given only an indication that the proceedings in relation to the entitlement and benefits of a deceased employee have to be continued and disciplinary proceedings cannot be terminated as that would be detrimental to the employee.

19. What we find is that in the instant case it is only one of the employees who has died, but, so far as the other two employees who are charged with the same allegations and on similar set of facts are still available for holding of the enquiry. The question of unfairness on account of absence of one of them therefore, in the present case may not arise and may not even prejudice the cause of the enquiry or leading of the evidence during the enquiry proceedings.

20. We are, therefore, of the opinion that the issue of unfairness apprehended and even doubted by us does not in any way appear to be justified at this stage inasmuch as the documents are still available, and in view of the fact that the other two charged employees are very much available for the enquiry, we are of the considered opinion that the enquiry can still go on in order to ascertain as to whether the allegations can be proved or not. It would be premature to assume the paucity or non-availability of evidence or any prejudice arising therefrom even before the enquiry proceeds.

21. Having come to this conclusion we are also of the opinion that the allegations are with regard to neglect of duty that has consequently resulted in the apprehension of alleged financial loss.

22. So far the first part of the charge is concerned, the same survives and it cannot be said that the charge memo should be quashed in its entirety. The consequential apprehension or otherwise about any financial loss cannot therefore be a ground at this stage to quash the charge memo.

23. The entitlement in our opinion, as per the argument of the learned counsel for the respondent has to be lawfully ascertained. It is only if the employees were lawfully entitled to receipt of consequential benefits upon exoneration that any payments can be claimed by them or by their heirs. Unless this is lawfully determined by following the due process that there is no financial loss, only then it can be said with certainty that the employees are entitled for the payments or either way liable to be exonerated. The proceedings therefore have to be terminated and brought to its logical conclusion and in this view of the matter we see no reason to interfere with the charge memo or the disciplinary proceedings at this stage.

24. The last but not least is the argument relating to the payment of gratuity and such other payments which the petitioners contend could not have been withheld by the respondent.

25. Suffice it to say that if that is so, if they are entitled to any such benefit, the authority concerned shall consider the same and pass appropriate orders on merits and in accordance with law within a period of six weeks from the date of presenting of a certified copy of the order before the Principal District Judge.

26. An endeavour shall be made to conclude the disciplinary proceedings that have been initiated as expeditiously as possible preferably within three months from today.

27. All the three writ petitions stand disposed of accordingly with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

sr

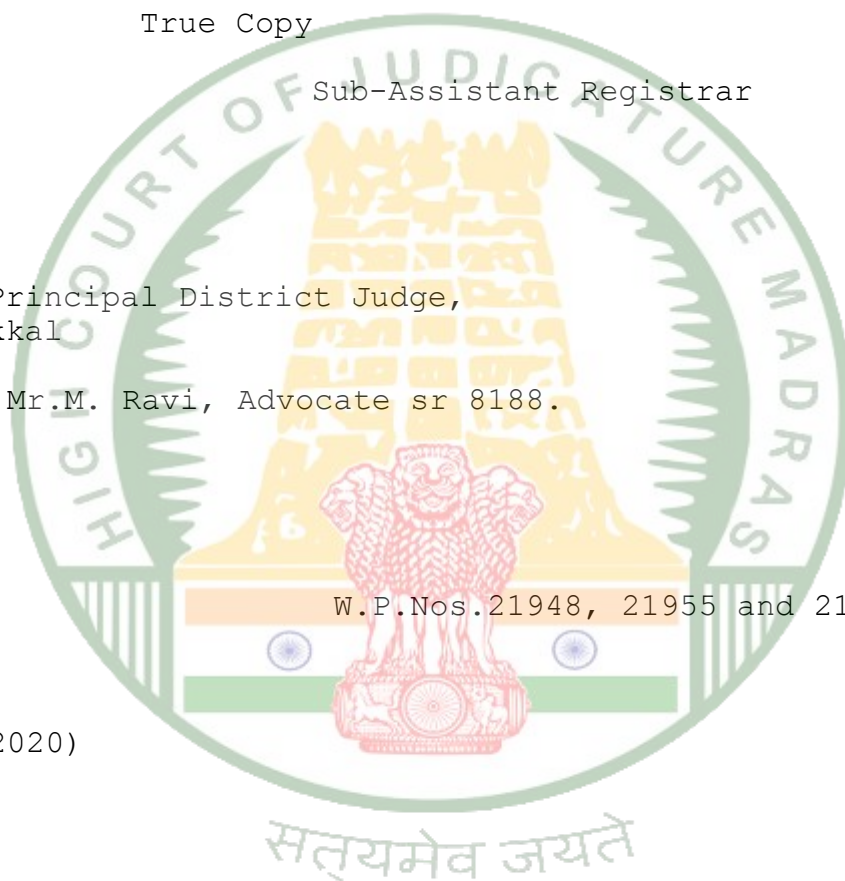
To

The Principal District Judge,
Namakkal

+3 Ccs to Mr.M. Ravi, Advocate sr 8188.

W.P.Nos.21948, 21955 and 21961 of 2019

JP(CO)
SP(25/02/2020)



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