

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.22590 of 2014

Kondamma (Deceased)

1. Prabhudoss

2. Vijayakumari

.. Petitioners/Legal heirs

(Petitioners 1 and 2 are legal heirs of the deceased Kondamma as per the order dated 20.11.2020 made in WMP.No.17344 of 2019 in W.P.No.22590 of 2014)

Vs.

1. The Corporation of Chennai,
Rep by its Commissioner,
Ripon Building,
Chennai - 600 003.

2. The Zonal Officer,
Zone III, Greater Chennai Corporation,
Madavaram, Chennai - 600 060.

3. State of Tamil Nadu,
Rep.by its Secretary
Municipal Administration and
Water Supply Department,
Fort St. George,
Chennai - 600 009.

... Respondents

(R2 amended as per order dated 06.01.2017 in WMP.No.31019/2016 in W.P.No.22590 of 2014)

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents to pay the gratuity, Family Pension Arrears, Family Pension, G.P.F., S.G.P.F., Pay Commission Arrears with 18% interest from the date of death of the Petitioner's husband to the Petitioner.

For Petitioners:	Mrs.N.Beulah John Selvaraj
For R1 & R2 :	Mr.R.Gopinath
For R3 :	Mr.S.Thangavel, Special Government Pleader

ORDER

This Writ Petition has been filed by one Kondamma seeking a direction to the Respondents to pay Gratuity, Family Pension Arrears, Family Pension, G.P.F., S.G.P.F. and Pay Commission Arrears with 18% interest from the date of death of her husband viz. Prakasam, to her.

2. As the original Petitioner viz. Kondamma died during the pendency of the Writ Petition, her legal heirs have been substituted in her place, by an order of this Court dated 20.11.2020 made in WMP.No.17344 of 2019 in W.P.No.22590 of 2014.

3. According to the substituted Petitioners, their father, viz. Prakasam was employed as a Sanitary worker in Madhavaram Municipality and he died on 30.05.2008, while in service. It is stated by the Petitioners that, the said Prakasam was appointed as a Casual Labourer on 01.10.1973 and was made permanent on 24.12.1977 with retrospective effect from 01.10.1973. In the year 1983, the said Prakasam went to his native place to take care of his parents and while so, he was dismissed from service on the ground of unauthorized absence from duty.

4. Challenging the order of dismissal, the said Prakasam raised an Industrial Dispute in I.D.No.708 of 2002, which ended as an exparte award on 26.03.2004. To set aside the exparte Award, Respondents therein filed an Application. However, the said Application was dismissed on 02.02.2006. Pursuant to the same, the second respondent passed an order of reinstatement of the said Prakasam into service. Accordingly, he joined duty on 19.09.2006 and worked as Sanitary Worker, till his death, i.e. on 30.05.2008. Thereafter, the original Petitioner applied to the Respondents for family pension and other monetary benefits due to her. As the same were not sanctioned, she came up with the present Writ Petition.

5. In the counter Affidavit filed by the first respondent, it is stated that the deceased Prakasam was employed as a Sanitary Worker in Madhavaram Municipality, which is now merged with Chennai Corporation w.e.f. 25.01.2011. He was unauthorizedly absent from duty from 01.11.1983 to 19.09.2006, which is nearly about 23 years and he rejoined duty on 20.09.2006, based on the order dated 16.06.2006 passed by the Labour Court, pending disposal of the disciplinary proceedings. Before completion of the disciplinary proceedings, the Petitioner died on 30.05.2008 and the Group Insurance Scheme amount of Rs.1,50,000/- has been sanctioned and paid to the original Petitioner vide Cheque bearing No.021969, dated 08.04.2010 drawn on HDFC Bank.

6. It is further stated in the counter Affidavit that, the pension proposal relating to the deceased Prakasam was forwarded to the Deputy Director of Local Fund Audit, Chennai Corporation wing on 28.02.2012 and the same was returned by the Audit stating that, the period of unauthorized absence from 01.11.1983 to 18.09.2006 has to be regularized for sanction of pension. As the pension proposal submitted by the Petitioner was not enclosed with the original Death Certificate, Legal Heir Certificate, Descriptive Roll etc., the same was also informed to the original Petitioner by letter No.7/2335/2013, dated 06.06.2013.

7. It is also the stand of the Respondents in the counter Affidavit that, as the deceased was absent for more than 23 years and had lived in Andhra Pradesh, there is every possibility for the deceased to have been employed in his native place and hence, unemployment Certificate from the competent authority during the period of unauthorized absence is required for processing the pension proposal.

8. Heard the learned counsel on either side and perused the material documents available on record.

9. Facts of the case are not in dispute. It is seen that, the deceased Prakasam was unauthorizedly absent from duty from 01.11.1983 to 19.09.2006, say for about 23 years and he rejoined duty on 20.09.2006, based on a Labour Court order, pending disposal of the disciplinary proceedings. While in service, the deceased Prakasam died on 30.05.2008. It is stated by the 1st Respondent that, Group Insurance Scheme amount of Rs.1,50,000/- of the deceased Prakasam has been sanctioned and paid to the original Petitioner. Though the 1st Respondent has taken a stand that, as the deceased Prakasam was unauthorizedly absent for more than two decades, he would have been gainfully employed in his native place and hence, unemployment Certificate from a competent authority during the period of his absence from duty is required, this Court cannot go into the said aspect in the present Writ Petition, as it is for the Respondents to decide.

10. However, at the end of arguments, learned counsel for the Petitioners pleaded that, the Respondents may be directed to consider the Petitioners' representation and pass appropriate orders, in accordance with law.

11. Having regard to the submissions made by the learned counsel on either side, this Court, without going into the merits of the case, directs the Petitioners herein to submit a fresh representation to the Respondents along with a copy of the

original Death Certificate of the deceased Prakasam, Legal Heir Certificate and other necessary documents as required by the Respondents, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such representation, the Respondents shall consider the same and pass appropriate orders as to the sanction of eligible terminal benefits of the deceased Prakasam to the Petitioners herein, on merits and in accordance with law, within a period of twelve weeks.

12. The Writ Petition is disposed of with the above direction.No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

av/aeb

To:

1. The Commissioner,
The Corporation of Chennai,
Ripon Building, Chennai - 600 003.
2. The Zonal Officer,
Zone III, Greater Chennai Corporation,
Madavaram, Chennai - 600 060
3. The Secretary,
The State of Tamil Nadu,
Municipal Administration and
Water Supply Department,
Fort St. George, Chennai - 600 009.

+1 CC to Mr.N. Beulah John Selvaraj, Advocate sr 37285
+1 CC to Mr.R.Gopinath, Senior Counsel Corporation of Chennai,
sr 37326
+1 Cc to The Government Pleader sr 37552.

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SP(21/12/2020)