



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.01.2020

CORAM :

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.12565 of 2011

and

M.P(MD)No.1 of 2011

Tmt.R.Rajeswari

... Petitioner

vs.

1)The Commissioner,
Tiruchirappalli City Municipal Corporation,
Tiruchirappalli.

2)The Assistant Commissioner(Personnel),
Tiruchirappalli City Municipal Corporation,
Tiruchirappalli.

3)The Deputy Director,
Local Fund Audit,
Tiruchirappalli Corporation,
Tiruchirappalli.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd Respondent herein in his proceedings in Na.Ka.No.H1/4271/2011/Maiyam dated 05-08-2011 and quash the same and consequently direct the Respondents herein to pay all terminal benefits and other benefits of deceased Rajendran to the Petitioner herein forthwith and also direct the Respondents herein to consider the claim of the Petitioner for compassionate appointment.

For Petitioner	: Mr.K.Hemakarthikeyan
For R1	: Mr.P.Srinivas
For R2 & R3	: Mr.S.Dhayalan, Government Advocate

ORDER

The prayer in the writ petition is to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd Respondent herein in his proceedings in Na.Ka.No.H1/4271/2011/Maiyam dated 05-08-2011 and quash the same and consequently direct the Respondents herein to pay all terminal benefits and other benefits of deceased Rajendran to the Petitioner herein forthwith and also direct the Respondents herein to consider the claim of the Petitioner for compassionate appointment.



2.Learned counsel for the petitioner would state that the petitioner's husband was appointed as Sanitary Worker in the respondent corporation on compassionate ground on 29.10.1999 due to the demise of his father. While so, based on anonymous petition that he obtained job by suppressing the fact that his family member is working in the corporation, the respondent conducted an enquiry and ultimately dismissed the petitioner's husband from service. Challenging the dismissal, the petitioner filed W.P.No.32874 of 2003 before the Principal Seat and by order dated 23.12.2003, the writ petition was allowed setting aside the dismissal order and also giving liberty to the respondents to proceed with the disciplinary proceedings as per the rules. Pursuant to the said order, the 1st respondent reinstated the petitioner's husband into service on 09.02.2004. Pending departmental proceedings, petitioner's husband died due to heart disease on 21.07.2007 leaving the petitioner, a son and two daughters as legal heirs. On the death of the petitioner's husband, the disciplinary proceedings pending against him was closed by the 1st respondent. Thereafter, the respondent corporation has given the group insurance amount for Rs.1,50,000/- to the petitioner on 05.11.2008. The petitioner made a representation to disburse the entire terminal benefits of her husband and also to provide her employment on compassionate grounds. As there was no reply, he made an application under the Right to Information Act and the 2nd respondent replied by the impugned order stating that the disciplinary proceedings pending against the petitioner's husband cannot be dropped and therefore, pensionary benefits cannot be given to the petitioner. Thus, he would pray for setting aside the impugned order.

3.The respondents have filed counter affidavit. Learned Government Advocate would state that since the petitioner's husband obtained appointment under compassionate grounds suppressing the fact of his mother's employment in the same corporation, he was terminated from service and thereafter he was reinstated based on the orders of the High Court without prejudice to the disciplinary action to be framed against him and after the death of the petitioner's husband, the petitioner/wife was paid with lumpsum amount under group insurance scheme and final settlement of eligible days of earned leave and therefore, question of sanctioning pensionary benefits does not arise. Thus, he would pray for dismissal of the writ petition.

4.Heard both sides.

5.Perusal of record shows that the 2nd respondent has passed the impugned order stating that no retirement benefits of the petitioner's husband will be given to the petitioner as her husband was reinstated without prejudice to the disciplinary action to be taken against him. In my considered opinion, the respondents cannot



take such a stand when admittedly the petitioner's husband died during service and the departmental proceedings were initiated based on anonymous petition which ended in dismissing the petitioner's husband from service on 29.11.2001, which was later set aside by the Principal Seat on 23.12.2003 with liberty to the respondents to proceed against the petitioner in accordance with law. Admittedly, from 23.12.2003 till the date of death of the petitioner's husband on 21.07.2007, enquiry in the disciplinary proceedings had not come to finality and after the death of the petitioner's husband, the disciplinary proceedings is deemed to be dropped. Therefore, in my considered opinion, the petitioner is entitled to the retirement benefits of her husband.

6. Therefore, the impugned proceedings in Na.Ka.No.H1/4271/2011/Maiyam dated 05-08-2011 are set aside and the respondents are directed to disburse all the retirement benefits payable to the petitioner's husband to the petitioner within a period of twelve weeks from the date of receipt of a copy of this order. As far as the claim of compassionate appointment to the petitioner is concerned, the respondents shall consider the same taking note of the fact that due to the death of the petitioner's husband, the disciplinary proceedings were dropped and shall pass appropriate orders in accordance with law after providing opportunity to the petitioner.

With the above direction, the writ petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

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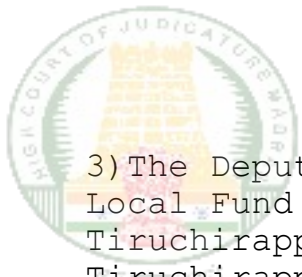
/ /2020

Sub Assistant Registrar(CS)

To

1) The Commissioner,
Tiruchirappalli City Municipal Corporation,
Tiruchirappalli.

2) The Assistant Commissioner(Personnel),
Tiruchirappalli City Municipal Corporation,
Tiruchirappalli.



3)The Deputy Director,
Local Fund Audit,
Tiruchirappalli Corporation,
Tiruchirappalli.

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+1 CC to Mr.K.HEMAKARTHIKEYAN, Advocate (SR-583[F]dated
07/01/2020)

+1 CC to SPL.GP (SR-726[F] dated 08/01/2020)

+1 CC to Mr.P.SRINIVAS, Advocate (SR-799[F] dated 08/01/2020)

ORDER MADE IN
W.P(MD)No.12565 of 2011
DATED : 07.01.2020

VB(22.01.2020) 4P 7C