

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.33628 of 2004

1. R.Govindarajan (Died)
2. M.Vasanthi
3. R.G.Anitha
4. G.Gowri
5. G.Vijayaram

... Petitioners

(P2 to P5 are substituted as
LRs of the deceased P1 vide
order, dated 11.04.2019 made
in W.M.P.No.8821 of 2019 in
W.P.No.33628 of 2004)

-Vs-

1. The Registrar (Housing)
Chennai - 600 020.
2. The Special Officer
SLM HSG-4, Punjai Puliampatti,
Co-operative Housing Society Ltd.,
Punjai Puliampatti,
Erode District.

.... Respondents

(Cause title amended as per order
of Court, dated 08.12.2005 in
W.M.P.No.11790 of 2005 in
W.P.No.33628 of 2004)

Prayer : Writ Petition under Article 226 of the Constitution
of India praying for the issuance of a Writ of Certiorarified
Mandamus, to call for the record relating to the impugned
order of the first respondent in Na.Ka. 10284 / 2003 / E2,
dated 05.02.2004 and quash the same insofar as the denial of
backwages is concerned and direct the respondents to pay
backwages to the petitioner for the period of non-employment
from 10.04.1999 to 28.02.2004.

For Petitioners : Mr.P.Rajendran

For Respondents : Mr.L.P.Shanmugasundaram
Spl.G.P for R1
Mr.Ma.P.Thangavel for R2

O R D E R

The prayer sought for herein is for a writ of certiorarified mandamus, to call for the records relating to the impugned order of the first respondent in Na.Ka. 10284 / 2003 / E2, dated 05.02.2004 and quash the same insofar as the denial of backwages is concerned and direct the respondents to pay backwages to the petitioner for the period of non-employment from 10.04.1999 to 28.02.2004.

2. The original petitioner, one Govindarajan was an employee of the second respondent Society, against whom an order of punishment of removal of service was inflicted on 10.04.1999. Subsequently, though appeal had been filed, the appeal could not be heard or could not be taken up for variety of reasons and in the meanwhile, the first respondent by a Sua Motu Revision order, dated 05.02.2004 set aside the order of punishment, dated 10.04.1999, awarded against the said employee and pursuant to which, the said employee was reinstated into service on 28.02.2004 and the period of absence was treated as leave on loss of pay by the first respondent.

3. Subsequently, on 26.04.2004, a definite charge memo has been served on the petitioner, pursuant to which, Disciplinary Proceedings was initiated and during the pendency of the disciplinary proceeding, the original petitioner reached superannuation on 31.05.2004, he was permitted to retire, of course without prejudice to the pending disciplinary proceeding against him.

4. Subsequently the Disciplinary Proceeding ended in punishment by way of recovery by order, dated 19.05.2006, by and under which, a sum of Rs.20,055/- was sought to be recovered from the petitioner.

5. In this context, it is submitted by the learned counsel appearing for the petitioner that, sum of Rs.20,055/- was also recovered from the petitioner and subsequently, the petitioner died on 04.12.2017.

6. In view of the death of the original petitioner, R.Govindarajan, his legal heirs had been impleaded subsequently by the orders of this Court, that is how the legal heirs who are the present petitioners are maintaining this writ petition with the prayer that the order, dated 05.02.2004 passed by the first respondent disallowing the pay benefits to the petitioner for the period from 10.04.1999 to 28.02.2004, during which period the petitioner was out of service and therefore the learned counsel appearing for the petitioner seeks the indulgence against the impugned order only in respect of the portion where the first respondent in his order, dated 05.02.2004 passed in Sua motu Revision declared the said period from 10.04.1999 to 28.02.2004 as a

period of leave on loss of pay.

7. I have heard Mr.Ma.P.Thangavel, learned counsel appearing for the second respondent and Mr.L.P.Shanmugasundaram, learned Special Government Pleader appearing for the first respondent.

8. Learned counsel appearing for the respondents, on instruction would submit that, first of all, the second respondent society subsequently has become defunct and it is not actually functioning now.

9. Insofar as the deceased employee, i.e., the original petitioner is concerned, there had been an enquiry conducted pursuant to the charges and Enquiry Officer filed a report on 22.09.2004, pursuant to which there has been a Section 87 enquiry, where also a report has been filed on 09.10.2006, subsequently, whether any final order has been passed for recovery of any amount from the original petitioner, apart from the recovery ordered by the orders, dated 19.05.2006 to the extent of Rs.20,055/-, is not known, as there has been no record to that effect to establish before this Court.

10. However, the learned counsel appearing for the respondents would submit that, admittedly the petitioner had not been in service between 10.02.1999 to 28.02.2004, as during which period, the original petitioner has not contributed anything towards the second respondent society, therefore he is not entitled for any salary, hence the view taken by the first respondent in the order impugned to declare the said period as leave on loss of pay is a justifiable one, therefore, no indulgence is required against the impugned order, they contended.

11. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

12. The only issue now to be resolved is that, whether the original petitioner was entitled to get the salary for the period between 10.04.1999 to 28.02.2004 and if so, whether that salary can be paid to the present petitioners who are the legal heirs of the deceased employee, i.e., the original petitioner.

13. In this context, it is to be noted that, admittedly, the petitioner had been out of service between 10.04.1999 to 28.12.2004. During which period the petitioner had not worked and therefore he had not made any contribution to the society. However, it is further to be noted that, the very dismissal order made on 10.04.1999 is an order without any enquiry and therefore, on that sole ground itself, first respondent in its suo motu revisional order, dated 05.02.2004, which is impugned herein, has set aside the said order of dismissal. However,

since the first respondent has declared that the period between 10.04.1999 to 28.02.2004 as leave on loss of pay, i.e., the only grievance of the original petitioner and the present petitioners who are the legal heirs of the original petitioner, that period should be treated for the purpose of service benefits including the salary.

14. In this context, it is to be noted that, the dismissal order, dated 10.04.1999 found to be an unlawful one, therefore it was set aside by the first respondent, as against which, no appeal was filed by the society and in fact, that order was accepted and acted upon. Subsequently, Disciplinary Proceedings was initiated which ended in punishment of recovery of a sum of Rs.20,055/- alone which was also recovered from the original petitioner, i.e., the deceased employee.

15. Apart from the said punishment, any other punishment was awarded against the original petitioner has not been brought to the notice of this Court, even though the learned counsel appearing for the second respondent made an attempt that, some Section 87 enquiry was conducted, however whether it was ended in any punishment of recovery of amount or not has not been made before this Court.

16. However, insofar as the said period, which is in dispute, i.e., from 10.04.1999 to 28.02.2004, since the original petitioner has not worked for the society, he may not be entitled for the full salary for the said period, however, at the same time, it cannot be stated that, the total salary payable to the original petitioner for the said period can be denied.

17. In that view of the matter, this Court feel that, atleast 50% of salary for the period between 10.04.1999 to 28.02.2004 can be permitted to be paid to the deceased employee, on whose behalf, now to the present petitioners, who are the legal heirs of the deceased employee, that would suffice to meet the ends of justice.

18. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders :

(i) That the impugned order insofar as declaring the period between 10.04.1999 to 28.02.2004 as a period of leave on loss of pay made by the first respondent is hereby set aside.

(ii) Consequently, the original petitioner, R.Govindarajan, since deceased, is entitled to get 50% of the salary and therefore, the same shall be calculated and be paid to the present petitioners, who are the legal heirs of

the deceased employee, within a period of three months from the date of receipt of a copy of this order.

(iii) If at all, the society has become defunct as claimed by the learned counsel appearing for the second respondent, the modalities as to how the amount, for which the present petitioners are entitled to as indicted above, to be calculated and paid, can be decided and worked out by themselves in the manner known to law.

19. With these directions, this writ petition is ordered accordingly. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

tsvn
To

1. The Registrar (Housing)
Chennai - 600 020.
2. The Special Officer
SLM HSG-4, Punjai Puliampatti,
Co-operative Housing Society Ltd.,
Punjai Puliampatti,
Erode District.

+1cc to Mr.Ma.Pa.Thangavel, Advocate SR.No. 4641

+1 cc to Spl Government Pleader Sr.No.4568

+1cc to Mr.P.Rajendran, Advocate SR.No. 4965

W.P.No.33628 of 2004

KV(CO)

A.SK(09.07.2021)

WEB COPY