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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN  
AND  
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No.678 of 2021

The Deputy Director of Public Health  
and Preventive Medicine,  
Institute of Public Health,  
Poonamallee,  
Chennai 600 056.

...Appellant/Respondent

vs.

1. N.Vijaya
2. N.Sandiya
3. N.Anandan
4. N.Surya

...Respondents/Petitioners

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 21.01.2020 passed by this Court in W.P.No.29753 of 2008.

Prayer in W.P.No.29753 of 2008: This Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondent culminated in the impugend termination order in Rc.No. 1597/P1/85 dated 4.8.2008 and quash the said order and entire proceedings there under against the petitioner and reinstate the petitioner in service as mazdoor inthe respondent department forthwith along with all attendant and monetary benefits and continuity of service.

For Appellant : Mr.U.M.Ravichandran,  
Special Government Pleader

For Respondents : Mr.B.Balachander

J U D G M E N T

(Judgment of the Court delivered by S.VAIDYANATHAN,J.)

Challenging the order dated 21.01.2020 passed by this Court in W.P.No.29753 of 2008, Respondent in the Writ Petition has come up with the present Appeal.



2.The deceased Nagarajan, who originally filed W.P.No.29753 of 2008 before this Court, was appointed as Mazdoor at the Institute of Public Health, Poonamallee on 14.03.1986, pursuant to the death of his mother, on compassionate ground. After putting in about 22 years of service, he was terminated from service, for the reason that, he suppressed the employment of his brother before getting compassionate appointment. Challenging the order of termination dated 04.08.2008, the deceased Nagarajan filed the said Writ Petition. During the pendency of the Writ Petition, he died in the year 2014. Thereafter, Petitioners 2 to 5, who are his wife and children, were impleaded as parties, to contest the said Writ Petition.

3.The learned Single Judge held that, terminating a person after 22 long years of service is illegal and arbitrary. Following the ratio laid down by the Apex Court in the case of Union of India vs. K.P.Tiwari reported in (2003) 9 SCC 129, the learned Single Judge categorically held that, it would not be appropriate to disturb the appointment of the deceased Nagarajan and to uproot his livelihood. In such view of the case, and taking note of the fact that, Nagarajan was 57 years old at the time of filing the Writ Petition, the learned Single Judge set aside the termination order dated 04.08.2008 passed by the Respondent therein and directed the Respondent to disburse the terminal benefits due to the deceased Nagarajan, to his legal heirs, within a period of twelve weeks from the date of receipt of a copy of the order.

4.Learned Special Government Pleader appearing for the Appellant drew the attention of this Court to G.O.Ms.No.560, Labour and Employment Department, dated 03.08.1977 and stated that, as per the said Government Order, it is the responsibility of the official Respondents to satisfy themselves about the indigent circumstances of the family before the appointment is offered on compassionate ground. He contended that, the deceased Nagarajan had obtained appointment on compassionate ground by suppressing the fact that, his brother was employed as Mazdoor in the very same Department.

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

6.A reading of G.O.Ms.No.560, Labour and Employment Department, dated 03.08.1977, makes it clear that, the dependent of a Government Servant, who died in harness leaving his family in indigent circumstances, is eligible to avail the concession granted in the Government Order read above, even when there is already an earning member in the family, if in the opinion of the Appointing Authority, the family is in indigent circumstances. The Government Order further states that, before



deciding the indigent circumstances of the family, the Appointing Authority should take into account the number of dependents left, the movable and immovable assets and liabilities left by the deceased Government Servant, the income of the earning member in the family, as also his liabilities. However, it is stated in the Government Order that, the said concession should not be granted to more than one dependent in the family of the deceased Government Servant.

7. Even assuming for the sake of argument that, when a family member of the deceased Government Servant is already in Government employment and that, after the demise of the Government servant, yet another family member is not entitled to be appointed in the vacancy of the deceased Government servant on the ground of compassionate appointment, such appointment to another family member of the deceased Government servant can be considered, taking note of the indigent circumstances of the family.

8. In the case on hand, the deceased Nagarajan has put in about 22 years of service and having allowed him to continue in service for more than two decades, the Appellant ought not to have terminated him from service on the ground that, his brother is already in service. Relying upon the decision rendered by the Apex Court in K.P. Tiwari's case (supra), wherein, it has been held that, it would not be appropriate to disturb the appointment of the employee and to uproot his livelihood, the learned Single Judge has rightly interfered with the termination order passed against the deceased Nagarajan and directed the Respondent therein to disburse the terminal benefits due to the deceased employee, to his legal heirs. Moreover, the deceased Nagarajan was 57 years old at the time of passing the termination order and that, he died in the year 2014 during the pendency of the Writ Petition. Hence, the question of reinstatement of the employee does not arise.

9. In view of the aforesaid discussion, this Court finds no reason to interfere with the order of the learned Single Judge, more so, in the light of the Government's Letter in Memo No. 34107/N1/77-1, dated 04.05.1978, which states that, even if an earning member is in the family, if in the opinion of the Appointing Authority, a family is in indigent circumstances, appointment can be made on compassionate basis to one more dependent of the deceased Government servant.

10. Taking note of the fact that, the employee is no more, this Court holds that, the entire period of service of the deceased Nagarajan from the date of his initial appointment till the date of his death, shall be taken into account as continuous service for the purpose of granting Gratuity and pensionary



benefits and that, all the terminal benefits shall be settled to the legal heirs of the deceased employee within a period of three months from the date of receipt of a copy of this judgment.

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11. It is made clear that, if pension is applicable to the deceased employee, the eligible legal heirs of the deceased employee would be entitled to family pension on and from the date of demise of the employee. However, backwages to the deceased employee are deprived.

The Writ Appeal is dismissed with the above direction. No costs. Consequently, connected C.M.P.No.3706 of 2021 is closed.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

The Deputy Director of Public Health  
and Preventive Medicine,  
Institute of Public Health,  
Poonamallee,  
Chennai 600 056.

+2cc to M/s.Ashok Menon, Advocate, S.R.No.12196

+1cc to the Government Pleader, S.R.No.12786

W.A.No.678 of 2021

RSI (CO)  
RGA(14/03/2022)