



W.P.No.30183 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.30183 of 2019

Palaniammal

...Petitioner

Vs.

- 1.The Commissioner of Municipal Administration,
11th Floor, Urban Administrative Building
(Opp. CIBA Building),
75, Santhome High Road, MRC Nagar,
Raja Annamalai Puram,
Chennai-600 028.
- 2.The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore.
- 3.The Assistant Commissioner (South Zone),
Coimbatore City Municipal Corporation,
Coimbatore.
- 4.The Assistant Director,
The Local Fund Audit,
Internal Audit,
Kuralagam 4th Floor,
Chennai-600 108.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the



W.P.No.30183 of 2019

records of the third respondent in its Na.Ka.No.2490/2016/E4(South) dated 01.06.2016 and to quash the same and consequently direct the respondents to disburse the family pension and other terminal benefits such as Gratuity, Family Pension, Earned Leave Encashment etc., and all other admissible dues along with interest with effect from 06.09.2011 along with arrears.

For Petitioner : Mr.V.Vijayashankar

For Respondent : Mr.T.Chezhiyan, AGP
Nos.1 & 4

For Respondent : Mr.K.Magesh
Nos.2 & 3

ORDER

The petitioner is a widow of one Late Palanichamy, who had joined the services of the second respondent Corporation as a Sanitary Worker on 17.08.1998 and while in service, he expired on 06.09.2011. Originally, the service of Late Palanichamy came to be regularised by the proceedings of the Executive Officer Kuniamuthur Town Panchayat (now upgraded as Municipality), Coimbatore / second respondent Corporation herein dated 28.02.2006, with effect from 23.02.2006. Since the petitioner's husband claimed that he was entitled for being



W.P.No.30183 of 2019

regularised on completion of three years of service in accordance with G.O.Ms.No.199, Municipal Administration and Water supply Department, dated 12.08.1997, he had filed a Writ Petition in W.P.No.25475 of 2008 and by an order dated 06.04.2011, this Court had directed the Municipality to consider the petitioner's husband's claim in accordance with the earlier decisions rendered in this regard. Pursuant to the order of this Court and the directions of the first respondent, the second respondent had regularised the services of the petitioner with effect from 16.08.2001 i.e., on completion of three years period to the proceedings in Na.Ka.No.1085/2011/A4(S), dated 18.01.2013. In this background, when the petitioner had sought for pensionary benefits with the first respondent herein, the same came to be forwarded to the third respondent, who had now passed the impugned order rejecting the petitioner's request, by placing reliance on G.O.Ms No.21, Municipal Administration and Water supply Department, dated 23.02.2006 stating that since the Government Order provides for payment of pension only for the employees whose services were regularised prior to 23.02.2006, the petitioner is not entitled for family pension. Challenging the said order, the present Writ Petition has been filed.



W.P.No.30183 of 2019

2. Heard Mr.V.Vijayashankar, learned counsel appearing for the petitioner and Mr.T.Chezhiyan, learned Additional Government Pleader appearing on behalf of the respondents 1 & 4 as well as Mr.K.Magesh, learned counsel for the respondents 2 & 3.

3. The learned counsel for the petitioner submitted that since the services of the petitioner's husband has already been regularised with effect from 16.08.2001 by the second respondent herein, who is the Competent Authority, the third respondent in total disregard of the regularisation of service of the petitioner's husband, had placed reliance on the Government Order without reference to the earlier order passed by the second respondent in respect of regularisation of services of the petitioner's husband.

4. The learned Standing counsel for the respondents 2 & 3 had submitted that the impugned order of the third respondent is only a communication of audit objections raised by the fourth respondent. He would further add that they had also brought to the notice of the fourth respondent about the earlier orders of regularisation of the petitioner's husband's services with effect from 16.08.2001.



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5. The reasoning adopted by the third respondent herein in the impugned order, cannot be sustained for the simple reason that the services of the petitioner's husband which was already regularised with effect from 16.08.2001 itself, has not been taken into account by him in the impugned order. It is also seen that the earlier order of regularisation has not been recalled by the second respondent herein. If that be so, the petitioner's husband is deemed to have been in regular service with effect from 16.08.2001 itself and therefore, he would be entitled for pension scheme. Consequently, the petitioner herein would be entitled to receive the family pension.

6. The learned counsel for the respondents 2 & 3 herein claims that the present impugned order has been passed by the third respondent in view of the audit objections raised by the fourth respondent herein. The learned counsel further submitted that they have also brought it to the notice of the fourth respondent about the earlier orders of regularisation of services of the petitioner's husband through letter dated 06.01.2015, but inspite of the same, he has totally ignored the regularisation proceedings and seems to have placed reliance on G.O.166, Municipal Administration and Water supply



W.P.No.30183 of 2019

Department, dated 31.12.2014 and claimed that the employees, who have been appointed under G.O.Ms.21, Municipal Administration and Water supply Department, dated 23.02.2006, will not be entitled for pension. The reasoning adopted by the fourth respondent while placing audit objections is not sustainable in view of the earlier regularisation of the petitioner's husband's services. As such, the petitioner herein is entitled for family pensionary benefits.

7. In the light of the above reasonings, the impugned order dated 01.06.2016 on the file of the third respondent herein, stands quashed. Consequently, there shall be a direction to the fourth respondent to forthwith pass orders, sanctioning family pension to the petitioner and any other connected benefits, within a period of two weeks from the date of receipt of a copy of this order and forward the same to the second respondent herein for further action. On receipt of such sanction order from the fourth respondent, the second respondent herein shall forthwith disburse the family pension, together with arrears of family pension, along with DCRG monetary benefits payable to the petitioner, if not already been paid. Such orders shall be passed by the second respondent, within a period of four weeks from the date of receipt of the sanction order from the fourth respondent herein.



W.P.No.30183 of 2019

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8. With the above observations and directions, the Writ Petition stands allowed. There shall be no order as to costs.

09.12.2022

Index:Yes/No
Internet:Yes/No
Speaking order/Non-speaking order

DP

To

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W.P.No.30183 of 2019

M.S.RAMESH,J.

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W.P.No.30183 of 2019

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