



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.02.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.11702 of 2019

and

W.M.P. (MD) No.8887 of 2021

P.Kalitheerthavan (Died)

- 1.Mrs.Santhakumari
- 2.Karthigaipriya
- 3.Dr.Praveen Kumar
- 4.Miss.Saranya

... Petitioners

[Petitioners 2 to 4 are impleaded vide order dated 11.02.2022 in WMP(MD) No.15672 of 2021 in WP(MD) No.11702 of 2019]

-vs-

- 1.The Superintending Engineer,
TANGEDCO,
Virudhunagar Distribution Circle,
Virudhunagar.

- 2.The Administrative Officer,
Administrative Branch No.5,
Central Office,
Virudhunagar Distribution Circle,
Virudhunagar.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the 1st respondent in Ku.Aa.No.1005/009/Ni.Pi.1/U.1/Ko. Oothiyam/2019 dated 10.04.2019 and quash the same and consequently direct the respondents to continue to pay annual increments to the petitioner.

For Petitioners	:	Mr.P.Gunasekaran
For Respondents	:	Mr.S.Arivalagan

O R D E R

The order impugned dated 10.04.2019 regarding the re-fixation of pay and recovery is under challenge in the present writ petition.

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2.The petitioner was serving as Junior Engineer and retired as Assistant Executive Engineer on 29.02.2020. After retirement, the petitioner died on 29.05.2021. Thus, the legal heirs of the petitioner are impleaded.

3.Learned counsel appearing for the petitioner made a submission that there is an error in fixation of pay and further, the recovery has also been imposed. The petitioner retired from service and died also and under these circumstances, in the event of effecting recovery, the family will be put to hardship.

4.Learned counsel appearing for the respondents made a submission that the petitioner filed yet another writ petition challenging the order of punishment of stoppage of increment without cumulative effect and the currency of the punishment was over. However, in respect of the said writ petition challenging the order of punishment, it is to be dealt with separately and no way connected with the fixation of pay and the recovery. Even if there is an implication in respect of the punishment regarding fixation of pay, the said punishment has already been implemented and without reference to the punishment, the revision of pay is to be done by following the rules in force.

5.As far as recovery is concerned, the petitioner retired from service and died in the year 2021. The family is yet to get pension and even the terminal benefits are not settled.

6.Learned counsel appearing for the petitioner would submit that the family is in penury circumstances and unable to get pensionary benefits and family pension. This being the factum, the hardship caused to the family is also a ground to set aside the recovery, as per the judgment of the Hon'ble Supreme Court in **State of Punjab vs. Rafiq Masih** reported in **(2015) 4 SCC 334**.

7.Thus, this Court is inclined to pass the following orders:-

(i) the respondents are directed to verify the correctness or otherwise of the fixation done in the case of the deceased employee Mr.P.Kalitheerthavan within a period of four weeks from the date of



receipt of a copy of this order;

(ii) the impugned order passed by the 1st respondent in proceedings in Ku.Aa.No.1005/009/Ni.Pi.1/U.1/Ko. Oothiyam/2019 dated 10.04.2019 is set aside to the extent of recovery alone; and

WEB COPY (iii) the respondents are directed to complete the said exercise, send the pension proposal, settle the pensionary benefits and the family pension, arrears of family pension, etc., as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order.

8.With the above observations and directions, this Writ Petition stands allowed in part. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

abr

To

1.The Superintending Engineer,
TANGEDCO,
Virudhunagar Distribution Circle,
Virudhunagar.

2.The Administrative Officer,
Administrative Branch No.5,
Central Office,
Virudhunagar Distribution Circle,
Virudhunagar.

+1 CC to M/s.S.ARIVALAGAN, Advocate (SR-6322[F] dated 15/02/2022)

W.P. (MD) No.11702 of 2019
11.02.2022

SK(CO)
KB(02.03.2022) 3P 4C