



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.01.2022

Pronounced on : 15.02.2022

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CORAM:

THE HONOURABLE MRS.JUSTICE S. SRIMATHY

W.P(MD) No.15825 of 2014 and
M.P(MD) .Nos.1 and 2 of 2014

1.Tamilarasi
2.Nishanth Amirtharaj :Petitioners

..VS..

1.The Secretary and General Manager,
Tamil Nadu Water Supply and Drainage (TWAD) Board,
31, Kamaraj Salai,
Chepauk, Chennai - 600 005.

2.The Chief Engineer,
Tamil Nadu Water Supply and Drainage (TWAD) Board,
31, Kamaraj Salai,
Chepauk, Chennai - 600 005.

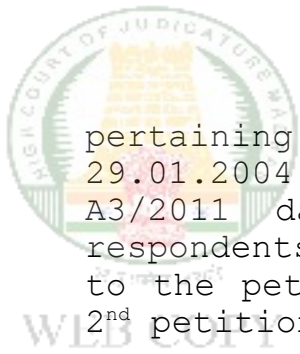
3.The Joint Chief Engineer,
Tamil Nadu Water Supply and Drainage (TWAD) Board,
31, Kamaraj Salai,
Chepauk, Chennai - 600 005.

4.The Executive Engineer,
TWAD Board, RWS Division,
No.7, Ganesh Nagar,
Opp to Mattuthavani Bus Stand,
Madurai - 07.

5.The Chief Engineer,
TWAD Board,
Southern Division (Mandalam),
Ganesh Nagar,
Opp to Mattuthavani Bus Stand,
Madurai.

: Respondents

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



pertaining to the 2nd respondent's proceeding No.A6/108/97, dated 29.01.2004 and to the consequential Memorandum No.16643/pa.ni.pi/A3/2011 dated 29.04.2014 and quash the same and direct the respondents to disburse the family pension and retirement benefits to the petitioners and to provide compassionate appointment to the 2nd petitioner.

For Petitioner : Mr. M. Saravanan
For R1, R3, and R5 : Mr. B. Vijayakarathikeyan
Standing counsel for TWAD Board
For R2 & R4 : Mr. N. Ramesh Arumugam
Government Advocate (Civil Side)

O R D E R

This Writ Petition is filed to quash the impugned order dated 29.01.2004 and the consequential memo dated 29.04.2014 and direct the respondents to disburse the Family Pension and retirement benefits to the petitioner and to provide the compassionate appointment to the second respondent.

2. The brief facts of the case are that the petitioner's husband viz., V. Vellaichamy was working as Junior Engineer in TWAD Board. The deceased Vellaichamy married the petitioner viz., Tamilarasi and has one son viz., Nishanth Amirtharaj. The deceased V. Vellaichamy died on 24.04.2008. At the time of death, the second petitioner viz., Nishanth Amirtharaj was only five years old. The petitioner submitted a representation dated 13.06.2003 to the respondents to disburse the retirement benefits and to provide employment on compassionate ground. The respondents directed vide letter dated 24.06.2003 to produce the death certificate of the petitioner's husband and also legal heir certificate. Thereafter, the respondents directed the petitioner to submit the succession certificate. The petitioner filed SOP.No.49 of 2003 on the file of Principal Sub Court, Madurai and obtained a succession certificate. Thereafter, the petitioner was directed to obtain Legal Heir Certificates from Tahsildar and the Tahsildar had replied that SOP order is final and separate Certificate is not necessary. Again the petitioner submitted a representation dated 04.01.2006 and the respondents issued a draft for amount of Rs.14,165/- as final settlement in the name of deceased husband under GPF account. The petitioner is aggrieved since the other retirement benefits were disbursed and the respondents have not considered the petitioner's application for compassionate appointment also. In the meanwhile, the 2nd petitioner has completed SSLC in the year 2008 and has joined Diploma Course in EEE and he could not complete the Course because due to financial constrain. Hence, the petitioner submitted an



application to provide an employment to her son. Thereafter, the first respondent filed a memo dated 29.04.2014 has informed the application for compassionate appointment was not submitted within a period of three years from the date of death of the husband.

WEB COPY 3. After receiving the said memo the petitioner enquired at the office of the respondents and came to know about the fact that the petitioner's husband was removed from service even without issuing any charge memo. Therefore, the petitioner submitted a letter to the respondents to furnish a copy of the proceedings dated 29.04.2004 and also applied under Right to Information Act. Thereafter, on 10.09.2014 the petitioner has received a copy of the dismissal order. The contention of the petitioner is that the petitioner's husband was dismissed from service through the impugned order dated 29.01.2004 but that order was passed against a dead employee, since the petitioner's husband died on 24.04.2003. Hence, the petitioner has challenged both the order dated 29.01.2004 and the consequential memo, dated 29.04.2014.

4. The respondents have filed counter affidavit stating that the deceased V. Vellaichamy was placed under suspension with effect from 29.01.1994 and the delinquent died on 24.04.2003 while he was in Madurai Central Jail as Jail prisoner. The deceased Vellaichamy was convicted under Section 498(A) IPC and the dowry case was preferred by the 1st petitioner herein. Moreover, there was rival claim for the terminal benefits of the deceased V. Vellaichamy. One V. Virumayi, claiming to be another wife of Vellaichamy residing at Srivilliputur has claimed terminal benefits. The said claim was returned directing to submit the Legal Heirs certificate. Moreover, the said Vellaichamy has nominated his mother viz., Karupayee in the service register. The deceased Vellaichamy was arrested by the police and remanded in prison on 29.01.1994 based on the complaint of his wife viz., Tamilarasi who is the writ petitioner herein for the Dowry, Harassment and Cruelty and Assaulting or using criminal force against the writ petitioner. The subsistence allowance was paid with effect from 29.01.1994 that is from the date of his suspension upto 30.09.2001 as per the Rules. Thereafter the deceased V.Vellaichamy was removed from service with effect from 19.01.1999 as per the impugned order dated 29.01.2004 for the reason he was convicted and sentenced to undergo Rigorous Imprisonment in C.C.No.1094 of 94 for three years and the same was confirmed in C.A.No.14 of 1999, but the punishment was reduced in High Court in Crl. R. C. No. 1528 of 2001 as 2 years. As per Rule 9 (b) (i) (a) (b) and Sub Rule 6 of (xxvi) of TWAD Board Discipline and Appeal Regulation, 1972, the petitioner's deceased husband was removed from service. Therefore, the deceased employee is not eligible to receive any retirement benefits except the GPF and Special Gratuity. Since he was convicted under Section 498(A) IPC the removal from service proceedings was issued to the wife viz.,



Tamilarasi and the respondent have received the acknowledgment card also on 13.02.2004 itself. The deceased employee did not attend the office from 01.10.2001 onwards to receive the subsistence allowance. Thereafter, the employee has received the handwritten letter from the deceased employee on 03.01.2003 intimating that he is in the Madurai Central Prison. The respondents have served impugned order dated 29.01.2004 and the same was served on the petitioner on 13.02.2004 and after the lapse of 10 years the petitioner has preferred this Writ Petition, hence the petition is hit by the principles of delay and latches.

5. Heard the Learned Counsel for the petitioner, Learned Counsel for the respondents 2 to 5 and Learned Government Advocate for the respondent 1 and perused the materials available on record.

6. It is seen the petitioner has preferred the criminal case against her husband viz., V. Vellaichamy for the dowry harassment and cruelty. Thereafter, the deceased delinquent was arrested by the police and remanded in prison from 29.01.1994. Under deemed suspension, the deceased delinquent was kept under suspension with effect from 29.01.1994 and subsistence allowance was paid upto 30.09.2001. From 01.10.2001 onwards the deceased delinquent did not come to the office to receive the subsistence allowance. Then a letter was sent to the delinquent at his Madurai residence but the same was returned without delivery. Then an attender was sent in person to enquiry about his whereabouts and it was informed that the delinquent was not residing in that address and these facts are evident from the impugned order dated 29.01.2004. On 03.01.2003 the deceased delinquent has written a letter on his own hand writing from Madurai Central Prison informing he was punished in the criminal case and was undergoing punishment and has also informed that the punishment was reduced from for three years to two years by the High Court on appeal. Thereafter, it was informed by the prison authorities that the delinquent died on 25.04.2003. On receipt of such letter further information was sought from the prison authorities, wherein it was informed that on 19.01.1999 the delinquent was convicted, then he was enlarged on bail, then on appeal the conviction was confirmed but punishment was reduced vide order dated 29.11.2002 and thereafter the delinquent was undergoing punishment in Madurai prison. After the detailed information from the prison authorities, it was decided to take appropriate proceedings. Thereafter the respondents have passed an impugned order dated 29.01.2004 stating the delinquent was removed from service. It is pertinent to note the delinquent did not inform about his conviction in the year 1999 but has received subsistence allowance until 2001, then the conviction was confirmed in appeal, the delinquent has informed from the prison that he is undergoing punishment.



7. The first contention raised by the petitioner is that the impugned order dated 29.01.2004 was passed after the demise of the delinquent therefore, this order is non-est in the eye of law since it is an order passed against the dead person. Moreover, the contention of the petitioner is that the said order was passed without giving any opportunity to the delinquent.

8. The respondents submitted that the delinquent did not inform about his conviction in the year 1999 but has received subsistence allowance until 2001. The respondents have taken earnest effort to know about his whereabouts from 2001 by sending a registered letter and also in person to his Madurai address. Then the conviction was confirmed in appeal, the delinquent has informed from the prison that he is undergoing punishment. It is an admitted fact that the respondents have not issued any show cause notice to the deceased delinquent. The respondents submitted even if any show cause notice was issued, an enquiry cannot be conducted when the delinquent was in prison. The respondents stated that it is an admitted fact that the delinquent was arrested for the charges under Section 498(A) IPC and has faced trial and the punishment of three years Rigorous Imprisonment was imposed and he was imprisoned in Madurai Central Jail to undergo punishment. The contention of the respondent is that the natural consequences, after the punishment under a criminal case is the dismissal from service or removed from service. The issuance of notice is only an empty formality and therefore, the impugned order passed removing the delinquent from service is sustainable in law. This Court is of the considered view that the show cause notice would be an empty formality and the consequences of imprisonment after conviction would be removal from service or dismissal. Moreover the delinquent has informed about his conviction only from prison, then enquiry can be conducted after his release, but in the meantime he died inside prison. Therefore this Court is of the considered opinion that the removal from service is sustainable in law.

9. The petitioner contended that the respondents can take action only when there is moral turpitude. An act or behaviour that gravely violates the sentiment or accepted standard of the community is moral turpitude. The word has wide connotation and the act of dowry can be termed as act of moral turpitude. Therefore this Court is convinced that the punishment of removal from service is sustainable in law.

10. Even if any disciplinary proceedings have not been initiated, the same will not place the writ petitioner in a better position. Since as per the service records the petitioner's name was not given as nominee. The mother of the deceased name has been entered as nominee and then the mother is entitled to all service benefits. This Court is of the considered view that the petitioner's name and the second wife V. Virumayi are not found as nominee.



Therefore, both of them are not entitled to the terminal benefits of the deceased delinquent Vellaichamy. Hence this Court rejects the claim of the petitioner as far as the terminal benefits are concerned.

11. As far as the order of removal of service the same was issued to the petitioner and she has acknowledged the receipt as early as 2004, but has filed the present Writ Petition in the year 2015, it is clearly hit by delay and latches. Therefore this Court is of the considered opinion that the writ petition is hit by delay and latches.

12. Even though, the order passed against the dead person it is only a consequential order passed on the basis of the criminal case which ended in three years Rigorous Imprisonment. Further, the petitioner's husband was removed from service and therefore the Legal Heirs are not entitled to compassionate appointment even though the application is filed within three years. Therefore, this Court is of the view that the petitioners are not entitled for compassionate appointment.

13. The respondents submitted that the deceased delinquent is entitled to GPF and Special PF Gratuity scheme and the respondents are directed to pay the same to the petitioner at the earliest.

14. The deceased Vellaichamy was punished based on the complaint preferred by the wife i.e. the petitioner and the irony is she has come forward to receive the terminal benefits of her husband.

15. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS III)

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Sub Assistant Registrar(CS)

trp

To

1.The Secretary and General Manager,
Tamil Nadu Water Supply and Drainage(TWAD) Board,
31, Kamaraj Salai,
Chepauk,
Chennai - 600 005.



2.The Chief Engineer,
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Southern Division (Mandalam),
Ganesh Nagar,
Opp to Mattuthavani Bus Stand,
Madurai.

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-6352[F] dated 16/02/2022)

+1 CC to M/s.SPL GP (SR-6435[F] & SR-1287[F] dated 15/02/2022)

+1 CC to M/s.B.VIJAY KARTHIKEYAN, Advocate (SR-6090[F] dated
15/02/2022)

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MGJ(22.02.2022) 7P 9C