



W.P(MD)No.27445 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.12.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.27445 of 2022

and

W.M.P.(MD)Nos.21547 and 21549 of 2022

K.Lakshmi

... Petitioner

Vs.

The Commissioner,
Madurai Corporation,
Madurai.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the respondent Commissioner in Ma.Po.The 5/12968/2003 dated 22.06.2004 quash the same and further direct respondent to sanction and disburse retirement benefits as well as monthly pension of the petitioners husband namely N.Kumar to the petitioner.

For Petitioner : Mr.S.Xavier Rajini

For Respondent : Mr.K.K.Kannan,
Standing Counsel.



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ORDER

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Heard the learned counsel for the petitioner and the learned standing counsel for the respondent corporation.

2.The facts of the case make a heartrending reading. The petitioner's husband namely, N.Kxxx joined the respondent corporation way back in the year 1975. His initial appointment was on consolidated basis. He was placed under regular scale of pay with effect from 01.04.1987. He was dismissed from service on 22.06.2004. It is this order that is under challenge in this writ petition.

3.The learned standing counsel for the corporation raised several objections as to the maintainability of the writ petition. His first ground is that the petitioner does not have the *locus standi* to question the order of dismissal. His second contention is that the writ petition is hopelessly barred by laches. Even on merits, according to the learned standing counsel, the impugned order would speak for itself and that it does not warrant any interference. The learned counsel also sought time to file counter affidavit.



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4. After carefully considering the objections of the learned standing counsel, I am of the view that the writ petition can be disposed of with certain directions. This is for more than one reason. Even in the impugned order, it has been mentioned that the employee was suffering from mental disorder. The question is whether the enquiry officer can proceed with the enquiry when it is evident that the delinquent employee is mentally unsound and not in a position to defend himself. Let me now refer to the provisions of the Criminal Procedure Code. It has been set out therein that when once the Court comes to know that the accused is suffering from mental disorder and he is not able to defend himself, the proceedings will be deferred and will be taken up only after the accused regains normalcy. The enquiry officer must also adopt similar approach. After knowing that the delinquent employee is suffering from mental disorder, he could not have proceeded with the enquiry. The disciplinary authority failed to keep in mind the basic principles of natural justice. No adverse order could have been passed against the charged employee unable to defend himself due to his mental condition.

5. There is again no merit in the objection of the learned standing counsel that the petitioner cannot question the impugned order. It is well settled that any interested person can come to this Court for vindication of one's rights. If



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the impugned order is set aside, certainly the petitioner's husband would have be visited with an order of retirement and that event, the petitioner would have be entitled to pension. Since the petitioner's rights are involved, the petitioner is very much having *locus standi* to maintain this writ petition.

6.The objection regarding laches also are without merits. The learned counsel for the petitioner relied on the following decisions:-

“(a) (2010) 7 MLJ 141 (SC) (Improvement Trust v. Ujagar Singh)

(b) (2012) 8 MLJ 515 (SC) (Tukaram Kana Joshi v M.I.D.C)

(c) (2021) 7 MLJ 1 (P.Dhanalakshmi v. State of Tamil Nadu)

(d) W.A.Nos.815, 1531, 1691 to 1693 of 2010, dated 07.07.2011 (N.Jwahar and Others v. The Government of Tamil Nadu and Others)

(e)W.A.(MD)No.532 of 2021, dated 16.03.2021 (S.Vijayalakshmi v. The Government of Tamil Nadu and Others)”

The ratio which runs as common thread in all these precedents is that delay cannot be invoked to non-suit the writ petitioner if third party rights have not intervened and the authority has not suffered any prejudice in the meanwhile.



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7. Even though the materials on record are sufficient to come to the conclusion that the petitioner's averments regarding her husband's mental condition is correct, still satisfy one's conscience, the authority can proceed afresh after obtaining proper medical certificate. The petitioner's counsel states that the petitioner's husband is refusing to cooperate and it will be very difficult to bring him to hospital for assessment for obtaining disability certificate.

8. In order to meet such situations, I have already held vide order dated in ***W.P.No.12540 of 2022, dated 12.05.2022 (T.R.Ramanathan Vs. Tamil Nadu State Mental Health Authority and Another)*** that the competent authority must cause spot visit to be made for making assessment and for issuing certificate. I had specifically held that the mentally ill patients need not be made to come to the medical board for undergoing assessment. The same approach can be adopted in this case also. The petitioner has given several representations. The last representation is dated 20.04.2022. The respondent is directed to consider the said representation and revisit the earlier order dated 22.06.2004. The respondent shall satisfy himself as to the correctness of the petitioner's averments. The respondent will hear the petitioner in person and pass final order. If the respondent finds that the petitioner's averments regarding her



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husband are true, the resultant effect will be that the order dated 22.06.2004 passed by the Commissioner (In-charge) will become nullity. In that event, the petitioner as the guardian of her husband will be entitled to all consequential benefits. The entire exercise shall be completed within a period of sixteen weeks from the date of receipt of a copy of this order.

9.The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

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G.R.SWAMINATHAN, J.

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