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W.P.No.22924 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.01.2023

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.No.22924 of 2015
and M.P.No.1 of 2015

K.Kalaiselvi

..Petitioner

Vs.

1.The State of Tamil Nadu

Rep. by the Secretary to Government

Municipal Administration and Water Supplies Department

Fort St.George

Chennai-600 009.

2.The Commissioner of Municipal Administration

Chepauk, Chennai-600 005.

3.The Commissioner

Thiruvallur Municipality

Thiruvallur District.

4.The Assistant Director

Local Fund Audit (Municipal Pension)

IV Floor, Kuralagam,

Chennai-600 108

..Respondents.



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PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying to call for the entire records pertaining to the impugned order passed by the Assistant Director, Local Fund Audit (Municipal Pensions) IV Floor, Kuralagam, Chennai-600 108, 4th respondent herein, vide his proceedings No.Moo.Mu.No.2017/NaOSa (1)/2015 dated 11.02.2015 and quash the same as illegal, arbitrary, unreasonable, being violative of rules and principles of natural justice and thereby direct the respondents herein to sanction family pension to the petitioner and to disperse all monetary, service and other attendant benefits to the petitioner consequent to the death of petitioner's husband Late.Krishthumani on 24.04.2003 while serving as sanitary worker as was sanctioned to the other 19 similarly situated employees under the 3rd respondent Municipality.

For Petitioner : Mr.A.R.Suresh

For respondents : Mr.S.Arumugam, Govt.Advocate for R1
Mr.P.Srinivas for R4.

ORDER

This writ petition is filed praying to quash the impugned order dated 11.02.2015 passed by the 4th respondent, whereby, it is stated that the petitioner is not entitled to family pension from the pension fund but only entitled to pension under Contributory Pension Scheme.



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2. The petitioner is the wife of Krishthumani who was appointed as sanitary worker on daily wage basis on 16.10.1992. The petitioner submits that her husband was brought under consolidated pay. On 24.04.2003 he died in harness. The petitioner was sanctioned family welfare scheme fund. The petitioner submits that she made a representation to the District Collector, Thiruvallur, on 09.07.2005 requesting to provide appointment on compassionate grounds. The petitioner made representation in this regard to the respondents herein and filed W.P.No.11421 of 2012.

3. W.P.No.11421 of 2012 was allowed by this court by order dated 10.09.2012. The rejection order passed by the respondents in respect of compassionate appointment was quashed. The learned Judge directed the 2nd respondent therein-The Commissioner of Municipal Administration, Chepauk, to consider the claim of the petitioner for appointment on compassionate ground, as per the representation dated 04.02.2012 of the second petitioner (wife of the employee) and provide employment to the first petitioner (son of the employee), if there is no other impediment.

4. Thereafter, the petitioner filed W.P.No.34364 of 2012 seeking

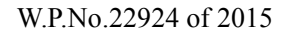


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direction to the respondents to sanction family pension consequent to the death of her husband. The petitioner averred in the said writ petition that similarly placed employees as that of petitioner's husband were sanctioned family pension and therefore, she is also entitled for the same.

5. In W.P.No.34364 of 2012, this court, by order dated 07.08.2014, referring to the remarks of the Commissioner, Chennai Corporation, pointed out that the services of the petitioner's husband was regularised with effect from 29.06.2012 and the petitioner's son has also been provided employment. The petitioner's husband's service regularization must be on and par with similarly placed 19 employees. The learned Judge, quoting the decision of the Honourable Apex Court reported in **(1981) 1 SCC 449 [Som Prakash Rekhi Vs. Union of India and another]**, directed the respondents - Corporation and the State Department to calculate the amount due to the petitioner and release the same within three months and also to pay interest @ 9% per annum from the date of the order (07/08/2014), till the amount is actually paid.

6. The respondents, without going into the detailed findings of the order dated 07.08.2014 in true letter and spirit, passed the order dated



7. Without complying with the directions of this court passed in the order dated 07.08.2014, wherein time limit of three months is stipulated for carrying out such direction, the respondents filed W.A.No.747 of 2016 after a long time. By the said order dated 11.02.2015, the respondent-authorities held that pension cannot be released from Pension Fund, but can be disbursed only from Contributory Pension Fund.

8. It is relevant to point out herein that if the High Court had passed a detailed speaking order in the subject matter in issue, then, it would have been desirable and palatable one that the direction passed is to be complied with unless the order is stayed by the appellate forum. In the absence of the order of the learned Judge dated 07.08.2014 being challenged before the Division Bench of this court, the respondents cannot find fault with the order. But in the



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instant case, after passing rejection order, the respondents chosen to file the writ appeal. Furthermore, when the writ appeal was taken up for hearing on 17.06.2016, it was represented that the proposal for payment of family pension has been rejected by proceedings dated 11.02.2015 and the petitioner has challenged the rejection order in W.P.No.22924 of 2015 [present writ petition]. The said writ appeal was dismissed by a Division Bench of this court, by judgment dated 17.06.2016 as infructuous observing that nothing survives in the writ appeal,

9. The present writ petition which is filed as against the rejection order dated 11.02.2015, is now before me. In my considered opinion, the cryptic order of the 4th respondent dated 11.02.2015 cannot be allowed to stand. The facts to be mentioned herein at the risk of repetition is that petitioner's husband joined in the service of the Thiruvallur Municipality on 16.10.1992. In the earlier writ petition filed by the petitioner in W.P.No.34364 of 2012, by order dated 07.08.2014, this court had noted that similarly placed employees services had been regularised on 29.06.2005 who are similarly appointed as that of petitioner's husband, but since petitioner's husband died on 24.04.2003, petitioner's husband name had been omitted while regularising the services of



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other employees and viewed the same as hypertechnical one.

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10. The submission of the respondents that since petitioner's husband expired on 25.04.2003 well before the issue of Government Orders, his service could not be regularised, does not have any substance,

11. The letter dated 12.12.2013 of the Commissioner, Thiruvallur Municipality, in Na.Ka.No.2145/2006-H.1, would go to show that petitioner's husband Kristhumani has been brought under consolidated pay on par with 19 similarly placed employees and after 1 1/2 years, on 26.06.2002 his scale of pay was brought under time scale 2550-55-2660-60-3200. From 26.06.2002 to till his date of death i.e. 25.04.2003, his services got regularised subject to audit objection. Therefore, it is very clear that the Commissioner, Thiruvallur Municipality, in the letter referred, has clearly stated that the services of Kristhumani got regularised earlier on par with similarly placed persons, but the family pension has not been granted to the wife of the employee on the ground that family pension cannot be granted under Pension Fund and she can be given pension only under contributory pension scheme. In the considered opinion of this court, once the Commissioner, Thiruvallur Municipality has



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category stated that his services have been brought under time scale of pay and petitioner's husband's services have been regularised till the date of his death, the petitioner is certainly entitled for pension.

12. In the facts and circumstances of this case, the petitioner has emerged as the next eligible dependent family member of deceased Krishthumani, because, she satisfies the qualifications prescribed for the grant of family pension and has not incurred any disqualification. The Apex Court ruled that denial of pension to a deserving person amounts to violation of the fundamental right to life guaranteed under Article 21 of the Constitution of India (*S.K. Mastan Bee v. The General Manager, South Central Railway and Anr.*) The Apex Court, in the cited case, held that it was an obligation of the Railways to have computed the family pension and offered the same to the widow of its employee as soon as it became due to her and also in view of the fact her husband was only a Gangman in the Railways who might not have left behind sufficient resources for the appellant to agitate her rights and also in view of the fact that the appellant is an illiterate.

13. Applying the above said ratio to the case on hand, this court feels it appropriate to direct the respondents 3 and 4 to grant the pension to the



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petitioner-wife of Krishthumani, with retrospective effect from the date on which it became due to her. The Respondents 3 and 4 shall take steps forthwith to compute the arrears of pension payable to the petitioner w.e.f. the date of regularisation of Krishthumai i.e.26.06.2002 and pay the entire arrears within three months from the date of the receipt of this order and continue to pay her future pension.

14. This writ petition is allowed on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

03.01.2023

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

- 1.The Secretary to Government, Municipal Administration and Water Supplies Department, Fort St.George, Chennai-600 009.
- 2.The Commissioner of Municipal Administration,Chepauk, Chennai-600 005.
- 3.The Commissioner,Thiruvallur Municipality, Thiruvallur District.
- 4.The Assistant Director, Local Fund Audit (Municipal Pension)
IV Floor, Kuralagam, Chennai-600 108.



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J.NISHA BANU, J.

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