

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

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DATED : 19.04.2023

Coram

**THE HONOURABLE MRS.JUSTICE V. BHAVANI SUBBAROYAN**

Writ Petition No.16385 of 2016

and

W.M.P.No.14173 of 2016

A.Chitra

.. Petitioner

Versus

1. The Secretary to Government,  
Municipal Administration and water supply department,  
Fort St. George,  
Chennai – 600 009.
  2. The Managing Director,  
Tamilnadu Water Supply & Drainage Board,  
No.31, Kamaraj Salai,  
Chepauk, Chennai – 600 005.
- ... Respondents

**Prayer :** This Writ Petition has been filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records pertaining to the order, dated 27.07.2015 made in B.P.Ms.No.36, on the file of the Managing Director, Tamil Nadu Water Supply and Drainage Board, 32, Kamaraj Salai, Chepauk, Chennai – 600005, the second respondent herein and quash the same and consequently, direct the respondents to give the benefits to the petitioner reckoning the date of death of delinquent for the purpose of calculation of the terminal benefits within a time frame fixed by this Court.

|                 |                                                                                                                |
|-----------------|----------------------------------------------------------------------------------------------------------------|
| For petitioner  | : Mr.R.Sugumaran                                                                                               |
| For Respondents | : Mr. D. Gopal,<br>Government Advocate for R1<br>Mr. S. Ravindran, Senior counsel<br>for Ms. S. Mekhala for R2 |

**ORDER**

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The relief sought for in this writ petition is to quash the order, dated 27.07.2015 made in B.P.Ms.No.36, on the file of the Managing Director, Tamil Nadu Water Supply and Drainage Board, 32, Kamaraj Salai, Chepauk, Chennai – 600005, the second respondent herein and for a consequential direction to the respondents to reckon the date of death of the delinquent for the purpose of calculation of the terminal benefits within a time frame fixed by this Court.

2. The case of the petitioner is that the petitioner's husband viz., late A.Appavoo, was appointed as an Assistant Engineer in the Investigation and Design Division of the 2<sup>nd</sup> respondent Board at Erode on 10.01.1973. Subsequently in the year 1983, he was promoted to the post of Assistant Executive Engineer in Sub Division III, Hill Area Development Division (HADP) Uthagamandalam. While he was working in the said place, he was placed under suspension on 23.09.1987 along with some other officials for alleged irregularities committed in execution of Uthagamandalam Water Supply Improvement Scheme. Pursuant to the same, a Charge Memo has also been issued, for which the said late A. Appavoo sent his reply on 22.11.1987 repudiating the charges. Since there is no response on the reply, he filed a Writ



Charge memo. The said Writ Petition was disposed of, by directing the respondents therein to reconsider the suspension order.

3. Pursuant to the same, several enquiry officers were appointed to enquire the case, among them, when one Sellappa was serving as an Enquiry officer, out of 44 witnesses, 20 were examined. Subsequent to the superannuation of the said enquiry officer, one Chakaravathy who was in the rank of Chief Engineer was appointed as an Enquiry officer. Objection was raised with regard to the appointment of the said officer of lower rank as Enquiry Officer by the officers against whom charges were leveled. However after conducting enquiry by the said Chakaravathy, the respondent Board de-linked one of the delinquent officer viz., P.V.Rajagopalan who was in the rank of Chief engineer from the array of parties, notwithstanding the fact that he was instrumental in execution of the entire work which suffered from alleged irregularity.

4. Hence, aggrieved against the enquiry conducted by the said Chakravarthy, a Writ Petition in W.P.No.4318 of 2001 has been filed. However the respondent continued the enquiry and by an order dated 07.02.2002, dismissed the employee late A. Appavoo. Challenging the same,



officers have also challenged the order of dismissal and withholding of pension and DCRG. All the Writ Petitions were taken up together and a common order has been passed on 01.02.2013, partly allowing the Writ Petitions and directed the 2<sup>nd</sup> respondent to consider afresh and impose any lesser punishment. Challenging the said order, the 2<sup>nd</sup> respondent preferred an appeal before the Division Bench of the Court in W.A.Nos.401 to 403 of 2014 and the same were dismissed on 16.04.2014, against which, the 2<sup>nd</sup> respondent preferred Special Leave Petitions before the Supreme Court and the same were also dismissed on 07.11.2014.

5. In this circumstance, the husband of the petitioner died on 29.05.2014 before the matter was given a quietus. Even after the dismissal of SLP, the 2<sup>nd</sup> respondent has not chosen to comply with the order of the Court and hence the petitioner sent a notice on 10.04.2015 to the 2<sup>nd</sup> respondent that unless the order passed in the Writ Petition is complied with, within a period of 10 days, necessary steps would be taken to initiate Contempt proceedings. Subsequently, the petitioner filed a Contempt petition in Cont.P.No.1532 of 2015. After receiving notice in Contempt proceedings, the 2<sup>nd</sup> respondent passed an order on 27.07.2015 modifying the punishment from that of dismissal from service to that of compulsory retirement and penalty to recover



Now the petitioner has challenged the said order of modification of punishment to the effect of withholding 1/3<sup>rd</sup> pension and gratuity which is contrary to the Judgment of this Court.

6. The 2<sup>nd</sup> respondent filed a detailed counter affidavit, denying certain allegations stated in the affidavit. The facts regarding the appointment and promotion of the delinquent employee are admitted. It is stated that the execution of Udthagamandalam W.S.I.S. commenced on 17.05.1986. The work connected with temporary off-take arrangement, such as construction of sumps, erection of pumpsets and laying of water transmission main, was executed to provide pilot water supply on the target date as promised. The supply could not be maintained due to frequent burst in C.I. Pipes in the conveying main. As there was public criticism, the then Collector, Nilgiris wrote a letter to the Special Commissioner stating that the scheme had some serious problems in execution and in view of its importance and the huge outlay involved, he requested a detailed enquiry to identify the problems. The question of substandard execution for the scheme cropped up and the Board appointed a Technical Committee to probe into possible irregularities to find out the causes for its failure. The allegation of substandard execution stands proved through the evidence of the members of Technical Committee,



the officers to install vital devices, non construction of thrust blocks before commencing the pilot water supply, substandard construction of sumps and thrust blocks are facts that prove the substandard execution of the work.

7. Thereafter, the Government in its Lr (D) No.743/MAWS/ME.IV dept, dated 04.12.1996 and Lr.No.36191/ME.IV(w)/95-6, dated 3.12.1996 directed the Board to initiate departmental disciplinary action against certain Tamil Nadu Water Supply and Drainage Board officials for the irregularities committed in execution of works related to UWSIS and the loss incurred to the Board was calculated at Rs.14,77,962/- as per the DV & AC report. Based on which, the charges were framed against the employees, including late A.Appavoo, who is the husband of the petitioner under Regulation 9 (b) of TWAD Board Employees' (Discipline and Appeal) Regulations, 1972. The charges framed against the late A.Appavoo are as follows:

Charge No.1: that he failed in his duties to exercise proper check over the work of construction of clear water sump in UWSIS which resulted in the substandard construction of sumps resulting in profuse leakage of water as proved by the test results of Highways and Research Institute of Chennai on concrete samples, collected from sumps;

Charge No.2: that he is responsible for the non provision of air valves and water hammer devices change of class of pipes and failure of segment wise



hydraulic pressure test resulting in the burst of pipes and failure of the scheme and thereby caused a loss of Rs.1,66,654.39 to the Board.

Charge No.3: that he made false and improper claims to the tune of Rs.2,11,817/- from temporary advance by manipulating written understandings as if rolled down pipes were retrieved and thereby caused a loss of Rs.2,11,817/- to the Board.

Charge No.4: that he made false and improper claims from temporary advance by manipulating written understandings as if surplus earth was transported from one place to another place and each was transported from elsewhere to refill the trenches along the alignment and thereby caused huge loss to the Board.

8. The counter proceeded to state that late A. Appavoo submitted his reply to the charges denying the allegations made against him. On enquiry, the charges 1, 3 and 4 framed against the deceased A. Appavoo has been proved. However, Charge No.2 was partly proved and the same was duly communicated to the accused officer for his further written statement. In reply, the accused has emphasized the same points as already given by him. For the proven charges which are grave in nature and as the quantum of loss is very high, the penalty of dismissal from service was imposed on the accused



dated 07.02.2002. Further the Board resolved to file a civil suit to recover Rs.2,78,609/- being the loss suffered by the Board due to the irregularities committed by the accused after getting legal opinion.

9. Challenging the same, the said A.Appavoo, had filed W.P.No.14154 of 2002 and the same was partly allowed by this Court on 01.02.2013 and thereby the matter was remanded back to the respondent Board to impose any other lesser penalty other than dismissal from service and withholding the entire pension. As against the order dated 01.02.2013, a Writ Appeal has been preferred in W.A.Nos.401 to 403 of 2014 and the same was dismissed on 16.04.2014. Aggrieved over the same, the 2<sup>nd</sup> respondent preferred SLP in SLP (C) No.30886 – 30888 of 2014 before the Supreme Court and the same was also dismissed 07.11.2014. Thereafter, the matter was placed before the Board meeting held on 23.04.2015 for taking final decision. The Board resolved to modify the punishment already awarded in B.P. Ms. No.42, dated 07.02.2022 as “Compulsory Retirement”. Accordingly, the earlier punishment of dismissal from service and also to file civil suit to recover Rs.2,78,609/- being the loss to the Board awarded to the delinquent officer was modified as “compulsory retirement” and “penalty of recovery of 1/3<sup>rd</sup> of pension and gratuity under Rule 39 of Tamilnadu Pension Rule”. The Board further



delinquent employee in the criminal case pending against him and in the event of conviction, the delinquent officer shall be liable for all the consequences arising therefore in accordance with law. In this circumstance, the delinquent officer expired on 29.05.2014. Hence, the wife of the said officer, the petitioner herein, has preferred the present Writ Petition challenging the above said order dated 23.04.2015.

10. The learned counsel for the petitioner submitted that the 2<sup>nd</sup> respondent has passed the order beyond the period prescribed by this Court without getting any order for extension of time. Hence, the order is liable to be set aside. The respondent ought to have treated the date of imposition of revised penalty or the actual date of his superannuation for purpose of reckoning the pension and family pension of the employee. The respondent ought to have seen that if late A.Appavoo continued to serve in view of the order passed in the writ Petition, he would have reached the level of Chief Engineer and as such, ought to have fixed his pension or family pension commensurate with the salary he would have received. According to the petitioner, the impugned order does not satisfy Rule 39 of Tamilnadu Pension Rules and not enable the competent authority to pass recovery order for the alleged loss. The said rule is an enabling provision to grant pension not less



on compulsory retirement but it is not a provision to recover the alleged loss to the Government as such the portion of the order of recovery of 1/3<sup>rd</sup> pension and gratuity is liable to be stayed, otherwise the petitioner would be greatly prejudiced and put to heavy and irreparable loss.

11. In support of his contention, the learned counsel for the petitioner relied on the order of this Court, dated 18.10.2022 made in W.P.No.17016 of 2012 wherein this Court by taking into account of the petitioner's advanced age, agreed with the analogy of commutation of pension and set aside the impugned order of punishment of removal from service and allowed the Writ Petition and directed the 1<sup>st</sup> respondent therein to pass orders keeping in mind the observations made therein within six weeks.

12. Mr.S.Ravindran, learned Senior counsel appearing for Mrs.S.Mekhala learned counsel for the 2<sup>nd</sup> respondent submitted that the delinquent officer expired on 29.05.2014. The eligible pension for the period from the date of compulsory retirement to date of his death and eligible gratuity amount after deducting 1/3 amount was sanctioned to the petitioner. Moreover, the petitioner was sanctioned with the full family pension without recovery as per rules in force. In pursuance to the direction issued by this



retirement has been imposed along with penalty of recovery of 1/3<sup>rd</sup> pension and DCRG which is the appropriate punishment for the irregularity committed by him. Insofar as the charges framed against the deceased employee, finding of the enquiry officer and the punishment imposed already, has been subjected to judicial review and as per the order, the punishment was reduced. Hence, as per regulations the punishment of compulsory retirement now imposed was lesser than punishment of dismissal from service. More so, all the pension and DCRG benefits were sanctioned to the deceased employee upto date of his death and the family pension was also sanctioned to the petitioner. Hence, he prays for dismissal of the Writ Petition.

13. Heard the learned counsel for the petitioner, the learned Government Advocate appearing for the first respondent and the learned senior counsel appearing for the second respondent.

14. On perusal of the records, it is seen that charges were levelled against the husband of the petitioner by name late A.Appavoo for having allegedly committed certain irregularities in the execution of the works of the Udthagamandalam water Supply Improvements Scheme, HADP Division, Ooty and thereby caused huge loss to the Department. The disciplinary proceedings

culminated in passing an order of dismissal from service together with the



order to recover a sum of Rs.2,78,609/- being the loss to the Board by way of filing civil suit. However after disposal of the Writ Petition, which was confirmed in Writ Appeal and the Special Leave petitions, the above order was modified into compulsory retirement together with penalty to recover 1/3<sup>rd</sup> pension and gratuity under Rule 39 of Tamil Nadu Pension Rule. While the petitioner has not questioned the punishment of compulsory retirement, she has questioned the penalty to recover 1/3<sup>rd</sup> pension and gratuity under Rule 39 of the Tamil Nadu Pension Rule.

15. At this juncture, it is relevant to refer the judgments of the Division Bench Court to give a quietus to the issue:

15.1. In the case of ***the Director of Public Health and Preventive Medicine, Chennai and ors Vrs. T.V.Shanmugasundaram*** reported in ***MANU/TN/1200/2019***, this Court has observed as follows;

*“7. Having heard the rival submissions, we are of the considered view that in terms of Rule 39 of the Tamil Nadu Pension Rules, 1978, the Respondents were justified to exercise the power conferred therein to reduce 10% of the pension of the Petitioner. In this regard, reference may be made to Rule 39 of the Tamil Nadu Pension Rules, 1978, which is extracted below:-*

*“39. Compulsory retirement pension:-*

*(1) A Government servant compulsorily retired from service as a penalty may be granted by the authority*



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*competent to impose such penalty, pension or gratuity, or both at a rate not less than two-thirds and not more than full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement.*

*(2) Whenever in the case of a Government servant the Government passes an order (whether original, appellate or in exercise of power of review) awarding a pension less than the full compensation pension admissible under these rules, the Tamil Nadu Public Service Commission shall be consulted before such order is passed.*

*Explanation.- In this sub-rule, the expression “pension” includes gratuity.*

*(3) A pension granted or awarded under sub-rule (1) or as the case may be under sub-rule (2) shall not be less than the limit specified in sub-rule (5) of rule 43.”*

*On a bare perusal of the aforesaid provisions, it is evident that the pension of the Government servant, who has been compulsorily retired from service as a measure of penalty, is liable to be reduced at such rate not less than two-thirds and not more than full amount of pension on the date of his compulsory retirement. Inasmuch as the Writ Court without even referring to Rule 39 of the Tamil Nadu Pension Rules, 1978, has held that the reduction in the pension of the Petitioner, who had been compulsorily retired from service, would amount to punishing him twice, the said conclusion cannot be sustained and accordingly the same is set aside.*



15.2. Similarly in another occasion, in the case of ***K.Arumugam Vrs.***

***The Chairman, Tamil Nadu Public Service Commission and Ors.*** reported in ***MANU/TN/2562/2007***, this Court held as follows;

*23. We are unable to countenance the above contention since this point was not raised in the Writ Petition as well as in the grounds of appeal. This point also does not seem to have been urged before the learned Single Judge. That apart, when a Government servant is compulsorily retired from service, as per Rule 39 of Tamil Nadu Pension Rules, penalty may be imposed by the Authority competent to impose such penalty of both pension or gratuity or both at a rate not less than 2/3rds. Rule 39 reads as under:*

*39. Compulsory retirement pension: (1) A Government Servant compulsorily retired from service as a penalty may be granted by the authority competent to impose such penalty, pension or gratuity, or both at a rate not less than two-thirds and not more than full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement.*

*24. We are of the view that it was well within the purview of the Disciplinary Authority to impose such penalty of pension or gratuity or both at the time of imposing punishment of compulsory retirement. When there is no violation of Pension Rules, order directing payment of 2/3rd of eligible pension and DCRG cannot be interfered with.*



15.3. In the case of ***K.Veluchamy Vrs. State of Tamil Nadu and Ors.***,

reported in ***MANU/TN/3144/2017***, this Court has observed as follows:

23. *Therefore, in our opinion, the class of pension, to which, the writ petitioner is entitled squarely falls under Rule 39 and hence, he is not entitled for payment of superannuation pension, as spelt out in Rule 32. There is a well-marked distinction between superannuation pension governed by Rule 32 and compulsory retirement pension specified under Rule 39.*

24. *This is the precise reason why Clause (1) of Rule 27 has used the expression 'addition to qualifying service for superannuation pension', but not for any other class of pension'. In our opinion, Rule 27 gets attracted only to such cases where the superannuation pension under Rule 32 becomes admissible and it does not get attracted to cases where pension under Rule 39 or under the other Rules noticed supra, becomes admissible. Otherwise, there is no necessity for the Rule Making Authority to specifically use the expression 'but not for any other class of pension' in Rule 27(1) of the Rules.*

25. *It is a settled principle of law that when a Rule is clear and unambiguous, the full flow thereof should be given effect to normally and by an interpretative process, the Court shall not add or delete anything therefrom. We are, therefore, not justified in subscribing to the idea put forth by the writ petitioner that in his case, he shall be extended the benefit of added qualifying service as per Rule 27, ignoring the mandate that no such addition is admissible to pensions liable to be sanctioned under other Rules contained in Chapter V of the Rules, than under Rule 32.*



16. The case on hand is squarely applicable to the above mentioned cases. In the order passed in the writ petition, this Court only directed to impose a lesser punishment on the ground that the order of dismissal is harsh and not commensurate to the proved charges. However, that does not mean that the officials have been exonerated from the disciplinary proceedings or the charges against them are not proved. In other words, the husband of the petitioner was not given a clean chit by this Court, while passing the order in the writ petition. What was observed by this Court is that the punishment of dismissal from service is relatively harsh and it requires modification. Therefore, in compliance with such observation made by this Court, in the wisdom of the disciplinary authority, the punishment of compulsory retirement was imposed together with recovery of amount from the pensionary benefits. While so, this Court does not find any merit in the grounds urged in this writ petition. In any event, there is no violation of the order passed by this Court in the order while modifying the punishment into compulsory retirement and the penalty of recovery of 1/3<sup>rd</sup> of pension and gratuity under Rule 39 of the Tamil Nadu Pension Rule. Hence, this Writ Petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

**19.04.2023**

Index : yes/no

Speaking order/non-speaking order

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To

1. The Secretary to Government,  
Municipal Administration and water supply department,  
Fort St. George,  
Chennai – 600 009.
  
2. The Managing Director,  
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**V.BHAVANI SUBBAROYAN,J**

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**W.P.No.16385 of 2016 and**  
**W.M.P.No.14173 of 2016**

**19.04.2023**