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W.A.No.2626 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2023

CORAM

THE HON'BLE Mr. JUSTICE R.SURESH KUMAR
AND
THE HON'BLE Mr. JUSTICE K.KUMARESH BABU

W.A.No.2626 of 2019

P.Kala

... Appellant

Vs.

1.The Secretary to Government,
PWD, Fort St. George,
Chennai – 600 009.

2.The Deputy Director of Institute of
Hydraulics and Hydrology,
Public Works Department,
Poondi Circle, Poondi 602 023.

3.The Assistant Director,
Right Flank, Institute of Hydraulics,
Hydrology, Poondi Circle, Poondi.

4.Accountant General of Tamil Nadu,
Chennai – 600 018.

... Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent Act, praying to set aside the order dated 07.11.2017 in W.P.No.21164 of 2012.

For Appellant : Mr.M.Muthappan

For Respondents : Mr.R.Kumaravel

Addl. Government Pleader for R1 to R3

: No appearance for R4



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JUDGMENT

WEB COPY (Judgment of the Court was delivered by R.SURESH KUMAR, J.)

This appeal has been directed against the order passed by the Writ Court dated 07.11.2017 in W.P.No.21164 of 2012.

2. The appellant herein is the writ petitioner whose husband one Panchatcharam was appointed as a Mazdoor at the 2nd respondent Department in the year 1980. He had been working in that capacity for several years.

3. Like the husband of the appellant, thousands of people who had been appointed or engaged though had been working for several years, their services were not regularised.

4. Therefore, in this regard the Government had come forward to issue a Government Order in G.O.(Ms).No.334 Public Works (C2) Department dated 19.10.2007 under which more than thousand people similar to that of the husband of the appellant had been considered for regularisation.



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5. Pursuant to the said G.O. all the eligible persons who got such regularisation on completion of 10 years period from the date of initial engagement, their names have been placed in a list filed as Annexure XI to G.O.(Ms).No.334 dated 19.10.2007 and in the said Annexure in Sl.No.161 the name of the appellant also is found place.

6. Pursuant to the said G.O., though posting order had been given on 09.01.2008, already i.e. on 07.03.2003 since the husband of the appellant died, the posting order could not be effected by posting him as Attendant at the 2nd respondent office at Poondi.

7. Subsequently the appellant being the widow of the deceased employee Panchatcharam had made a request on 22.04.2008 seeking for the retiral and pensionary benefits payable to the family of the deceased employee and also she sought for the appointment on compassionate ground.

8. Since that request was not considered, she had approached this Court by filing a writ petition in W.P.No.25057 of 2008 where a



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direction was given by the Writ Court on 20.10.2008 to consider the said request and to pass orders.

9. Pursuant to which, on 04.12.2008 the 2nd respondent passed an order which reads thus:

“As per the reference 2nd cited, the regularisation takes effect from the date of issue of Government order. Thiru.Panchatsaram worked as daily wages Mazdoor upto 01.03.2003 and died on 07.03.2003. Hence, the G.O. second cited is not applicable to the Thiru.Panchatsaram, since before the issue of order, the individual died and hence the individual cannot be considered as a regular Government employee.

In the above situation, it is informed that the terminal benefits and family pension are not eligible as prayed by Tmt.P.Kala W/o(Late) Panchatsaram.

However, the individual is requested to submit a representation to Government to consider her case on sympathetic grounds and the same will be recommended to Government.”

10. Challenging the same, the said writ petition had been filed which was considered and decided by the learned Judge through the impugned order dated 07.11.2017, whereby, the learned Single Judge has rejected the said writ petition. Aggrieved over the same, the present appeal has been directed.



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11. Heard Mr.M.Muthappan, learned counsel appearing for the appellant and Mr.R.Kumaravel, learned Additional Government Pleader appearing for respondents 1 to 3.

12. The fact remains that, by virtue of G.O.(Ms).No.334 more than thousand such temporary employees or NMRs or Mazdoors like the husband of the appellant were regularised with effect from the completion of 10 years of their service from the initial engagement.

13. Insofar as the husband of the appellant is concerned, since he joined in the year 1980 had completed the 10 years service in 1990, therefore in 1990 or 1991 he become eligible to be considered for regularisation which in fact having been considered, such regularisation had been given.

14. However, it is to be noted that, in para (iii) of the G.O., the Government had directed that, though the regularisation for which they are eligible after completion of 10 years, however their pay would be fixed not from the completion of 10 years period i.e. on the date of regularisation but only from the date of relaxation given for such



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regularisation and such relaxation since was given only on the date of issuance of the G.O. i.e. from 19.10.2007, all these people even though got regularisation on completion of 10 years service long back, they become eligible to be fixed the salary only with effect from the date of G.O. i.e., 19.10.2007.

15. The said import of the G.O. fixing a cut off date i.e. from the date of relaxation as the date for fixing the pay scale was challenged before this Court initially by writ petition and subsequently by way of writ appeal in W.A.Nos.168 and 169 of 2012. The said writ appeals were considered and disposed by a Division Bench of this Court where they passed the following orders:

“14. As rightly contended by the learned counsel appearing for the appellants, what is sought for is only a notional fixation of pay retrospectively on completion of 10 years of their service without any monetary benefit, so that they would get their entire service period counted for the purpose of service benefits including the monetary benefits.

15. In our considered view granting of such notional fixation of pay retrospectively without monetary benefit is not going to affect the Government in any way, especially when such benefit was given to other similarly placed



persons numbering more than 600 as has been seen in the above referred proceedings. The learned Single Judge failed to consider this aspect of discrimination and dismissed the writ petitions only on the reason that the appellants/petitioners having benefited by regularising of their service through impugned Government Order, cannot seek to improve upon the scheme. In our considered view such finding of the learned Single Judge is not correct in view of the fact that the appellants/petitioners are not seeking to improve the scheme and on the other hand seek the benefit conferred to similarly placed persons based on the very same Government Order as has been discussed supra. The action of the respondents in treating the appellants differently is in violation of Article 14 of the Constitution of India. Right to treat similarly placed persons equally is a fundamental right guaranteed under the Constitution of India. The said position is made clear in the following decisions:-

(i) Premchand Somchand Shah vs. Union of India reported in (1991) 2 SCC 48. In paragraph 8 of the Judgment, it is held thus:-

“8.As regards the right to equality guaranteed under Article 14 the position is well settled that the said right ensures equality amongst equals and its aim is to protect persons similarly placed against discriminatory treatment. It means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Conversely discrimination may result if persons dissimilarly



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situate are treated equally. Even amongst persons similarly situate differential treatment would be permissible between one class and the other. In that event it is necessary that the differential treatment should be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that differentia must have a rational relation to the object sought to be achieved by the statute in question ”

(ii) In Radhy Sham vs. State of U.P., reported in (2011) 5 SCC 552, it is held that policy of pick and choose in some parcel of the land and leaving many other parcels of the land under the Land Acquisition Act is discriminatory and violation of Article 14 of the Constitution of India.

(iii) In Sham Lal vs. State of Punjab reported in 2013 (10) Scale 67, the aforesaid position is reiterated in this case.

(iv) In State of U.P., vs. Dayanand Chakrawarty reported in (2013) 7 SCC 595, it is held that there cannot be any discrimination in treating equally placed persons on same footing for all purposes. The above decisions were followed by the Division Bench, of which one of us (N.Paul Vasanthakumar,J.) is a member in the decision in the case of Union of India & Anr., vs. S.Subramani reported in 2013 WLR L.R., 1010.

16. As the appellants have established the discriminatory treatment meted out to them, as could be seen from the available proof, which are not disputed by the



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respondents, the orders of the learned Single Judge upholding the action of the Government are liable to be set aside.

17. In fine, the Writ Appeals are allowed and the respondents are directed to notionally fix the pay of the appellants/petitioners retrospectively with effect from the date of completion of 10 years of service as NMRs, with monetary benefits from the date of the Government Order, dated 19.10.2007, as it has been extended to others in G.O.Ms.No.124, Public Works Department, dated 15.05.2008. Such exercise shall be commenced and completed by the respondents, within a period of eight weeks from the date of receipt of a copy of this order. No costs.”

16. Therefore the offending clause enabling the Government to fix the salary only from the date of issuance of G.O. since has been set aside or quashed, the other import of the G.O. since would be applicable to these people who got regularised after 10 years of service from their initial appointment they would be entitled to seek for the fixation of salary of course on notional basis on completion of their 10 years period based on which those retired employees would be entitled to get the pensionary benefits also.



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17. Despite these factual matrix are available where the Government Order had already been issued and the offending portion also since had been challenged successfully by the order passed by the Division Bench as stated supra, the learned Judge without considering these aspects in proper perspective was pleased to reject the writ petition by the impugned order dated 07.11.2017, therefore we feel that the said approach on the part of the writ Court in dismissing the writ petition is an erroneous one, hence we feel that, the impugned order can be interfered with.

18. Insofar as the prayer sought for by the appellant before the Writ Court is to set aside the order dated 04.12.2008 and consequential prayer to give terminal benefits and also appointment to the petitioner in any one of the suitable post on compassionate appointment.

19. Insofar as the plea raised by the appellant to get a compassionate appointment is concerned, since the husband of the appellant died in the year 2003, we are in 2023 after two decades.



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WEB COPY 20. It is a settled proposition of law in case of compassionate appointment as has been held several times by the Hon'ble Supreme Court that, Compassionate Appointment Scheme itself is envisaged only to bail out the family members who left suddenly by the demise of the employee who may be the breadwinner or head of the family from the penurious circumstances of the family.

21. In the present case, 20 long years have gone therefore at this juncture, the question of considering the candidature of the appellant who stated to be 57 years old as of now for compassionate appointment does not arise, therefore with regard to that portion of the prayer sought for by the appellant before the Writ Court since was rejected by the learned Judge can be approved.

22. However, insofar as seeking the prayer to set aside the proceedings of the 2nd respondent dated 04.12.2008 in refusing to consider the retiral and pensionary benefits sought for by the appellant is concerned, the order passed by the Writ Court since would be erroneous, it is to be interfered with. In the result, the following orders are passed in



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this writ appeal:

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(i) That the impugned order dated 07.11.2017 is set aside to the extent of refusing to set aside the order impugned before the Writ Court dated 04.12.2008 and refuse to give a direction to the respondents to fix the salary of the deceased employee i.e., the husband of the appellant on completion of 10 years period, in view of the Division Bench judgment as stated supra and to calculate the pay for the purpose of calculating the family pension to the family of the deceased employee is hereby modified.

(ii) As a result, there shall be a direction to the respondents to fix the salary for Panchatcharam, the husband of the appellant on completion of his 10 years period of service from his initial appointment i.e., in the year 1980 and accordingly his entire service till his death shall be taken into account for the purpose of calculating the pensionary benefits, based on which, the family pension shall be calculated with arrears and shall be paid to the appellant within a period of twelve weeks from the date of receipt of a copy of this judgment. The family pension shall continue to



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be paid to the appellant till her entitlement.

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23. With these directions, this Writ Appeal is ordered accordingly to the extent indicated above. However, there shall be no order as to costs.

[R.S.K., J.] [K.B., J.]

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Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

Sgl

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