



W.P. No. 80 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2024

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P. No. 80 of 2018
and
W.M.P. No. 77 of 2018

V. Kavitha

... Petitioner

Vs.

1.The Salem City Municipal Corporation,
Rep., by its Commissioner,
Salem, Salem District – 636 007.

2.The Salem City Municipal Corporation,
Rep., by its Assistant Commissioner,
Sooramangalam Ward Office,
Salem, Salem District.

... Respondents

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the order of the second respondent dated 09.02.2016 in Na.Ka.No.K2/743/2016, and quash the same and consequently direct the respondents to forthwith pay all the Death-cum-Retirement benefits of the deceased S. Selva Kennedy, to the petitioner and thus render justice.

For Petitioner : Mr. K. Selvaraj

For Respondents : Mr. N. Ravi,
Standing Counsel



ORDER

This Writ Petition has been filed for the issuance of writ of certiorarified mandamus to call for the records relating to the order of the second respondent dated 09.02.2016 in Na.Ka.No.K2/743/2016, quash the same and consequently direct the respondents to forthwith pay all the Death-cum-Retirement benefits of the deceased S. Selva Kennedy, to the petitioner and thus render justice.

2. The case of the petitioner is that, the petitioner's husband was appointed as Technical Assistant on a daily wages from 01.10.1995. Since his services has not been regularized, he along with the other 15 Technical Assistants have filed writ petition in W.P. No. 2417 of 2007 before this Court and this Court by order dated 07.11.2013 allowed the writ petition by directing the first respondent herein to regularize the services of the petitioner's husband and 14 others and also further directed the respondents herein to pay the monetary benefits to the petitioners which would arise by regularising the services from 15.05.2001 and fix their pay in the pay scale of Rs.4,500-125-7000. While this being the position, the petitioner's husband died on 02.04.2014.

3. The petitioner had made a representation to the first respondent dated 05.02.2016 requesting to pay the Provident Fund and other Death-cum-Retirement



benefits payable to her late husband to the petitioner. The second respondent by order dated 09.02.2016 has rejected the claim made by the petitioner on the ground that the petitioner's husband was appointed subsequent to 01.04.2003, he comes under New Pension Scheme and hence, could not be paid Death-cum-Retirement benefits, Family Pension and other Earned Leave amounts.

4. Mr. K. Selvaraj, learned counsel for the petitioner would submit that the petitioner's husband is deemed to have been regularised with effect from 15.05.2001 as per the order of this Court dated 07.11.2013 and he is entitled for all the monetary benefits as a regular employee of the Salem Corporation.

5. On behalf of the respondents counter affidavit has been filed. Based on the averments in the counter affidavit, the learned Standing Counsel for the respondents would submit that the petitioner's claim for the pay since 15.05.2001 based on the order of this Court in W.P. No.2417 of 2007 dated 07.11.2013 cannot be considered, as the same is against the Government Order and any consideration would lead to the objection from the local body – financial audit. Further, the learned Standing Counsel submitted that as per the order of the Supreme Court, the G.O.No.106 of the Municipal Administration and Water Supply (Judicial) dated 30.03.2012 and as per Government letter Na.Ka.No.49690/PGC/2012 dated 02.01.2013, all the Central,



State and municipal servants joined after 01.04.2003 are brought into contribution pension scheme. Also the petitioner's claim for the pay since 15.05.2001 as per the order of this Court in W.P.No.2417 of 2007 dated 07.11.2013 for regular pension benefits would be against the said contribution scheme and also against the orders of the government. Hence, sought to dismiss the writ petition.

6. This Court has carefully considered the submissions made on either side and perused the materials available on record.

7. For proper adjudication of the issue involved in the present case, it is apt to extract the relevant paragraphs of the order of this Court in W.P. No. 2417 of 2007, as extracted herein under: -

“10. For the contention, the reasoning given by the 1st respondent that since the Government has imposed a ban, they could not regularise the petitioners from 15.05.2001 is not at all convincing. Once an employee is appointed by the Government, he is entitled for all the benefits as per the Government Orders and service rules. Accordingly, the services of the petitioners have to be regularised by the 1st respondent as per G.O.Ms.No.125 w.e.f. 15.05.2001.

11. Next coming to the question of granting time scale of pay to the petitioners from the post of Technical Assistant, it has been specifically mentioned in the order of the 1st respondent dated 15.05.2000 that they have been regularised only as unskilled workers.



Hence, I am of the view that the later portion of the order is correct.

But, as I have narrated earlier, their services have to be regularised w.e.f. 15.05.2001.

12. In the result, the Writ Petition is allowed as indicated above. The 1st respondent is further directed to pay the monetary benefits to the petitioners, which would arise by regularising the petitioners from 15.05.2001 and fixing their pay in the scale of pay of Rs.4500-125-7000, within a period of four months from the date of receipt of a copy of this order.”

8. As seen from the above order, it is clear that this Court directed to regularise the service of the petitioners with effect from 15.05.2001 after considering the objections raised by the respondents. While allowing the said writ petition, this Court further directed to pay the monetary benefits to the petitioners, which would arise by regularising the petitioners from 15.05.2001 and fixing their pay in the scale of pay of Rs.4500-125-7000.

9. Though in the counter affidavit filed by the respondents, it is stated that they have filed a writ appeal against the order in W.P. No. 2417 of 2007 and the same is pending, but no particulars of writ appeal are furnished. As such, it has to be construed, the order passed by this Court on 07.11.2013 has become final.



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10. Under these circumstances, now the respondents are not permitted to take stand that the petitioner's claim for the pay since 15.05.2001 cannot be considered.

As and when this Court categorically recorded finding that the service of the petitioners have to be regularised by the first respondent as per G.O.(Ms).No.125 dated 27.05.1999 with effect from 15.05.2001 and the order dated 07.11.2013 in the said writ petition has become final, the respondents have to consider the claim of the petitioner as directed by this Court.

11. For the reasons stated above, in the considered opinion of this Court, the petitioner has made out a strong case warranting interference of this Court based on the order dated 07.11.2013 passed by this Court in W.P. No.2417 of 2007 and as such, the order of the second respondent in Na.Ka.No.K2/743/2016 dated 09.02.2016 is liable to be quashed to meet the interest of justice.

12. Accordingly, this Writ Petition is allowed with the following directions: -

i) The impugned order dated 09.02.2016 in Na.Ka.No.K2/743/2016 is hereby quashed.

ii) The respondents are directed to forthwith pay all the Death-cum-Retirement benefits of the deceased i.e., S.Selva Kennedy to the petitioner.



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13. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

14.10.2024

Index :Yes/No

Neutral Citation :Yes/No

AT

To

1.The Commissioner,
Salem City Municipal Corporation,
Salem, Salem District – 636 007.

2.The Assistant Commissioner,
Salem City Municipal Corporation,
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BATTU DEVANAND, J.

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