



W.P.No.23122 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2024

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

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C.Palaniammal

... Petitioner

Vs.

1.The Additional Director,
Survey and Land Records,
Chepauk, Chennai 600 005.

2.The Assistant Director,
Survey and Land Records,
Kancheepuram,
Kancheepuram District.

3.The Director of Pension,
Saidapet, Chennai -15.

4.The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Special Investigation,
Chennai.
(Crime No.7/AC/2009)

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the 1st and 2nd respondents to dispose of the representation of the petitioner dated 06.08.2021 in the light of G.O.Ms.No.151, Personnel and Administrative Reforms (N)



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Department, dated 31.10.2018 and pay the family pension and other terminal benefits with arrears of full back wages within a stipulated period.

For Petitioner : Mr.R.Sreedharan
For Respondents : Mr.T.Chezhiyan, AGP

ORDER

This Writ Petition has been filed for the issuance of a Writ of Mandamus, to direct the 1st and 2nd respondents to dispose of the representation of the petitioner dated 06.08.2021 in the light of G.O.Ms.No.151, Personnel and Administrative Reforms (N) Department, dated 31.10.2018 and pay the family pension and other terminal benefits with arrears of full back wages within a stipulated period.

2. Heard Mr.R.Sreedharan, learned counsel for the petitioner and Mr.T.Chezhiyan, learned Additional Government Pleader for the respondents.

3. The petitioner's husband worked as a Firka Surveyor and he was arrested and suspended from service for the allegations of corruption. A criminal case has been filed in this regard in Spl.Case No.3 of 2009



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before the Chief Judicial Magistrate, Chengalpattu and the same ended in conviction. The petitioner's husband had filed an Appeal against the order and the sentence was suspended. Subsequently, the petitioner's husband died on 26.12.2019 due to ill-health.

4. The learned counsel for the petitioner submitted that as per G.O.Ms.No.151, Personnel and Administrative Department dated 31.10.2018, the abatement order for dropping further action consequent to the death of the Government Servant during the pending departmental proceedings should be issued. The petitioner had made a representation in this regard to the first respondent on 06.08.2021 for sanctioning family pension and other benefits. But the first respondent has issued a reply stating that the decision will be taken based on the pending criminal appeal.

5. The learned Additional Government Pleader for the respondents submitted that the petitioner's husband has already been convicted and the conviction order is not set aside. Hence, consequential orders can be



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passed only on the basis that the charges against the petitioner were proved before the Criminal Court. Subsequent to the receipt of the Court orders, a show cause notice was issued to the delinquent under Rule 17(C)(i)(1) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules.

5.1. The learned Additional Government Pleader further submitted that the petitioner's husband submitted a representation on 12.02.2019 requesting to continue the subsisting allowance citing the pendency of criminal appeal. Since the petitioner's husband was convicted, he was dismissed from service with effect from 28.02.2019 under the order of the second respondent and the same was served to him on 28.02.2019 itself. So it is incorrect to state that the petitioner's husband has been removed from service all of a sudden. When the criminal appeal is pending, the petitioner's husband died and the order of abatement is applicable as per the Government Order in G.O.Ms.No.151 dated 31.10.2018, only in respect of those cases where the employee dies in harness or pending trial.



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5.2. Even though the conviction part of the judgment was stayed, the petitioner's husband has not been exonerated from the proved allegations. In order to safeguard the interest of the family members of the delinquent, provisions were made in the fundamental rules for granting subsistence allowance during the period of suspension. Consequent to the trap and arrest of the petitioner's husband, 50% of the pay drawn by him at the time of suspension had been granted as subsistence allowance but that was not revealed by the petitioner. If the Government Servant is dismissed or removed from service, it entails the forfeiture of past service. Hence the petitioner is not entitled to get the relief as prayed.

6. The fact that the petitioner's husband got convicted in the criminal case on the allegation of corruption has not been denied. However, the petitioner's husband had filed an appeal and an interim order was also granted for suspension of sentence imposed against him. Unfortunately, during the pendency of the appeal, the petitioner's husband died. The petitioner claims the benefit under G.O.Ms.No.151



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which speaks about the issuance of abatement certificate in the event of the death of the employee during the pendency of the criminal / departmental proceedings. However, it is claimed by the petitioner that the petitioner's husband has been convicted and the order of conviction has been reversed. Hence the consequences of reversion of conviction only will follow.

7. It is noted that the petitioner's husband got dismissed from service even though the appeal was pending. However, the sentence has been suspended. No order has been passed for reinstating the petitioner's husband into service. However, the petitioner seems to have continued the criminal appeal. So far as the orders under Rule 17(c) is concerned, the order is just consequential to the conviction of the employee and even in this case, orders under Rule 17(c) has been passed on 28.02.2019 only following the order of conviction.

8. Since the order of dismissal has been issued consequent to the conviction by the Criminal Court and not by virtue of any independent



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analysis of the departmental authorities on the allegation, the result of the criminal proceedings can have the impact on the order of dismissal dated 28.02.2019. In other words, the dismissal order has been issued only on the ground that the order of conviction has been given in the criminal case. In the event of reversal of conviction, the order of dismissal dated 28.02.2019 would also get revoked and the employee will have to get reinstated into service. He could have continued to be in service or be permitted to retire, if he had attained the age of superannuation. But such liberty is lost in view of the death of the petitioner's husband. In such circumstances, the third respondent cannot state that the removal order cannot be reversed.

9. In fact, even in the order dated 28.02.2019, there is no detailed analysis on the representation given by the delinquent. All that were taken into consideration was only the conviction in the criminal case. In the absence of any appreciation on the grounds of appeal, the order of conviction cannot be treated as an order that had attained finality. No doubt the appeal is a continuation of the proceedings. Hence, the criminal



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appeal should be treated as pending proceedings. In fact, the imprisonment was also suspended and the petitioner's husband was not sent to prison. Unfortunately, the petitioner's husband died during the pendency of the criminal proceedings and hence, the Department is obliged to issue abatement order which would naturally reverse the order of dismissal and in that event, it has to be construed that the petitioner's husband continued to be in service irrespective of the pending criminal appeal which might be contested by the legal heirs of the deceased employee.

10. It is to be added further that the issuance of abatement certificate is consequential to the death of the employee and hence, even in the event of the judgment passed in the appeal confirming the judgment of the Criminal Court, the orders issued in G.o.Ms.No.151 dated 31.10.2018 shall not be withdrawn. This is obviously for the reason that the abatement order given under the above said Government Order is purely due to the death of the employee and not in accordance with the merits of the orders that might be passed in the criminal appeal or in any



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other proceedings.

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11. The applicability of G.O.Ms.No.151 dated 31.10.2018 has been made clear in unequivocal terms in the said Government Order itself that on receipt of the death certificate, the disciplinary authority shall take immediate action to settle the terminal benefits of the legal heirs of the deceased without waiting for the slip proceedings from the Court. As per the language adopted in the Government Order in respect of the slip proceedings, it can only be understood as the order of the Court in respect of the pending or closed status of the proceedings before the Court. Admittedly, in this case, the appeal filed by the petitioner's husband is pending for impleadment of his legal heirs.

12. In view of the above stated reasons, this Writ Petition is disposed and the respondents are directed to dispose the representation of the petitioner dated 06.08.2021 in the light of G.O.Ms.No.151, Personnel and Administrative Reforms (N) Department, dated 31.10.2018 and disburse the family pension and other terminal benefits within a period of six weeks from the date of receipt of a copy of this order. No costs.



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20.03.2024

Index : Yes /No
Speaking / Non-speaking
Neutral Citation : Yes / No
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R.N.MANJULA, J.

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To

- 1.The Additional Director,
Survey and Land Records,
Chepauk, Chennai 600 005.
- 2.The Assistant Director,
Survey and Land Records,
Kancheepuram,
Kancheepuram District.
- 3.The Director of Pension,
Saidapet, Chennai -15.
- 4.The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Special Investigation,
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