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Writ Petition No.28063 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.28063 of 2024

&

W.M.P.No.30611 of 2024

C.Malani

W/o.M.S.Chakkravarthy

... Petitioner

Vs.

1. The Secretary to Government of Tamil Nadu,
Municipal Administration and Water Supply
Department, Fort St.George, Chennai - 9.

2. The Director of Town Panchayats,
Kuralagam, Chennai - 108.

3. The Assistant Director of Town Panchayats,
Vellore.

4. The Executive Officer,
Kalavai Selection Grade Town Panchayat,
Kalavai, Ranipet District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus calling for the records of the fourth respondent in its Na.Ka.No.295/2013 dated 12.02.2024 and quash the same and consequently direct the respondents to grant arrears of pay fixation payable to her late husband M.S.Chakkravarthy on completion of 3 years of temporary services, arrears of pay, pension, gratuity and family pension along with arrears to



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the petitioner in compliance of the direction issued by this Court in W.P.No.22599 of 2013 dated 29.08.2013 as confirmed in W.A.No.742 of 2015 dated 11.09.2015.

For Petitioner : Mr.V.Vijayashankar
For Respondents : Mr.C.Selvaraj
Additional Government Pleader
[R1 to R3]
Mr.V.Ramesh
Government Advocate [R4]

ORDER

This writ petition has been filed challenging the impugned proceedings of the fourth respondent dated 12.02.2024 and for a consequential direction to the respondents to grant arrears of pay fixation payable to the petitioner's husband and to pay the arrears of pay, pension, gratuity and family pension along with arrears to the petitioner in compliance of the direction issued by this Court in W.P.No.22599 of 2013 dated 29.08.2013 as confirmed in W.A.No.742 of 2015 dated 11.09.2015.

2. When the writ petition came up for hearing on 23.09.2024, this Court passed the following order:

"Mr.C.Selvaraj, learned Additional Government Pleader, takes notice on behalf of respondents 1 to 3.

2. Mr.V.Ramesh, learned Government Advocate, takes



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notice on behalf of fourth respondent.

3. When this Court disposed of the earlier writ petition in W.P.No.26237 of 2021, the following direction was given by this Court:

"5. However, the respondents did not take the above stand before the Writ Court or before the Division Bench, now the respondent cannot take shelter under the unnumbered Review application which is pending in SR stage itself for several years. Hence, the 4th respondent is directed to consider the representation of the petitioner dated 25.10.2021 and pass appropriate orders on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order."

4. In spite of the above direction issued by this Court, the fourth respondent, through impugned proceedings dated 12.02.2024, has rejected the claim made by the petitioner by assigning the following reasons:

"மேலும் பார்வை 3ல் காணும் வழக்கு விசாரணை நிலுவையில் உள்ளதால் அந்த வழக்கின் மீது வரும் தீர்ப்பினை பொறுத்து தங்களின் கோரிக்கை பரிசீலனை செய்யப்படும் என இதன் மூலம் தங்களுக்கு தெரிவித்துக்கொள்ளப்படுகிறது."

5. In the considered view of this Court, the order passed by fourth respondent is in complete disregard to the directions issued by this Court and therefore, the fourth respondent is directed to be present before this Court during the next date of hearing. This Court makes it clear that it will be left open to the fourth respondent to withdraw the impugned proceedings dated 12.02.2024 and deal with the claim made by the petitioner on merits as directed by this Court and report the same before this Court during the next date of hearing.

Post this writ petition at the end of motion list on 03.10.2024."

3. Thereafter, the matter was listed for hearing on 04.10.2024



and this Court passed the following order:

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"Pursuant to the earlier order passed by this Court on 23.09.2024, Mr.C.Jayakumar, who is the Executive Officer of the 4th respondent Town Panchayat was present before this Court. He tendered his unconditional apology and pleaded that the impugned order dated 12.02.2024 was passed by him out of ignorance.

2. The learned Additional Government Pleader appearing on behalf of the respondents submitted that the impugned order dated 12.02.2024 will be withdrawn.

3. An affidavit shall be filed by the 4th respondent in this regard and considering the same, further orders will be passed by this Court.

4. Post this case at the end of the motion list on 14.10.2024."

4. Pursuant to the above order, the matter was listed for hearing today. Mr.C.Jayakumar, Executive Officer of the fourth respondent, Town Panchayat, was present and he filed an affidavit before this Court.

The relevant portions in the affidavit are extracted hereunder:

"4. I humbly submit I appeared in person on 04.10.2024, as directed by this Hon'ble Court and tendered my unconditional apology and plead this Hon'ble Court, to permit me to withdraw the impugned order dated 12.02.2024. This Hon'ble Court was pleased to direct me to file an affidavit in this regard and post the matter for 14.10.2024. Accordingly, I file this affidavit with unconditional apology and permit me to withdraw the impugned order. I respectfully submit that the inadvertent error is neither willful nor wanton but due to my misunderstanding.

5. I humbly pray that this Hon'ble Court may be



pleased to grant me liberty to consider her representation dated 25.10.2021, afresh and pass order on merit, in accordance with law and in the light of the order passed by this Court in WP.No.22599/2013, dated 29.08.2013, W.A.No.743/2015, dated 11.09.2015 and the order passed by the Division Bench in R.A.No.31 of 2023 in W.A.No.1537 of 2014, in similar claims. I have high respect to this Hon'ble Court and implement its orders without fail. However, the above error occurred inadvertently. Hence, I tender my unconditional apology and purge me."

5. The unconditional apology tendered by the fourth respondent is accepted and it is made clear that the fourth respondent will not repeat such conduct in future and shall strictly comply with the orders passed by a Court of law.

6. Heard Mr.V.Vijayashankar, learned counsel for petitioner, Mr.C.Selvaraj, learned Additional Government Pleader appearing for respondents 1 to 3 and Mr.V.Ramesh, learned Government Advocate appearing for fourth respondent.

7. On carefully going through the materials placed before this Court, it is seen that the petitioner's husband had filed W.P.No.22599 of 2013 before this Court challenging the proceedings of the fourth respondent dated 11.12.2009 and for a consequential direction to regularize his service on time scale of pay with all attendant benefits. This



writ petition came to be allowed by this Court by an order dated

29.08.2013 and the relevant portion is extracted hereunder:

"17. In these circumstances, the impugned order dated 11.12.2009 of the fourth respondent is quashed and the respondents are directed to regularise the service of the petitioner on completion of three years from the date when he was appointed on consolidated pay into regular time scale of pay, within a period of three months from the date of receipt of copy of this order and monetary benefits pursuant to the regularisation shall be paid to the petitioner within four weeks thereafter."

8. The above order passed by learned Single Judge was taken on appeal along with connected writ appeals in W.A.No.580 of 2015 *etc.* batch. The Division Bench, on considering the facts and circumstances of the case and the order passed by learned Single Judge, disposed of the writ appeals by an order dated 11.09.2015 in the following terms:

"The instant appeals are filed by the State Government and the respective Town Panchayats against the orders passed separately by learned Single Judges, whereby and whereunder, the respondents therein were directed to regularise the service of the writ petitioners on completion of three years from the date when they were appointed on consolidated pay into regular time scale of pay and to pay consequential monetary benefits.

2. The aforesaid issue involved in these writ appeals came up for consideration in a batch of writ appeals filed by the Government in The Secretary to Government of Tamil Nadu, Municipal Administration and Water Supply Department and two others - Vs. - M.Rani [W.A.No.1289 of 2014 *etc.* batch], which was partly allowed by a Division Bench of this Court, of which one of us was a Member (Satish K. Agnihotri, J.), vide common judgment dated 30th June 2015, observing as under:-

"29. Resultantly, for the reasoning and analysis



made hereinabove, the appeals are partly allowed to the extent that the respondents are entitled to consideration for grant of time scale on regular basis on the basis of performance assessment to be done on completion of three years and in the event, the performance of the respondents, is found satisfactory, they are entitled to regularisation on completion of three years, with all consequential monetary benefits. Costs made easy. Connected Miscellaneous Petitions are closed."

3. In view of the foregoing, the instant writ appeals also stand partly allowed on the same terms. Costs made easy. Connected Miscellaneous Petitions are closed."

9. The petitioner's husband died on 26.05.2021. The petitioner approached this Court and filed W.P.No.26237 of 2021. This writ petition was disposed of by an order dated 12.01.2024 and the relevant portions are extracted hereunder:

"4. Mr.R.Neethi Perumal, learned Government Advocate appearing for the Respondents submitted that G.O.Ms.No.198, Municipality Administration and Water Supply Department, dated 26.10.1998 on which basis the earlier Writ Petition is allowed, is not applicable to the case of the petitioner. The learned Government Advocate further submitted that the petitioner's husband has attained the age of superannuation on 31.05.2015 and after his retirement, he died on 26.05.2021. The terminal benefits due to him has been paid to him in the year 2017. Now the petitioner's wife has filed the present Writ Petition seeking pension for her husband who is not eligible under the old pension scheme.

5. However, the respondents did not take the above stand before the Writ Court or before the Division Bench, now the respondent cannot take shelter under the unnumbered Review application which is pending in SR stage itself for several years. Hence, the 4th respondent is directed to consider the



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representation of the petitioner dated 25.10.2021 and pass appropriate orders on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order."

10. It is quite clear from the above order that the learned Single Judge, while disposing of the writ petition, has specifically taken note of the order passed in the earlier writ petition and the order passed by the Division Bench in the writ appeal and a contrary stand that was attempted to be taken by the fourth respondent in that writ petition. On considering the same, this Court made it very clear that the fourth respondent cannot take shelter under an unnumbered review application and should pass orders in line with the order passed in the writ petition and the writ appeal by considering the representation made by the petitioner. After the above order was passed by this Court, the fourth respondent proceeded to once again reject the claim made by the petitioner on a ground which was unsustainable and which was taken note of by this Court while passing the order on 23.09.2024.

11. The above orders passed during the pendency of this writ petition, which resulted in the affidavit filed by the fourth respondent, makes the position very clear that the request made by the petitioner has



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to be necessarily considered in line with the orders passed in

W.P.No.22599 of 2023, dated 29.08.2013 and W.A.No.580 of 2015 *etc.*

batch, dated 11.09.2015. These orders have not been reviewed till date and therefore, the fourth respondent is duty bound to act upon those orders and pass final orders within the time frame fixed by this Court. If at all, the fourth respondent wants to prosecute the review application, final orders can be made subject to the result of the review application. Only to that extent, the interest of the fourth respondent can be safeguarded.

This writ petition is allowed and there shall be a direction to the fourth respondent to pass final orders in the light of the above observations made by this Court within a period of four (4) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

14.10.2024

Neutral Citation: Yes/No

Index: yes/no

Speaking Order/Non-Speaking Order

gm

N.ANAND VENKATESH, J

gm



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To
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3. The Assistant Director of Town Panchayats,
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Kalavai Selection Grade Town Panchayat,
Kalavai, Ranipet District.

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