



W.P.(MD)No.15411 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.07.2024

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THE HONOURABLE MS JUSTICE R.N.MANJULA

W.P.(MD)No.15411 of 2024

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... Petitioner

Vs.

1.The Commissioner of Municipal Administration,
Office of the Commissioner of Municipal
Administration,
Chepauk,
Chennai.

2.The Commissioner,
Dindigul Corporation,
Dindigul.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No. 8909/2004/E1 dated 27.02.2006 on the file of the respondent No. 2 and the impugned order in Na.Ka.No. 5845/2023/B2 dated 26.10.2023 on the file of the respondent No. 2 and quash the same as illegal and consequently to direct the respondents to grant Family Pension to the Petitioner under Old Pension Scheme with all the attendant benefits by revising the date of regularization of service of the petitioners husband namely T.Anthonysamy on completion of one year of his initial service from date of his



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appointment i.e., 14.02.2001 in the second respondent Corporation on the basis of G.O.(Ms).No.125, Municipal Administration and Water Supply Department, dated 27.05.1999 within the time stipulated by this Court.

For Petitioner : Mr.M.Kalifullah

For R-1 : Mr.J.Ashok,
Additional Government Pleader

For R-2 : Mr.J.Lawrance

ORDER

Heard Mr.M.Kalifullah, learned counsel appearing for the petitioner and Mr.J.Ashok, learned Additional Government Pleader appearing for the first respondent and Mr.J.Lawrance, learned counsel appearing for the second respondent.

2. The petitioner is the wife of the deceased viz., T.Anthonysamy, who was working as an 'Unskilled Worker' in the second respondent Corporation. The said Anthonysamy was initially appointed on 01.09.1985 as 'Head Pump Operator' as a Nominal Muster Roll employee on daily wage basis in the erstwhile Dindigul Municipality and he was working continuously. While so, one Dharmaraj, who was working as 'Wireman Helper' in the Engineering



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Division of the Dindigul Municipality, died on 28.11.2000, while he was in

service. The Government has issued a Government Order in G.O.(Ms).No.125, Municipal Administration and Water Supply Department, dated 27.05.1999, directing to regularize the Nominal Muster Roll employees in Municipalities those who are working prior to 01.10.1996. However, the said Government Order stipulates that all those employees shall be appointed on a consolidated pay for one year and thereafter, his service will be regularized and that will be brought under the time scale of pay.

3. The petitioner's husband has been appointed as 'Wireman Helper' on consolidated pay on 14.02.2001. Since the petitioner is entitled to get himself regularized only after completing the period of one year, the petitioner's husband is entitled to get regularization after completion of one year from the date of his appointment on consolidated pay when the Dindigul Municipality was upgraded as Corporation. The petitioner continued to work and he retired on attaining the age of superannuation on 30.06.2022 and he died on 13.05.2023. Thereafter, the petitioner gave a representation for seeking family pension and the same was rejected stating that her husband is not entitled to get the benefit of Old Pension Scheme as he was regularised only on 27.02.2006 after the cut off date of the old pension i.e., 01.04.2003.



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4. Similar placed persons were appointed along with the petitioner have been regularised prior to 01.04.2003 and they were getting benefits of the Old Pension Scheme.

5. Mr.M.Kalifullah, learned counsel appearing for the petitioner submitted that the petitioner's husband cannot be regularised in view of the policy decision of the Government being a fresh employer by issuing Government Order in G.O.(MS).No.212, Personnel and Administrative Reforms (P) Department, dated 29.11.2001. The above Government Order came into effect on 29.11.2001 and the same was in force till the Government has issued G.O.Ms.No.14, Personnel and Administrative Reforms (P) Department, dated 07.02.2006 and it was lifted during the year 2006.

6. Attention was drawn to the earlier judgment of this Court in W.P.No. 18248 of 2020, dated 19.12.2013, wherein, this Court has dealt with the implication of Government Order in G.O.(Ms).No.212, Personnel and Administrative Reforms (P) Department, dated 29.11.2001 and observed that the above said Government Order would ban only fresh appointments and that will not prevent the regularization of the existing employees in whose favour a



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policy decision has already been taken into regularization scheme. The relevant

portions in the said Judgment are extracted hereunder:

“12. The regularisation is being done only by virtue of G.O. (Ms.)No.524, Personnel & Administrative Reforms Department, dated 06.06.1983, which was issued by considering the long services of the persons working as daily wages for several years. When a welfare measure is implemented against certain number of similarly placed persons, it should also be extended to rest of the persons of the same category. Even though there is no ill intention on the part of the Government, the hurdles were realised in view of G.O.(Ms.)No.212, Personnel & Administrative Reforms (P) Department, dated 29.11.2001. The above G.O. ought not to have been understood in a way it bars even the regularisation exercise that has to be taken as per the policy decision already taken in that regard.

13. If the purpose of G.O.(Ms.)No.212, Personnel & Administrative Reforms (P) Department, dated 29.11.2001 has not been understood wrongly, the petitioners would have got their regularisation much earlier. There cannot be any second thought that the date of regularisation can be taken effect from the date of issuance of the order. In the case of the petitioners or specifically as against the remaining 16 Mazdoors the date of regularisation subsequent to 31.03.2003 will play a major difference. Because the persons who have got regularisation before 31.03.2003 will be covered under the old pension scheme and all those persons whose services have been regularised later than 31.03.2003 will not get the benefit of old pension scheme.



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14. In fact, the very regularisation itself is needed only to accommodate the Mazdoors to come under regular scheme in which they are entitled to get the retiral benefits including pension. If such benefits are not extended to the remaining 16 Mazdoors, the very purpose of regularisation itself will be lost. In fact, the Government was conscious of what is being done and what is being to given to its employees by putting a conscious condition that no Mazdoors shall be appointed in future similar to the petitioners”

7. When similarly placed persons like that of the petitioner were brought under the Old Pension Scheme by virtue of issuing regularisation in their favour before the cut off date i.e., 01.04.2003, the petitioner's husband was aggrieved as he was regularised in the year 2006. Similarly placed persons have already filed another Writ Petition in W.P.No.10142 of 2022, dated 29.01.2024 before this Court and the relevant portion of the order passed in the said petition is extracted hereunder:

“7. Similarly placed persons were considered by this Court in W.P. (MD).No.4068 of 2009 dated 08.09.2011, in the case of C.Philip Antony and others Vs The State of Tamil Nadu, represented by the Secretary to Government, Chennai and others, in which this Court held that there is no justification for specifying the effective date as 23.02.2006. When G.O.Ms.No.125, Municipal Administration and Water Supply



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Department, dated 27.05.1999 gives the benefit of regular time scale of pay on completion of one year in the consolidated scale of pay in terms of paragraph 3(ii), the alternate date stated in G.O.Ms.No.21, Municipal Administration and Water Supply (MC.3) Department dated 23.02.2006 cannot be justified as the earlier Government Order is very much in force and has not been rescinded, withdrawn or modified. When the benefit has already been granted under G.O.Ms.No.125 Municipal Administration and Water Supply Department dated 27.05.1999, it cannot be denied based on the subsequent Government Order unless the said earlier Government Order has been specifically and intentionally overruled, modified or withdrawn.

8. Therefore, the petitioners are entitled for regularization of their service from the date of completion of consolidated pay as per G.O.Ms.No.125 Municipal Administration and Water Supply Department dated 27.05.1999. Accordingly, the respondents are directed to regularize the service of the petitioners from the date of completion of one year of consolidated pay, with all monetary benefits, within a period of twelve weeks from the date of receipt of a copy of this order.”

8. Since the petitioner's husband is also similarly placed person, the petitioner's husband should also be given with the same relief without any distinction. In such a case, the petitioner's husband can be brought under the Old Pension Scheme and the petitioner will be entitled to get family pension until her life.



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9. In view of the same, the Writ Petition is **disposed of** with a direction to the respondents to regularize the petitioner's husband services with effect from the date of completion of one year from the date of his appointment on the consolidated pay on par with the similarly placed persons and disburse the family pension and all other attendant benefits to be payable to the deceased / husband of the petitioner as per the Old Pension Scheme, to the petitioner and pass appropriate orders within a period of six weeks by calculating eligible years of service by giving effect from the date of regularization as ordered above. No costs.

19.07.2024

NCC:yes/no

Index:yes/no

Internet:yes/no

TSG

To

1.The Commissioner of Municipal Administration,
Office of the Commissioner of Municipal
Administration,
Chepauk, Chennai.

2.The Commissioner,
Dindigul Corporation,
Dindigul.



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R.N.MANJULA, J.

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