



W.P.(MD) No.517 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.02.2024

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THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD)No.517 of 2021

and

W.M.P.(MD)No.442 of 2021

E. Pitchaimani

... Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Rural Development and Panchayat Raj Department, Secretariat,
Chennai 600 009.

2.The Director of Rural Development
and Local, Administration,
Pangal Buildings, Saidapet,
Chennai - 600 015.

3.The Director of Local Fund Audit,
Integrated Finance Department Office Complex,
4th Floor, Nandanam, Chennai - 600 035.

4.The District Collector
Theni District, Theni.

5.The Commissioner
Chinnamanur Panchayat Union,
Chinnamanur, Theni District.

... Respondents



W.P.(MD) No.517 of 2021

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus or any other order or directions in the nature of a writ calling the records of the first and third respondents i.e the Additional Chief Secretary to Government Rural Development and Panchayat Raj Department Chennai in his letter No. 11893/Pa.A.5/2018-5 dated 24.07.2020 and the communication of the above said letter of the Government by the Director of Local Fund Audit Chennai in his Mu.Mu.No.19996/U.O.O.Sa.(2)/2020 dated 18.11.2020 and calling for pension proposals in the cadre of Night watchmen and quash the same and consequently direct the Government i.e. first respondent to ratify the promotion of the deceased employee Thiru. R.Eswaran as Record clerk and to give specific directions to the Director of Local Fund Audit, Chennai for sanction of Pension in the cadre of Record Clerk as per the pay last drawn within a specified time frame that maybe fixed by this Court.

For Petitioner : Mr.S.Visvalingam

For Respondents : Mr.Na.Ga.Nataraj,
Government Advocae for R1 to R4

: Mr.A.K.Manikandan
Special Government Pleader for R5

ORDER

The husband of the petitioner was initially appointed as basic servant on 08.07.1981 through employment exchange and subsequently, he was promoted as watchman and then as Record Clerk. The services of the



W.P.(MD) No.517 of 2021

petitioner's husband in the cadre of basic servant was regularized by issuing G.O. (Perm.)No.161, dated 26.06.2000 with effect from 22.07.1981. While so, when the others were retired from the post of Record Clerk and other posts, the husband of the petitioner approached this Court by filing W.P. (MD)No.8576 of 2007 and the similarly situated persons have also filed other Writ Petitions and all the Writ Petitions were disposed of by this Court by a common order dated 20.02.2008, setting aside the orders of the reversion and directing the respondents to continue the petitioner in the promotional post. The reason for reversion as contended by the respondent in the said Writ Petition is that the petitioners in the batch of writ petitions were appointed during 1981 and 1982 and during the period there was a ban for appointments and therefore, their initial appointment is not in accordance with law. Therefore, they are not entitled for promotion.

2. This Court has considered such contentions and rejected all the contentions of the respondents and ordered to continue the petitioner therein viz., Eswaran in the promotional post. Altogether 6 Writ Petitions were disposed of by this Court. Out of six writ petitioners, five of them were



W.P.(MD) No.517 of 2021

granted pensionary benefits and they were able to get benefit to them.

However, the husband of the petitioner is concerned, he had retired from service on 30.06.2012 in the post of Record Clerk, but he was not granted any regular pension. On the other hand, he was paid provisional pension by passing PPO No.28135/P, dated 26.05.2014. Aggrieved by the non-payment of the pensionary benefits, the husband of the petitioner approached this Court by filing W.P.(MD)No.15813 of 2019 and this Court by order dated 28.08.2019, passed the following order :

"5. In the light of the submission of the learned Additional Government Pleader, now the proposal of the petitioner is pending before the second respondent. Therefore, by taking note of the fact that the aforesaid pension proposal of the petitioner is pending before the second respondent as stated in the counter affidavit filed by the third respondent. The above said proposal was received by the third respondent on 19.11.2014 the same was forwarded to the second respondent on 30.12.2014 for clarification and the delay in forwarding the proposal to the second respondent is an inordinate delay. The second respondent ought to have considered the said proposal submitted by the third respondent and the same shall be forwarded to the first respondent for passing appropriate orders. Keeping this pension proposal for long time, affected the



W.P.(MD) No.517 of 2021

the rights of the petitioner and in getting the statutory rights of the petitioner. Therefore, this Court has not specified the reasons for the delay in sending the proposal to the first respondent by the second respondent. Atleast, now at this stage, the second respondent has to awake, arise and to send the proposal to the first respondent as expeditiously as possible, preferably within a period of Two (2) weeks, from the date of receipt of copy of this order. If any such proposal made before the first respondent, the same shall be considered on merits and in accordance with law, and pass appropriate orders, without any further delay.

6. Before parting the orders, by taking note of the above said delay for payment of pensionary benefits, the first respondent shall issue necessary guidelines and directions to the authorities concerned to consider the pension application and disburse all the pensionary benefits as per rules, within a time bound manner as stated supra. Otherwise, the retired employees will run pillar to post for getting their statutory rights of the pensionary benefits."

Thereafter, the petitioner expired on 20.03.2020.



W.P.(MD) No.517 of 2021

WEB COPY

3. Pursuant to the above said order, the respondent No.1 herein having considered the proposals submitted by the respondent No.3, passed the impugned order dated 24.07.2020, refusing to ratify the promotion of the husband of the petitioner to the post of Record Clerk and directing the respondent No.2, to process the pension proposal of the husband of the petitioner in the cadre of service of basic servant. Aggrieved by the said communication dated 24.07.2020, the petitioner filed this Writ Petition.

4. From the perusal of the impugned order, it is noticed that the respondent No.1 has taken note of the regularization of the service of the petitioner in the cadre of basic servant by issuing G.O.No.161, dated 26.06.2000. However, for the reasons, best known instead of considering the proposal submitted by the respondent No.3 in the proper perspective, made an attempt to regularise of the services of the husband of the petitioner in the cadre of basic servant by quoting various decisions of the Hon'ble Apex Court and made an attempt to meddle with the orders passed by this Court as well. The regularization of the services of the husband of the petitioner in the



W.P.(MD) No.517 of 2021

cadre of basic servant are found to be in violation of Articles 14 and 15 of the Constitution of India by the respondent No.1. Thus, respondent No.1 having found that the regularization of the service of the husband of the petitioner, in the cadre of basic servant itself is irregular, by making a reference to the judgment of the Hon'ble Supreme Court, the respondent No.1 has issued the impugned order requiring the respondent No.2 to take steps for payment of pension to the husband of the petitioner in the cadre of basic servant.

5. There is no dispute about the regularization of service of the husband of the petitioner in the cadre of basic servant, by issuing G.O. as early as on 26.06.2000. The respondent No.2, while submitting permission for ratification of husband of the petitioner, has sought for ratification of the regularization of the proceedings. The fact that the petitioner was promoted as Record Clerk with effect from 15.03.1996 and the order passed by this Court in W.P.(MD)Nos.8572 to 8576 of 2007, dated 20.02.2008 is also not in dispute. This Court by issuing a Writ of Mandamus, directed the respondents therein in W.P.(MD)No.8576 of 2007, to continue the husband of the petitioner in the promotional post of Record Clerk. Admittedly the husband



W.P.(MD) No.517 of 2021

of the petitioner retired from the post of Record Clerk as early as on 30.06.2012. When that be the fact situation, the respondent No.1, instead of considering the proposal submitted by the respondent No.2 in a proper prospective and in the light of the order passed by this Court in W.P.(MD) No.8576 of 2007 has proceeded to consider as though the proposals are submitted for considering the case of the petitioner's husband for regularization in the cadre of basic servant. Such an approach of the respondent No.1 is not only without application of mind, but also shows the attitude of the respondent No.1 in giving a go by to the orders passed by this Court especially in W.P.(MD)No.8576 of 2007.

6. Further, from the materials placed on record, it is also noticed that the other similarly situated persons, except the husband of the petitioner, who are the parties in the W.P.(MD)No.8572 of 2007 and batch dated 20.02.2008 were all granted the benefit of ratification of their promotion and they were also granted pension in the promotional cadre and the husband of the petitioner alone is singled out. In spite of continuous representation made during his life time from 2012 to 2020, the respondents have not bothered to



W.P.(MD) No.517 of 2021

release the pension to the husband of the petitioner. Even, after the death of the husband of the petitioner, the efforts made by the petitioner herein by filing writ petition for grant of pensionary benefits are sought to be obstructed by the respondent No.4 by filing a detailed counter without any substance. As already noted above, the regularization of the service of the husband of the petitioner in the cadre of basic service is not in dispute and the same is sought to be disputed time and again to depriving terminal benefits and the pensionary benefits of the husband of the petitioner.

7. In the light of the above, the reasons given in the impugned order dated 24.07.2020 are totally without application of mind and absurd. Hence, the impugned order dated 24.07.2020 is set aside, accordingly, the Writ Petition is allowed, directing the respondents to forthwith take steps for ratifying promotion of the husband of the petitioner to the post of Record Clerk and settle all the terminal benefits payable consequent to the retirement of the husband of the petitioner on 30.06.2012 and family pension from the date of death of the husband of the petitioner ie. 20.03.2020, including arrears and pay the same as expeditiously as possible, at any rate within a period of



W.P.(MD) No.517 of 2021

three months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes/No

28.02.2024

Index : Yes/No

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To

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and Local, Administration,
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W.P.(MD) No.517 of 2021

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