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W.A NO. 80 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04-03-2025**

CORAM

THE HONOURABLE MR JUSTICE R. SURESH KUMAR

AND

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

WA NO. 80 of 2023 AND

CMP NO. 746 OF 2023

1. The State Of Tamil Nadu
Rep by the Secretary to Government, Revenue
Department, Fort St. George, Chennai 9.
2. The Commissioner and Director of Survey and
Settlements, Chepauk, Chennai – 600 005.
3. The Assistant Director of Survey and Land
Records, Kanchipuram.

... Appellants

Vs

M.R.PRASAD (Deceased)

- 1.Kanaka, W/o.Late M.R.Prasad, 17, Sundaresan St,
NGO Nagar, Chengalpattu 603 001.
- 2.Poongothai
D/O.Late M.R.Prasad, 17, Sundaresan St,
NGO Nagar, Chengalpattu 603 001.
- 3.Parimala
D/O.Late M.R.Prasad, 17,
Sundaresan St, NGO Nagar, Chengalpattu 603 001.
- 4.Thirupurasundari
D/O.Late M.R.Prasad, 17, Sundaresan St,
NGO Nagar, Chengalpattu 603 001.

... Respondents



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Prayer : Writ Appeal under Clause 15 of the Letters Patent against the order passed in W.P.No.35769 of 2004 dated 30.04.2019.

For Appellants : Mr.Alagu Gowtham
Government Advocate
For Respondents : No appearance

J U D G M E N T

(Judgment of the Court was delivered by **R.Suresh Kumar, J.**)

This intra Court appeal is filed against the judgment dated 30.04.2019 made in W.P.No.35769 of 2004.

2. The respondents are the legal heirs of one M.R.Prasad, who was the employee of the appellant department. The said employee was appointed as Field Surveyor in the year 1963 and was promoted as Sub Inspector of Survey in the year 1973. In the said post he was continuing for some time, when there has been a criminal case against him, which ended in conviction, as against which he filed an appeal. The appeal was pending for quite sometime. Continuously ten years since he has been working in the post of Sub Inspector of Survey from 1973, with effect from 01.10.1984 he has been conferred with the status of Selection Grade and subsequently after further ten years, he has been conferred with Special Grade in the post of Sub Inspector of Survey. Accordingly, his pay scale also has been stepped up and enhanced.



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3. In the meanwhile, he superannuated on 31.10.1996. However, in view of the pendency of the Criminal Appeal at that time, he was not permitted to retire. However shortly after superannuation, the criminal appeal filed by the employee came to be allowed on 06.11.1996, by thus, the conviction registered by the trial Court has been set aside and he has been acquitted.

4. In view of the acquittal, as against which the State has not filed any appeal, the appellant Department being the employer, having accepted the verdict of the Court in allowing the criminal appeal filed by the employee, has issued a Government Order in G.O.(2D) No.326 dated 24.12.1997. By thus, the employee was permitted to retire peacefully from service by regularizing his services till the date of superannuation. The employee also retired from service.

5. However when the employee, after retirement, asked for pay arrears and revised pensionary as well as retirement benefits, the same came to be rejected. Challenging the rejection order, the employee filed the above writ petition. The learned Writ Court directed the appellant Department to fix the employee's pay and calculate the retiral benefits of the employee and directed the same to be paid to the respondents, who are the legal heirs of the deceased employee. That is the sum and substance of the order passed by the Writ Court, which is impugned herein.



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6. Learned Special Government Pleader appearing for the appellant Department would point out that though the deceased employee was entitled to get the promotions of Deputy Inspector as well as Inspector of Survey with effect from 08.11.1989 and 27.01.1994, such promotions could not be given because of the pendency of the criminal case. However, on acquittal since the criminal appeal was allowed by the appellate Court, the Government has issued G.O.(2D) No.326 dated 24.12.1997, where since the deceased employee was permitted to retire from the date of his superannuation ie., 31.10.1996, his last drawn pay has been taken into account for the purpose of pensionary benefits.

7. In this context, the learned Special Government Pleader would point out that on the date of retirement, the scale of pay which was received by the deceased employee was Rs.5900-200-9900/-. But at the same time, the scale of pay of Inspector of Survey and Land Records was also Rs.5900-200-9900/-. Therefore, the pay that has been fixed for the post of Inspector of Survey and Land Records at the time of superannuation of the deceased employee has already been reached by him because, he was conferred the status of Selection Grade and Special Grade long back. Therefore, the question of stepping up or refixing the pay does not arise.

8. We find some force in the said submission made by the learned Special Government Pleader, as he has quoted from the averment in Paragraph 9 of the



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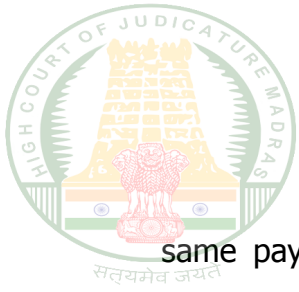
counter affidavit filed by the appellant Department, who were the respondents

before the Writ court.

9. Even though a direction has been given by the writ Court in Paragraph 10 of the impugned order by the learned Judge to revise the salary of the deceased employee in the post of Deputy Inspector of Survey and Land Records with effect from 08.11.1999 and 21.01.1994, such an exercise is only a formal exercise to be undertaken by the appellant Department, as such a pay has already been reached and received by the employee at the time of his superannuation.

10. Since the said pay scale viz., Rs.5900-200-9900/- has already been received by the employee at the time of his superannuation, which is nothing but the pay fixed for the post of Inspector of Survey and Land Records, the same pay shall be treated as his last drawn pay, based on which the pensionary benefits of the deceased employee can be calculated and be paid. On the basis of such calculation, after the demise of the deceased employee, the widow of the deceased employee would be entitled to get the family pension also. Therefore, such an exercise can very well be undertaken.

11. We, by way of a clarification direct that, in order to comply the orders passed by the Writ Court, especially in Paragraph 10 of the impugned order dated 30.04.2019, an order can be passed by the appellant Department fixing the very



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same pay of Rs.5900-200-9900/- as on 31.10.1996 as the pay for the deceased employee in the post of Inspector of Survey and Land Records. Such a clarification order shall be passed by the appellant Department, based on which, the notional pay can be calculated and accordingly the pensionary benefits and family pension also be calculated and paid.

12. With the above clarification, the writ appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

(R.SURESH KUMAR, J.) (A.D.MARIA CLETE, J.)
04-03-2025

Index : Yes/No

Neutral Citation : Yes/No

KST

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