
(2010) 04 MAD CK 0312
In the Madras High Court
Case No : Writ Petition (MD) No. 6095 of 2010

C. Senthamil Selvi

APPELLANT

Vs

The Secretary to Government, The Engineer-in-Chief
(General), Public Works Department and The Executive
Engineer, Public Works Department, Water Resource
Organization

RESPONDENT

Date of Decision : 28-04-2010

Acts Referred:

Tamil Nadu Pension Rules, 1978 — Rule 45, 49(1), 49(2A)

Citation : (2010) 04 MAD CK 0312

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

**Advocate : S. Balamurugan, for the Appellant; R. Manoharan, Government
Advocate, for the Respondent**

Final Decision : Allowed

Judgement

P. Jyothimani, J.—Mr. R. Manoharan, learned Government Advocate takes notice for the respondents. By mutual consent of the learned Counsel for the petitioner and the learned Government Advocate, this writ petition is taken up for final disposal at the admission stage.

2. The petitioner is the wife of one Chandra Kumar, who was working as NMR (Mazdoor) in the office of the third respondent from 10.07.1984 onwards. He completed 10 years of service as on 01.01.1995 and on that basis the third respondent sent a proposal to the Government for regularisation. But even before such regularisation could be issued, he died on 02.03.2001 while he was in service. Thereafter, the petitioner has made a representation seeking for death and pensionary benefits and compassionate appointment to her. On her application, the first respondent, by a communication, has directed the second respondent to take appropriate steps in this connection. Even after that no order whatsoever has been passed. In those circumstances, the petitioner has come

forward with this writ petition seeking for a direction to the third respondent to provide death and pensionary benefits to her.

3. The learned Counsel for the petitioner would submit that the petitioner's husband has completed 10 years of qualified service and subsequently, his service was regularised after his demise. In those circumstances, as held by the Principal Bench of this Court in *S. Vijayalakshmi v. Tamil Nadu Water Supply and Drainage Board* 2006 WLR 91, the petitioner is entitled for death and pensionary benefits. He would also rely on a clarification issued by the Secretary to the Government, Public Works Department in Letter Ms. No. 403, dated 08.07.1997 issuing certain clarifications to G.O.Ms. No. 680 Public Works Department dated 16.08.1995, wherein the Secretary to Government has stated that pensionary benefits may be granted by taking into account the undrawn pay for the employees who retired/expired while in service before issue of their regularisation orders. Based on the same, the learned Counsel would request this Court to issue appropriate direction to the third respondent in this regard.

4. Heard the learned Government Advocate appearing for the respondents.

5. In my considered opinion, as held by Principal Bench of this Court in *S. Vijayalakshmi v. Tamil Nadu Water supply and Drainage Board* case, as stated above, when the petitioner's husband was fully eligible for being regularised long before his death, the petitioner is certainly entitled for pension benefits as well as death benefits. In the said judgment in paragraphs 5, 6 and 7 the Principal Bench of this Court has held as follows:

5. Once it is held that the deceased employee was in law entitled to the benefit of acquisition of permanent status, any consequential benefit cannot be denied to the widow on death of such person or merely because during the life time of the employee on such permanency had been "actually conferred".

6. On the basis of aforesaid conclusion, Rule 49(2-A) of the Tamil Nadu Pension Rules is relevant and on that basis, family pension would be payable. Similarly, the benefit towards Death-cum-Retirement Gratuity as contemplated under Rule 45(b) is also available.

7. Learned Counsel for the respondent has however submitted that in view of Rule 49(1)(iii) of the Tamil Nadu Pension Rules, no family pension is payable. This submission however cannot be countenanced in view of the conclusion that on completion of 480 days, the employee concerned had acquired right and, merely because the employer had failed to discharge his statutory obligation, the consequential benefits to such employee or on his death to this dependent wife, cannot be denied.

In the clarification issued by the Secretary to the Government dated 08.07.1997 it has been clarified as follows:

Pensionary benefits may be granted by taking into account the undrawn pay for the employees who retired/expired while in service before issue of their

regularisation orders.

6. In view of the above, I am of the considered opinion that the petitioner is entitled for pension as well as the death benefits provided she satisfies the other requirements. The third respondent is obliged to pass appropriate orders without any further delay in this matter.

7. In view of the above position, the writ petition is allowed and the third respondent is directed to consider the issues in accordance with law in the light of the order of this Court in *S. Vijayalakshmi v. Tamil Nadu Water Supply and Drainage Board* case and of the clarification issued by the Government and the observations made above and pass appropriate orders within a period of three months from the date of receipt of a copy of this order. The petitioner is directed to furnish a copy of this order along with a copy of the order of this Court in *S. Vijayalakshmi v. Tamil Nadu Water Supply and Drainage board* case, cited *supra*. No costs.