

W.P.(MD).No.13438 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.08.2023

PRONOUNCED ON : 01.11.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.13438 of 2021

and

W.M.P(MD)No.10386 of 2021

M.Sharmila Banu

... Petitioner

Vs.

- 1.The Secretary to the Government,
State of Tamil Nadu,
Housing and Urban Development,
Secretariat,
Chennai.
- 2.The Secretary to the Government,
State of Tamil Nadu,
Health and Family Welfare Department,
Secretariat,
Chennai.
- 3.The District Collector,
Collectorate,
Dindigul District.
- 4.The Director of Health Services,
Dindigul,
Dindigul District.
- 5.The Deputy Director of Health Services,
Dindigul,
Dindigul District.

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6.The Directorate of General Health
and Preventive Medicine,
Chennai – 6.

7.The Office of the Commissioner of
Treasuries and Accounts,
Contribution Pension Scheme Cell,
Government Data Centre,
Nandhanam,
Chennai – 600 035.

... Respondents

(RR 6 & 7 *suo motu* impleaded vide order
dated 01.11.2023 in W.P(MD)No.13438 of 2021)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned proceedings of the fifth respondent in Na.Ka.No.3226/A1/2021 dated 27.04.2021 and quash the same as illegal.

For Petitioner	: Ms.Jeena Rita David M/s.Polax Legal Solutions
For RR 1 to 4	: Mr.D.S.Neduncheliyan Government Advocate
For R – 5	: Mr.S.Shanmugavel

ORDER

The present Writ Petition has been filed by the petitioner for issuance of a Writ of Certiorari, to quash the impugned proceedings of the fifth respondent, dated 27.04.2021.

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2.Heard Ms.Jeena Rita David learned counsel appearing for the petitioner, Mr.D.S.Nedunchelivan, learned Government Advocate appearing for the respondents 1 to 4 and Mr.S.Shanmugavel, learned counsel appearing for the fifth respondent and perused the materials available on record.

3.The petitioner is the widow of an employee of the Health Department. The petitioner's husband, one late.M.Nainar Mohamed, served as a Health Inspector Grade - I in the Government Headquarters at Dindigul. He joined in the service as Health Inspector Grade II at Gopalpatty on 08.10.2007. Thereafter, he was promoted to the post of Health Inspector Grade I. While so, the first phase of Covid-19 pandemic broke out during the year 2020. Since he was a Health Inspector, he was one among the frontline corona warriors at Dindigul District and he rendered continuous health service 24 X 7 at the risk of his life day and night.

4.The spread of Covid-19 was so grave to such an extent that vide letter, dated 14.03.2020, the Ministry of Human Affairs, Union of India decided to treat Covid-19 as a notified Disaster in India

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for the purpose of providing assistance under the State Disaster response fund. As a Health Inspector Grade – I, the petitioner had to serve day and night without rest continuously as a frontline corona warrior which resulted in untold stress, fear and strain physically and mentally. Despite such difficulties, he promptly discharged his duties as a Health Inspector in the service of the Director of Health Service at Dindigul District. As a result of which, he succumbed to heavy ischemia which lead to definite cardiac arrest and he was admitted in the emergency ward at St.Joseph Hospital, Dindigul on 12.11.2020. Subsequently on the recommendation of the experts, he was shifted urgently to the Velammal Hospital to the Intensive Care Unit at Madurai in midnight on 12.11.2020. However, he passed away on 14.11.2020.

5.While in service, the petitioner's husband availed House Building Advance (HBA) for the construction of a house in S.F.No.41/1A (Plot Nos.A12, A13, A27 and A26 part), Bharani Nagar, A Zone, Pilaiyamatham Village, Athoor Taluk, Dindigul District. On the basis of the application of the House Building Advance loan received from late.M.Nainar Mohammed, that is, the petitioner's husband by the proceedings of the Collector of Dindigul District, dated 17.08.2020,

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House Building Advance of a sum of Rs.25,00,000/- was sanctioned in favour of the petitioner's husband. The petitioner's husband was also requested to ensure that the said property covered by this advance was insured within three months from the date of completion and duly renew the same every year, till the principal amount together with interest is repaid in full and thereafter the first instalment of Rs.12,50,000/- was also disbursed to him on 05.11.2020. The aforesaid HBA advance house loan scheme could be availed only by those Government servants with 5 years of service prior to their retirement at the time of enrolling under the scheme and the salient features of the same are extracted as follows:-

"9.The above HBA advance will be recovered from 1 to 125 monthly instalments of Rs. 20,000/- per month commencing from the month following the month of occupation or completion of 18 months from the date of drawal of first instalment, whichever is earlier and the interest amount will be recovered from the month subsequent to the month of last recovery of advance recovered and balance amount of any pending recovery should be recovered from DCRG amount/payable/retirement benefit at the time of retirement ie., 30.09.2036 as per HBA Rules.

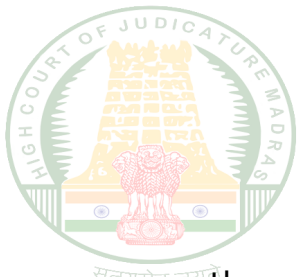


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10.To get the benefits under the Tamil Nadu Government Employees House Building Advance Special Family Benefit Fund Scheme, the loanee Government Servant should enrol his name paying a monthly subscription of 1% (one percent) of the monthly instalment amount towards repayment of the Housing Building Advance both principal and interest till the repayment of the Advance together with interest.

This scheme shall be applicable only to those who have 5 years of service prior to their retirement at the time of enrolments under the scheme. The Drawing Officer is requested to recover a monthly subscription of 1% HBA, F.B.F of the monthly instalment ie., Rs.200/- separately from the salary of the individual from the month following the month in which the first instalments of the advance have been disbursed. The monthly recovery of House Building Advance shall commence as stated in para 9 of this order."

6.But it was too unfortunate that within 7 days of receipt of the first instalment of HBA advance, the petitioner's husband succumbed to cardiac arrest and passed away on 14.11.2020. Due to



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the sudden demise of the petitioner's husband, the salary for the month of November, 2020 was not disbursed to the petitioner. That apart, the mandates of the House Building Advance loan scheme required the respondents to deduct 1% of the monthly subscription amount towards repayment of the House Building Advance both principal and interest for the purpose of getting benefits under the Tamil Nadu Government employees House Building Advance special family benefit fund scheme. However, the said exercise was not done by the respondents. Under such circumstances, on 27.04.2021, the fifth respondent vide proceedings passed the impugned order directing the petitioner to pay an amount of Rs.12,50,000/- with interest towards first instalment of the HBA disbursed to the petitioner's husband on 05.11.2020, failing which the same would be deducted from the terminal benefits of the petitioner's husband. Challenging the same, this Writ Petition came to be filed.

7.While so, vide proceedings of the Office of the Commissioner of Treasuries and Accounts, Contributing Pension Scheme Cell, Government Data Centre, Nandhanam, Chennai, dated 23.08.2022 revised final payment authorization was issued authorizing the petitioner to draw a sum of Rs.9,17,596/- by presenting a bill at

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the District Treasurer, Dindigul. However, the said amount has not been disbursed to the petitioner so far and the respondents are trying to set off the first instalment of the House Building Advance loan amount from contributory CPS, Account, Gratuity, Provident Fund etc. of the petitioner's husband. The said late.M.Nainar Mohamed is survived by the petitioner aged 37 years and his mother.

8.The fifth respondent has filed a counter-affidavit and the learned Special Government Pleader submitted that an amount of Rs. 12,50,000/- has been disbursed to the petitioner's husband in the month of November ie., on 05.11.2020. However, 1% of the Family Benefit Fund could be recovered from his salary only during the next month of December, 2020 as per House Building Advance rules, wherein the drawing officer was requested to recover a monthly subscription of 1% of House Building Advance, Family Benefit Fund of the monthly instalment of Rs.200/- separately from the salary of the individual from the month following the month in which the first instalment of the advance has been disbursed. Since the petitioner's husband passed away within 9 days of obtaining the House Building Advance of Rs.12,50,000/-, the said Family Benefit Fund Scheme was not credited. Due to the unexpected death of the employee, the

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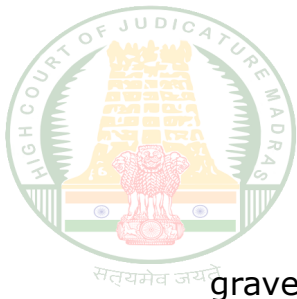
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building construction work was also not commenced. As per House Building Advance Rule, the amount of 1% of Family Benefit Fund would be recovered from the salary of the employee only after the next month of the disbursement of the first instalment of the loan amount. Due to the peculiar circumstances of the case in hand, the said Family Benefit Fund was not deducted from the employee's salary for the month of December, 2020. However, that will not absolve the petitioner's liability to repay the first instalment of the House Building Advance loan advance of Rs.12,50,000/- with interest. In view of the same, he pressed for dismissal of the Writ Petition.

9.The untold difficulty of a bereaving family of a deceased person, who passed away unexpectedly, could not be explained by anyone from any point of view.

10.The case in hand is a peculiar case, which has been filed by a bereaving wife of a front line corona warrior, who served during the Covid-19 pandemic as a Health Inspector Grade – I in the service of the Directorate of Health Service at Dindigul District with fullest dedication. It is needless to state that the continuous contribution of the petitioner's husband as a Health Inspector would have caused him

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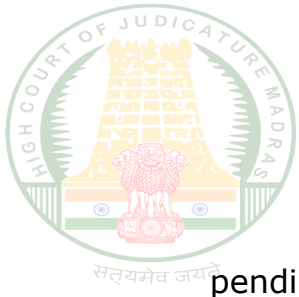
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grave stress and strain. As a result of which, he suffered a cardiac arrest and died. He is survived by his wife ie., the petitioner and his mother, who is a senior citizen. The culmination of all difficulties further attained new heights when the petitioner's husband availed House Building Advance loan advance of Rs.12,50,000/- on 05.11.2020 and he died unexpectedly on 14.11.2020. Within five months of the death of her husband, the petitioner was further slapped by the fifth respondent by the impugned order, dated 27.04.2021 requiring her to immediately pay an amount of Rs.12,50,000/- with interest within a period of 15 days from the date of the impugned order, which was received by her husband as HBA loan advance. The petitioner, who had undergone serious financial implications due to the medical expenses incurred by her during the treatment of her husband in various private hospitals, was left with little resources to heed to the directions of the impugned order passed by the fifth respondent.

11.That apart, the petitioner also made an application seeking appointment on compassionate grounds on 21.03.2022 and the said application was received by the fifth respondent, who in turn has forwarded the same to the Directorate of General Health and Preventive Medicine Department at Chennai. However, the same is still

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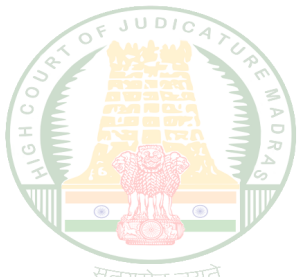


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pending before the Director of General Health and Preventive Medicine Department at Chennai without consideration. In addition to that, the total pension amount of Rs.9,17,596/- sanctioned towards the Contributory Pension Scheme of the petitioner's husband has also been withheld by the respondents pursuant to the filing of this Writ Petition without disbursing the same to the petitioner. The callousness with which the respondents deal with the petitioner's application seeking appointment on compassionate grounds which was made as early as on 21.03.2022 and the rigidity of the respondents in insisting the payment of Rs.12,50,000/- which was received by the petitioner's husband as the first instalment of House Building Advance loan advance despite his unexpected death within 9 days from the date of disbursement of the same shook the conscience of this Court. The voice of the widowed petitioner quivering with grief and poverty seeking equity and mercy reverberated across the corridors of this mighty Court. The final call for equity by an awe struck widow ameliorated my judicial conscience to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution in granting an equitable relief to her. The respondents ought to have dealt with this case with much compassion, kindness and social responsibility. The surviving legal heirs of a frontline corona warrior who relentlessly served for the

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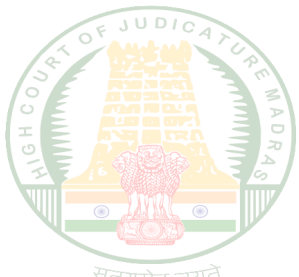
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purpose of common mankind during the pandemic have been thrown to the streets virtually subjecting them to consistent mental harassment by insisting the repayment of House Building Advance loan advance with interest. The repeated call for repayment of loan by the respondents would have caused untold misery in the lives of the surviving legal heirs of late.M.Nainar Mohammed ie., his wife, the petitioner and his mother, who is a senior citizen. Article 226 of the Constitution confers wide powers on the High Court to reach injustice wherever it is found. Not only injustice in a populous country like India with the millions of Citizens, this Court is empowered to interfere whenever the right of livelihood of a citizen that too women is at stake. It is the primordial duty of the Constitutional Court to act judiciously and direct the authorities to undo the difficulties caused by the unruly exercise of the powers by the authorities.

12.I am not hesitant to hold that it is the bounden duty of this Court to enforce the right of livelihood guaranteed to the petitioner under Article 21 of the Constitution of India with the mother's conscience in the service of Motherland. It is the duty of this Court to secure the livelihood of the petitioner and her mother-in-law as a tribute towards the greatest service contributed by her husband during

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corona pandemic as a frontline corona warrior for which he invested his life.

13.In view of the same, this Court is inclined to quash the impugned order, dated 27.04.2021 passed by the fifth respondent and accordingly, the impugned order, dated 27.04.2021 passed by the fifth respondent is hereby quashed and this Court hereby pass the following directions:-

(i) The Directorate of General Health and Preventive Medicine, Chennai – 6 is hereby *suo motu* impleaded as sixth respondent in this case.

(ii) Further, the sixth respondent is directed to immediately consider the petitioner's representation, dated 21.03.2022 seeking appointment on compassionate grounds on the death of her husband late.M.Nainar Mohamed while in service on 14.11.2020 and forthwith issue her with an appointment order suitable to her educational qualification within a period of four weeks from the date of receipt of a copy of this order.



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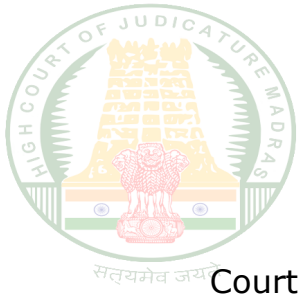
(iii) The Office of the Commissioner of Treasuries and Accounts, Contribution Pension Scheme Cell, Government Data Centre, Nandhanam, Chennai is hereby *suo motu* impleaded as seventh respondent.

(iv) The petitioner is directed to draw the sanctioned sum of Rs.9,17,596/- by presenting a bill towards the Contributory Pension Scheme which is already sanctioned in CPS Account No.7064725/MEDL-Revised Final Payment Authorization at the District Treasury, Dindigul.

(v) On being appointed in a suitable post, the fourth respondent is directed to deduct an amount of Rs.10,000/- per month, on the date of salary of every month towards Rs.12,50,000/- which has been disbursed to the petitioner's husband as the first instalment of HBA loan advance till the satisfaction of the said loan.

(vi) Considering the greatest sacrifice contributed by the petitioner's husband as a frontline corona warrior as the Health Inspector Grade I of the Health and Family Welfare Department, this

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Court directs the respondents to waive the interest towards the entire loan amount drawn by the petitioner's husband as the first instalment as House Building Advance loan advance.

14.With the above directions, the Writ Petition is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

01.11.2023

NCC : Yes
Index : Yes
Internet : Yes
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- 1.The Secretary to the Government,
State of Tamil Nadu,
Housing and Urban Development,
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- 7.The Office of the Commissioner of
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VERDICTUM.IN



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L.VICTORIA GOWRI, J.

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