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VERDICTUM.IN



W.P Nos. 4906 & 15586 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2023

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

WP Nos. 4906 & 15586 of 2018

And

W.M.P.No. 6051 of 2018

W.P.No. 4906 of 2018:

1. Smt. P.Santhi
2. V.Damodaran
3. V.Iyyappan ... Petitioners

-Vs-

1. The Chairman and Managing Director
Tamil Nadu Mines and Minerals Ltd.,
No.31, Kamarajar Salai,
Chepauk, Chennai – 600 005.
2. The Divisional Manager
Tamil Nadu Mines and Minerals Ltd.,
No.7, Chairman Shanmugam Street,
Shanmugam Colony (West),
Villupuram – 605 602.

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3. T.Vivekananda Doss

... Respondents

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PRAYER: Writ Petition under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the respondents 1 and 2 to initiate appropriate departmental action as against the third respondent for committing an offence under Section 494 of IPC as contemplated under Government Servant Conduct Rules.

For Petitioners : Mr. S.Udaya Kumar
For 1st Respondent : M/s. A.Sri Jayanthi
For 3rd Respondent : Mr. K.Thilagaraj

W.P.No. 15586 of 2018:

T.Vivekanandass

... Petitioner

-Vs-

1. Tamil Nadu Minerals Ltd.,
Rep. by its Managing Director,
Chepauk,
Chennai – 600 005.
2. The Divisional Manager (Villupuram)
Tamil Nadu Minerals Ltd.,
Villupuram.
3. Smt. P.Santhi



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4. V.Damodaran

5. V.Iyyappan

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for records relating to the order dated 30.04.2018 in Se.Mu.A.No. 837/A4/2013 passed by the second respondent and quash the same.

For Petitioner : Mr. Pradeep Jayaraman
For RR 1 & 2 : M/s. A.Sri Jayanthi
For RR 3 & 5 : Mr. S.Udaya Kumar

COMMON ORDER

W.P.No. 4906 of 2018 had been filed by the first wife and her two sons of the third respondent in the nature of a Mandamus seeking a direction to the first and second respondents to initiate appropriate departmental action against the third respondent as contemplated under the Government Conduct Rules for committing an offence under Section 494 of IPC.



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2. W.P.No. 15586 of 2018 had been filed by the said third respondent in W.P.No. 4906 of 2018 in the nature of Certiorari seeking records of an order passed by the second respondent whereby the second respondent had stated that the retirement benefits of the writ petitioner would not be disbursed owing to the pendency of W.P.No. 4906 of 2018.

3. In the affidavit filed in support of W.P.No. 4906 of 2018, the first writ petitioner had stated that she had married the third respondent / petitioner in W.P.No. 15586 of 2018 on 17.01.1986 at Tindivanam in Vedavalli Amman Thirumanamandapam, as per Hindu Rites and Customs. Two children were born to them. They are the second and third petitioners. The third respondent was working under the first and second respondents. Claiming that he ill-treated her, she took a decision to live separately along with the other two petitioners.

4. It is very specifically alleged that taking advantage of such separation, the third respondent had married another lady and through her



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two female children were also born to him. The petitioner claims that she has requisite documents to establish such marriage and birth of children.

5. The petitioner claimed that she sought initiation of departmental action against the third respondent but the second and third respondents had not responded to such requests. She had earlier filed W.P.No. 24954 of 2017 seeking a Mandamus to consider the representations given by her.

6. A learned Single Judge of this Court by an order dated 19.09.2017 stated that the representations should be examined in accordance with law within a period of 8 weeks from the date of receipt of that particular order.

7. The petitioner also stated in her affidavit that she had also taken recourse to filing a private complaint before the Judicial Magistrate at Maduranthakam, which had been taken cognizance as C.C.No. 28 of 2017



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and a report had also been filed by the Inspector of Police, Achirapakkam, on 13.06.2015 wherein the authority disclosed that the third respondent had married for a second time but on enquiry he had denied the same. Claiming that departmental action should be initiated against the third respondent, the Writ Petition has been filed.

8. W.P.No. 4906 of 2018 had been first presented before this Court on 26.02.2018. Notice had been directed to the respondents. A perusal of the records show that on behalf of the first and second respondents, the learned Special Government Pleader had filed vakalat on 05.04.2018. This date assumes significance since the third respondent had attained the age of superannuation on 30.04.2018 and the first and second respondents had also taken a decision, notwithstanding the pendency of the Writ Petition and though vakalat had actually been filed and signed by the Managing Director of the first and second respondents, to permit the third respondent to retire from service.



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9. Taking advantage of that particular order, the third respondent filed W.P.No.15586 of 2018 claiming as a matter of right that he was entitled for payment of retirement benefits. In the impugned order, it had been stated that since W.P.No. 4906 of 2018 was pending, the respondents were not in a position to take a decision about the payment of the retirement benefits to the third respondent/writ petitioner in W.P.No. 15586 of 2018. Questioning that particular order, he had filed the Writ Petition in the nature of Writ of a Certiorari.

10. On the previous occasion, on 25.08.2023, when the matter came up for hearing, it was represented before this Court that the parties have entered into a memo of compromise. The Court was under the impression that the two writ petitioners had come to some understanding and therefore, had thought that it would only be prudent to examine whether the memo of compromise is on equal terms and to put the same into effect.



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11. The memo of compromise however reflected that it had been entered into between the Deputy Manager of the first and second respondents and the writ petitioner in W.P.No. 15586 of 2018. The Deputy Manager had undertaken that all the retirement benefits would be released to the petitioner and that the petitioner must withdraw W.P.No. 15280 of 2022 filed by him seeking to quash an order dated 26.04.2018 passed by the first respondent. It is not known as to what the said Writ Petition in W.P.No. 15280 of 2022 was about and what was the relief sought in that particular Writ Petition. The matter which is now pending before this Court in W.P.No. 15586 of 2018.

12. Taking note of the contents of the compromise memo and wondering at the audacity of the first and second respondents to enter into such a memorandum of compromise, particularly when W.P.No. 4906 of 2018 is pending and a letter had been issued that owing to the pendency of W.P.No. 4906 of 2018 the retirement benefits cannot be released, the independent decision taken by the said Deputy Manager agitated the mind



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of this Court. Therefore, his presence was called and accordingly, Mr. P.Alexander Jeisingh, Deputy Manager (General) is present in Court today. He affirmed that he had signed the memorandum of compromise but stated that he had been ill- advised and regretted the same.

13. Heard the learned counsel for the petitioners in both the Writ Petitions and also the learned counsels appearing on behalf of the respondents in both the Writ Petitions.

14. This is a case where the first and second respondents have acted as an extra judicial authority and had taken the law into their own hands when the matters were pending before this Court. On the one hand, they issued a letter which is impugned in W.P.No. 15586 of 2018 rejecting a request made by the petitioner therein seeking payment of retirement benefits by stating that it could not be so paid owing to pendency of W.P.No. 4906 of 2018. That particular Writ Petition had been filed seeking initiation of departmental proceedings against the third respondent. On the



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other hand they entered into a memorandum of compromise agreeing to release the amounts provided W.P.No. 15280 of 2020 is withdrawn.

15. One fact is clear. The first petitioner in W.P.No. 4906 of 2018 is admittedly the first wife of the petitioner in W.P.No. 15586 of 2018. That fact has been stated in the affidavit and has also been stated across the bar. It is also seen that when that marriage was subsisting, the petitioner in W.P.No. 15586 of 2018, in defiance of the Conduct Rules proceeded to marry another lady. In effect, by his conduct, he had effectively created two separate victims, two ladies and their children.

16. It is a weak argument to advance that the ladies are individually employed and draw pension. That money is inadequate compensation for the suffering and mental agony which they would have undergone, with one knowing that the petitioner in W.P.No. 15586 of 2018 had deserted her and had taken companionship of another lady, and the other, also a victim, who had fallen into a trap laid by the petitioner in



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W.P.No. 15586 of 2018, realising well her status would always be questionable. When this is the case, it does not augur well that the first and second respondents had extended a favourable hand to the petitioner in W.P.No. 15586 of 2018 and try to brush the dust under the carpet. They should have initiated disciplinary proceedings. They were aware about the contracting of a second marriage by the petitioner in W.P.No. 15886 of 2018 when the first marriage was subsisting. The first and second respondents have failed in their duty and in their responsibility not only to the family of their own employee but also to follow the rule of law and the Code of Conduct which is expected of any employer.

17. It is also a weak argument to state that merely because he had retired and they had permitted to him to retire, disciplinary proceedings cannot be initiated. The said permission was granted in the teeth of the pendency of W.P.No. 4906 of 2018.



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18. It is thus clear that the first and second respondents have entered into an unholy alliance with the petitioner in W.P.No. 15586 of 2018. It is a clear case where they have all joined together to defeat the rights of the petitioner in W.P.No. 4906 of 2018, while accepting that the first petitioner was the first wife and in equally trampling the dignity of the second wife. Therefore, the order permitting him to retire cannot withstand the scrutiny of this Court.

19. A direction is therefore given that the first and second respondents must initiate disciplinary proceedings even though he had been permitted to retire, since W.P.No. 4906 of 2018 was pending on that particular date and without taking leave of the Court and without informing the Court a *suo moto* decision had been taken by them permitting him to so retire. The statements made in the affidavit itself are sufficient to hold that the petitioner in W.P.No. 15586 of 2018 had contracted a second marriage when the first marriage was still subsisting. This act is condemnable and has to be further examined by initiating disciplinary proceedings.



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20. Nodoubt, the petitioner in W.P.No. 4906 of 2018 had also exercised her right to approach the criminal Court by filing a complaint and C.C.No. 28 of 2017 is now pending before the learned Judicial Magistrate at Maduranthakam. A direction is issued to the Judicial Magistrate to proceed further with C.C.No. 28 of 2017 and bring it to a logical conclusion at the earliest.

21. The following directions are therefore issued:-

(i) The first and second respondents in W.P.No. 4906 of 2018 are directed to initiate disciplinary proceedings on the complaint given by the petitioners even though they had deliberately permitted him to retire on 30.04.2018 even when the Writ Petition was pending.

(ii) The first and second respondents may issue notice to the petitioners in W.P.No. 4906 of 2018, to the second wife and her children and also to the petitioner in W.P.No. 15586 of 2018 and place it on record that



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the petitioner in W.P.No. 15586 of 2018 had complicated the rights of the two other ladies by his ventures and thereafter, take a decision about the release or otherwise of the pensionary benefits. It is made clear that the first and second respondents should act independently and as a prudent employer. The Court during the course of its observations had also expressed an apprehension about the private agreement entered into by the Deputy Manager, that probably the first and second respondents would benefit by getting a 'cut' from the retirement benefits.

22. I hope and I fervently hope and the first and second respondents would uphold the rule of law.

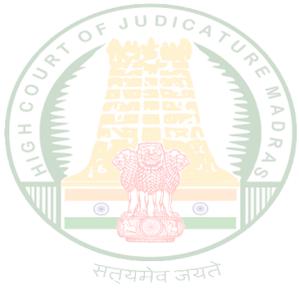
23. Both the Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

vsg

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Index: Yes/No

Neutral Citation: Yes/No



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To

1. The Judicial Magistrate, Maduramtakam,
for reference in C.C.No. 28 of 2017.
2. The Chairman and Managing Director
Tamil Nadu Mines and Minerals Ltd.,
No.31, Kamarajar Salai,
Chepauk, Chennai – 600 005.
3. The Divisional Manager
Tamil Nadu Mines and Minerals Ltd.,
No.7, Chairman Shanmugam Street,
Shanmugam Colony (West),
Villupuram – 605 602.
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vsg

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