

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2017

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.28455 of 2017
and W.M.P.Nos.30567 and 30568 of 2017

Samaruth Begum

[Petitioner]

Vs

- 1 The Director General of Police
O/o.the Directorate General of Police
Santhome High Road Chennai 600 004
- 2 The Deputy Inspector General of Police
O/o. the Deputy Inspector General of Police
Villupuram Range Villupuram District.
- 3 The Superintendent of Police
District Police Office Cuddalore District.

[Respondents]

Petition under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 3rd respondent in S.O.No.65 of 2017-Order on Punishment Roll dated 07.07.2017 quash the same and consequently direct the respondents to disburse all terminal benefits to the petitioner as per G.O.Ms. No. 478 Financial Pension Department dated 04.06.1987 within a time to be specified by this Honourable Court.

For Petitioner :: Mr.P.Ganesan

For Respondents:: Mr.ERA. Premnath, GA

ORDER

Mr.ERA. Premnath, learned Government Advocate, takes notice for the respondents and with the consent on both sides, the main writ petition itself is taken up for disposal at the admission stage itself.

2. The writ petition has been filed by the wife of one Sheikh Umar, who was a Police Constable worked in the Tamil Nadu Police Department from 1978, challenging the order of removal from service of the said Sheik Umar, passed by the 3rd respondent in S.O.No.65 of 2017-Order on Punishment Roll dated 07.07.2017 and to direct the respondents to disburse all

terminal benefits to her as per G.O.Ms. No. 478, Financial Pension Department dated 04.06.1987 within a time frame.

3. Heard the learned counsel on either side and perused the materials available on record.

4. It is the claim of the petitioner that in 1979, she married the said Police Constable Sheikh Umar and got two children through the wedlock. After 21 years, the said Sheikh Umar was promoted as Head Constable bearing H.C.No.1447 in 1998. While the said Sheikh Umar was working as Head Constable in Mangalmedu Police Station, he was transferred to Sozhatharam Police Station, Cuddalore District in the year 2009. On 28.11.2009, it is stated that the petitioner's husband went to attend his duty as usual, but he failed to return home. After complete search made from the petitioner's side to trace her husband, all efforts went in vein. For about two years, the petitioner's family were continuing their search, but ultimately, they were not able to trace him. Finally, the petitioner was advised to give a complaint to the police and accordingly, on 21.11.2011, a complaint was given to the respondents, based on which, a case was also registered in Crime No.553 of 2011 under the caption "man missing". However, there was no progress in the investigation in the criminal case. In the meantime, it appears that action has been initiated against the petitioner's husband for desertion by order dated 25.12.2009, which was subsequently confirmed by another order dated 08.02.2012 as per Police Standing Order 95(2) Volume I. However, the petitioner was unaware of the aforementioned orders. Subsequently, the petitioner filed Crl.O.P.No.19917 of 2015 before this Court with a prayer to direct the respondent Police to take action on the basis of the registration of the case in Crime No.553 of 2011 dated 21.11.2011, in accordance with law and to submit a final report. The said Crl.O.P.No.19917 of 2015 was disposed of with a direction on 07.08.2015, to submit a final report. Only in the year 2017, the petitioner was called upon by the 3rd respondent for enquiry and in the enquiry the photographs of unclaimed dead persons were shown to the petitioner to identify her husband. The petitioner identified one photograph, which has same resemblance to that of her husband, however, the father-in-law of the petitioner had reservation over the photographs and thereafter, the case was closed. Based on the above investigation, a report was filed before the learned District Munsif cum Judicial Magistrate, Kattumannarkudi on 28.01.2017, a copy of which, was also sent to the petitioner and finally, a removal order was passed on 07.07.2017, removing the petitioner's husband from service, against which, the present writ petition has been filed.

5. The learned counsel for the petitioner submitted that when the petitioner remained unauthorisedly absent, he was declared as a deserter by the Police Department by order dated 25.12.2009 and subsequently, the same was confirmed by order dated 08.02.2012, but, that was not even put on notice to the

petitioner. Therefore, the petitioner was unaware of the order of desertion.

6. This Court is unable to find any merit in the contention of the learned counsel for the petitioner. The reason is after the petitioner's husband Sheikh Umar was declared as deserter by order dated 25.12.2009, the said order was subsequently confirmed by another order dated 08.12.2012 as per the Police Standing Order 95(2) of Volume I. Further, on a perusal of the impugned order, it could be seen that the departmental action has been initiated against the said Sheikh Umar and the Enquiry Officer had taken effective steps to make him to attend the oral enquiry by conveying the date of oral enquiry through his father four times in the year 2011, however, the petitioner's husband did not attend the oral enquiry. Thereafter only, taking note of the fact that the petitioner herself has admitted that her husband was absent for duty from 28.11.2009 and the Enquiry Officer had summoned her husband three times to attend oral enquiry and to take him back for duty, but her husband had failed to attend the oral enquiry, the order of removal from service was imposed on the said Sheikh Umar. That apart, at this distance of time, it is not fair on the part of the petitioner to say that she is not aware of the desertion orders, that too when she is aware of the fact that the Enquiry Officer has summoned her husband for enquiry. Therefore, this Court finds no merits in the writ petition and hence the same is liable to be dismissed.

7. Accordingly, the writ petition is dismissed. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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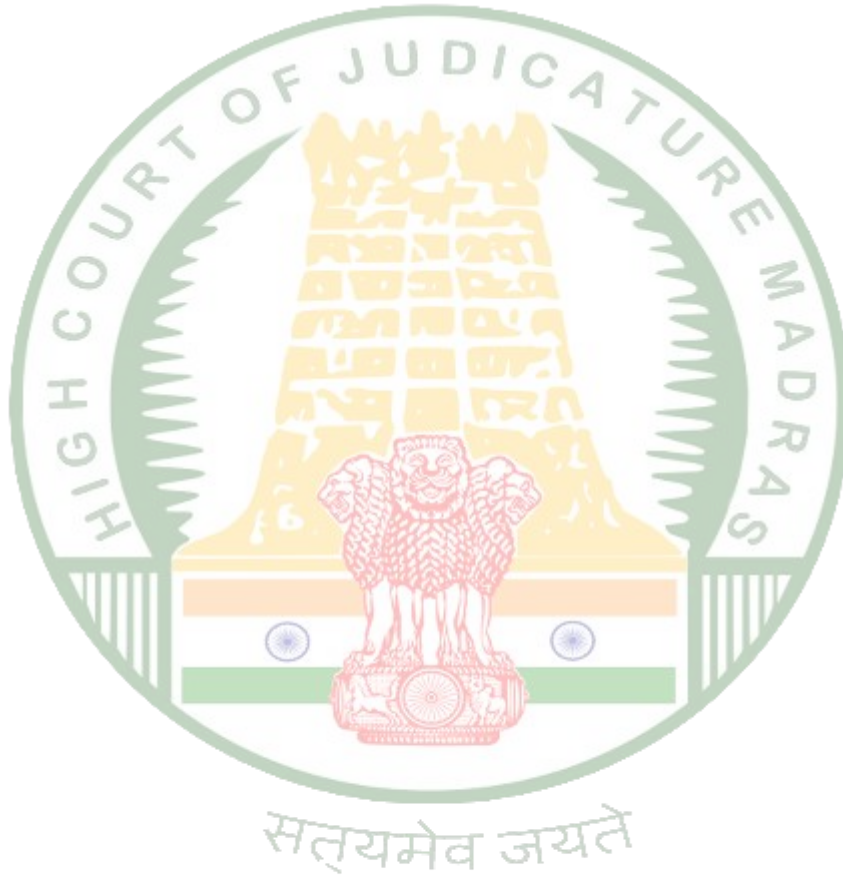
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+lcc to Government Pleader Sr.No.79561/17

rg(CO)
sm:8.1.2018

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