



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2017

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THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P. (MD) No.6705 of 2016

M.Arumugathai

... Petitioner

-vs-

- 1.The Secretary to Government,
Transport Department,
Government of Tamil Nadu,
Fort St.George, Chennai-9.
- 2.The Managing Director,
Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Bye-pass Road, Madurai.
- 3.The General Manager,
Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Bye-pass Road, Madurai.
- 4.The Administrator,
Tamil Nadu State Transport Corporation Employees'
Pension Fund Trust, Thiruvallurvar Illam,
Annasalai, Chennai-2.
- 5.The Inspector of Police,
Kandamanur Police Station,
Theni District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to pay the petitioner i) pensionary benefits of her husband ii) DCRG amount iii) arrears of family pension iv) regular monthly family pension along with interest fixed by the government.

For Petitioner : Mr.A.Mu.Sharavanan

For R1 & R5 : Mr.M.Rajarajan
Govt. Advocate

For R2 & R4 : Mr.A.Jeyaram
For R3 : Mr.Gunasekar

**ORDER**

This petition has been filed, seeking to direct the respondents to pay the retiral benefits of the petitioner's husband, DCRG amount, arrears of family pension and regular monthly family pension along with interest.

2. The case of the petitioner is that her husband, by name S.Muthuraj was working as Conductor in the 2nd respondent Corporation; that from 04.08.2007 onwards, when her husband was in the course of employment, he was found missing, which resulted in registration of a case in Crime No.236 of 2007 under the caption "Man Missing"; that subsequently, the Police closed the case by filing a final report before the learned Judicial Magistrate, Andipatty, Theni District as "Undetectable"; that her husband was aged 42 at the time of missing and that the petitioner has been struggling with her two children; that Section 108 of Indian Evidence Act gives a statutory presumption of death of a person, he is not heard for seven years by those who would naturally have heard him, he had been alive and that the dependants are entitled to all terminal benefits, including pension as per G.O.Ms.No.478, Finance (Pension) Department dated 04.06.1987 and exhausting all remedies, the petitioner is before this Court with the above prayer.

3. Learned counsel for the petitioner submitted that since the petitioner's husband is only missing, the petitioner is entitled to all the benefits due to her husband. Learned counsel for the petitioner brought to the notice of this Court the decision reported in CDJ 2008 MHC 781 (K. Srinivasan V. The Regional Manager (P & IR), Life Insurance Corporation wherein paragraph No.12 reads thus:

"12. In the decision reported in AIR 1995 SC 995 = 1995 Supp (1) SCC 27 (N. Jayalakshmi Ammal V. R.Gopala Pathar), the Supreme Court considered a similar issue and the burden of proof in such cases. Paragraphs 4 to 8 (in SCC) of the decision read thus:

"4. Section 107 of the Indian Evidence Act deals with presumption of continuation of life and Section 108 deals with the presumption of death. Sections 107 and 108 are to the following effect:

"107. Burden of proving death of person known to have been alive within thirty years When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.



"108. Burden of proving that person is alive who has not been heard of for seven years Provided that when the question is whether a man is alive or dead and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.".....

.....Further, in paragraph 10 (in SCC) of the judgment, the Supreme Court held thus:

.....This crucial fact has not been proved by the plaintiffs. They solely relied on the presumption under Section 108 of the Evidence Act. As we stated earlier, there is no presumption that Govindswamy died on any particular date or on the expiry of seven years from August 1930." In AIR 1993 Bombay 64 (Subhash Ramchandra Wadekar V. Union of India) also, it is held that in the absence of any clear-cut proof to presume the date and time of the death of a person, a person can be said to be died after he was not heard for seven years."

4. Learned counsel for the petitioner also drew the attention of this Court the judgment passed by me in **W.P.No.2904 of 2009 [Smt. Mohanambal vs. General Manager (Admn.) Metropolitan Transport Corporation (Chennai) Ltd., Pallavan House, Anna Salai, Chennai 600 002 and another, decided on 11.08.2014,** wherein I have elaborately dealt with the similar issue and granted the relief to the petitioner therein.

5. Heard the learned counsel for the respondents on the above submissions.

6. It is an admitted fact that the Police have registered a case in Crime No.236 of 2007 and later, they have also filed a final report before the learned Judicial Magistrate, Andipatty, Theni District on 24.12.2008 to the effect that they are unable to trace the husband of the petitioner. Since the petitioner's husband is not traceable for more than 7 years, as per the provisions of the Indian Evidence Act, extracted supra, it is proved that he has not been heard of, for more than 7 years, by those, who, naturally, would have heard of him, if he had been alive. However, the entire relief sought by the petitioner, as such, cannot be granted. Hence, considering the fact that the petitioner's husband is no more, as observed earlier, the petitioner is entitled to all the service benefits, due and payable to her husband from the date of entry into service till the date of final report. The amount, if any, due to the petitioner's husband, will have to be released to the petitioner within a period of two months from the date of receipt of a copy of this order.



7. With the above direction, this Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To:

- 1.The Secretary to Government,
Transport Department,
Government of Tamil Nadu,
Fort St.George, Chennai-9.
- 2.The Managing Director,
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Annasalai, Chennai-2.
- 5.The Inspector of Police,
Kandamanur Police Station,
Theni District.

+1cc to Mr.A.Mu.Sharavanan, Advocate Sr.No.12532

+1cc to Spl.Government Pleader Sr.No.12307

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