

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No. 8565 of 2009

S. Kanaka

... Petitioner

Vs.

1. The Director,
Khadi and Village Industries Commission,
State Office, No.326,
Avvai Shanmugam Road,
Gopalapuram, Chennai-600 086.
 2. The Inspector of Police,
Law and Order,
M2 Madhavaram Milk Colony Police Station,
Chennai - 600 051.
- ... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent relating to the impugned order dated 11.03.2009 made in letter No.SOT/II/EST/PF-551/08-09, and quash the same and to direct the first respondent to pay the retirement benefits applicable to be paid within Rule 1 and 2 of the Pension Rules of the missing persons.

For Petitioner : Mr.S. Muthukumar
For Respondent-1 : M/s. S. Srinivasan
For Respondent-2 : Mr. Rajaperumal
Additional Government Pleader

ORDER

The petitioner is the wife of one S.Srinivasan, who employed as Office Assistant in the first respondent/Khadi and Village Industries Commission. Out of their wedlock between the petitioner and the said S.Srinivasan they were having two children.

2. The petitioner also states that being the husband and wife, there was wordy quarrel between them. Therefore, on 04.02.2007 the petitioner's husband S.Srinivasan was left from his house. Thereafter, a complaint was lodged on 01.03.2007

to the second respondent police. Pursuant to the complaint, an FIR was registered on 01.03.2007 under the head "Man Missing". After two years, the petitioner's husband's whereabouts are not known. Therefore, the petitioner has given a representation to the first respondent on 11.08.2008 requesting the first respondent to pay the service benefits and pension benefits who have two children. Pursuant to the above representation, the first respondent has sent a reply letter dated 19.08.2008 directing the petitioner to give a compliant to the concerned Police Station and submitted a report before the first respondent.

3. On receipt of the said letter, report was also given by the second respondent police by stating that a case was registered in Crime No.39 of 2007 and the said case was enquired into and the "Man Missing" of S.Srinivasan, who is the husband of the petitioner has not been traced out. Therefore, the petitioner produced the FIR as well as the report dated 24.08.2008 given by the second respondent police to the first respondent. Based on the report filed by the petitioner on 11.03.2009, the first respondent has sent an impugned order to the petitioner by stating that the search for the above missing official is still going on. Therefore, the family pension cannot be considered at this juncture. Challenging the said order the petitioner has filed the present writ petition before this Court.

4. Heard the learned counsel appearing for the petitioner as well as for the respondents.

5. Admittedly, the petitioner's husband left from his house on 04.02.2007 and a case was registered in Crime No.39 of 2007 on 01.03.2007. Now, more than 11 years were lapsed even then, the first respondent has not considered the case of the petitioner and not come forward to pay the family pension benefits and pension benefits to the petitioner and two children.

6. When the person by namely S.Srinivasan, who employed as Office Assistant in the first respondent/Khadi and Village Industries Commission was Missing from 04.02.2007 and for the past 11 years there was no report by the second respondent police and also before the first respondent or to the petitioner. But, admittedly on 24.08.2008 the second respondent police also given a report by stating that the "Man Missing" person has not been traced out. Therefore, as per the Civil Procedure Code, it is presumed that once the person "Man Missing" for seven years, it is assumed that he is Civilly dead.

7. The first respondent also filed his counter to that effect and stating that death-cum-retirement gratuity is on a different footing because the petitioner's missing husband has not retired on superannuation or otherwise. He cannot also be

produced under law, unless he is not heard of for 7 years or more so, there will be legal difficulty in paying amount due as Death and Retirement gratuity to the petitioner this stage.

8. Unless the whereabouts of the "Man Missing" person S.Srinivasan is not cleared for more than 11 years, there will be legal difficulty in paying amount due as Death and Retirement gratuity to the petitioner at this stage.

9. Though the petitioner's husband S.Srinivasan was missing on 04.02.2007. This case has been taken up in the year 2018, after a lapse of 11 years. Therefore, it is made clear that as per the report filed by the second respondent police a missing person S.Srinivasan has not been traced out. Therefore, it is presumed that as per the Civil Procedure Code the said S.Srinivasan, who is the husband of the petitioner was Civilly dead. Therefore, there is no bar for the first respondent granting service and pension benefits in respect of the missing person to the petitioner and his two children, who are only legal heirs of S.Srinivasan.

10. In the above circumstances, I am inclined to pass the following order:

(a) this writ petition is allowed by setting aside the impugned order dated 11.03.2009.

(b) the first respondent is directed to pay all the service and pension benefits to the petitioner and to her two children within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Deputy Registrar

//True Copy//

सत्यमेव जयते Sub Assistant Registrar

To

1. The Director,
Khadi and Village Industries Commission,
State Office, No.326,
Avvai Shanmugam Road,
Gopalapuram, Chennai-600 086.

2. The Inspector of Police,
Law and Order,
M2 Madhavaram Milk Colony Police Station,
Chennai - 600 051.

+1cc to Mr.S.Muthukumar, Advocate SR.NO.50723
+1cc to Government Pleader SR.NO.51873

sm:29.8.2018

<https://hcservices.ecourts.gov.in/hcservices/>

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