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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.10485 of 2008
and M.P.No.2 of 2008

M.K.Latha

... Petitioner

Vs.

1.The Director General of Police
Mylapore
Chennai-600 004.

2.The Accountant General Tamil Nadu
(Accounts and Entitlements)
Tamil Nadu
Chennai-600 018.

3.The Accountant General (A&E)
Kerala, Thiruvananthapuram.

4.The Inspector General of Police
Armed Police
Chennai-600 010.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus calling for records of the 2nd respondent pertaining to order P5/111, dated 14.02.2008 and quash the same and consequently, direct the 2nd respondent to pay family pension to the petitioner till her husband Mr.M.K.Sreenivasan is allowed to join in his duty.

For Petitioner : Mr.A.Kalai Selvan

For R1 and R4 : Mrs.R.Janaki
Additional Govt. Pleader

For R2 and R3 : Ms.T.S.Selvarani



O R D E R

Writ Petition is filed for issuance of a writ of Certiorarified Mandamus calling for records of the 2nd respondent pertaining to order P5/111, dated 14.02.2008, quash the same and consequently, direct the 2nd respondent to pay family pension to the petitioner till her husband viz., M.K.Sreenivasan is allowed to join in his duty.

2(i).According to the petitioner, her husband viz., M.K.Sreenivasan was appointed as Grade-II Police Constable on 27.07.1988 in Tamil Nadu Special Police, V Battalion. When her husband was on duty at Poonamallee Sub Jail, his mother was seriously ill in Kerala. Her husband took oral permission from his superior officer and went to native place in Kerala. While he was in Kerala, on 10.07.1994, he fell ill and intimated the same to his office. According to the petitioner, her husband deserted her and child from 15.10.1994 without any intimation.

2(ii).The petitioner lodged a complaint before Kutypuram Police Station in Kerala on 23.09.1995 and also to Inspector of Police, Avadi Police Station. Both the complaints were registered in Crime Nos.8495 and 611 of 1998 respectively under 'Man missing'. Subsequently, both the cases were treated as 'undetactable' on 08.09.1996 and 07.08.1998 respectively.

2(iii).The petitioner contacted the 1st respondent on 10.01.1997 and she was informed that her husband was dismissed from service on 04.12.1996 after declaring him as deserter. The petitioner submitted a representation dated 18.01.1997 to the 1st respondent to sanction family pension. The 1st respondent modified the order of dismissal into compulsory retirement by the proceedings dated 26.06.1999 and sent the proposal to the Government. The Government considering the proposal, set aside the order of compulsory retirement issued by the 1st respondent in G.O.Ms.No.1338, Home Department, dated 15.12.2003 and sanctioned family pension with effect from 07.08.2000 with other benefits.

2(iv).While the petitioner was receiving family pension, her husband came back on 28.04.2007 and he reported to duty on 03.05.2007 before the 4th respondent. He was not permitted to join duty. However the 2nd respondent by the impugned order dated 14.02.2008 ordered to stop the family pension to the petitioner and insisted the petitioner to remit the family pension already drawn by her.



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2(v). The petitioner sent representation on 05.03.2008 to review the order of the 2nd respondent. But no order was passed. Hence, the petitioner has come out with the present writ petition.

3.The learned counsel appearing for the petitioner contended that the 2nd respondent passed the impugned order without any notice to the petitioner and the order directing the petitioner to remit the family pension already received, is not valid and the same is illegal. When the family pension was sanctioned to the petitioner, it was presumed that her husband was dead. The family pension was sanctioned only after considering all the materials and following the procedure by the Government and prayed for setting aside the impugned order of the 2nd respondent.

4.The learned counsel appearing for the respondents 2 and 3 filed counter affidavit, typed set of papers and contended that family pension was granted to the petitioner on the ground that her husband died. When it was brought to the knowledge of the authority that her husband is alive, the petitioner is not entitled to family pension and she has to refund the family pension received by her. The impugned order issued by the 2nd respondent is valid. The learned counsel for the 2nd respondent further contended that the Government considering the explanation of K.Sreenivasan, husband of the petitioner accepted the explanation, decided to confirm the punishment of compulsory retirement imposed to K.Sreenivasan by the 4th respondent, ordered not to refund the family pension already drawn by the petitioner and referred to G.O.(2D)No.463, Home (Pol.IX) Department, dated 26.11.2009 and prayed for dismissal of the writ petition.

5.Heard the learned counsel for the petitioner as well as the learned Additional Government Pleader for the respondents 1 & 4 and learned counsel for the respondents 2 & 3 and perused the materials available on record.

6.It is the contention of the petitioner that her husband deserted her and child on 15.10.1994. She gave a complaint to two Police Stations on 23.09.1995 that her husband is missing. The police gave a report that the case is undetectable. The petitioner made representation to the 1st respondent and on considering the petitioner's case, the Government by G.O.Ms.No.1338, Home Department, dated 15.12.2003, sanctioned family pension to the petitioner with effect from 07.08.2000 with other benefits. The family pension payable is only after the death of spouse who worked. The family pension was granted to the petitioner on the ground that the petitioner's husband



was presumed to be dead. Now even according to the averments made in the affidavit filed in support of the above writ petition filed by the petitioner, her husband K.Sreenivasan came on 28.04.2007 and he reported to duty on 03.05.2007. When undisputedly the husband of the petitioner is alive, the petitioner is not entitled to get family pension. The learned counsel for the respondents 2 and 3 filed counter affidavit and typed set of papers contending that the punishment to the petitioner's husband was modified to compulsory retirement in G.O.Ms.No.1338, Home Department, dated 15.12.2003 and that the petitioner need not refund the family pension already drawn by her. In view of the fact that the order of recovery of family pension already paid to the petitioner is recalled and petitioner's husband is alive, the writ petition is liable to be dismissed as devoid of merits.

7.In the result, the writ petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kj

To

1.The Director General of Police
Mylapore
Chennai-600 004.

2.The Accountant General Tamil Nadu
(Accounts and Entitlements)
Tamil Nadu
Chennai-600 018.

3.The Accountant General (A&E)
Kerala, Thiruvananthapuram.



4.The Inspector General of Police
Armed Police
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+1cc to the Government Pleader Sr.50156
+1cc to Mr.A.Kalaiselvam, Advocate Sr.50012

W.P.No.10485 of 2008
and M.P.No.2 of 2008

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srg 06/08/2019