

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15/03/2019

DATED : 20.03.2019

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.30425 of 2012

And

M.P.No. 1 of 2012

P.Shanthi

.. Petitioner

Vs

1. The Chief Security Commissioner  
Railway Protection Force  
Southern Railway  
MMC/Park Town, Chennai - 600 003.
2. Assistant Security Commissioner/CIB/MAS  
Southern Railway  
Railway Protection Force  
Office of the CSC/RPF/MAS.3  
MMC/Park Town, Chennai - 600 003.
3. R.Duraisamy  
IPF/CIB/Hqrs/MMC & Enquiry Officer  
C/o. Assistant Security Commissioner/CIB/MAS  
Southern Railway, Railway Protection Force,  
Office of the CSC/RPF/MAS.3  
MMC/Park Town, Chennai - 600 003.

(cause title amended as per order dated 22.11.2012 by  
NPVJ in M.P.No. 2 of 2012 in W.P.No. 30425/12)

4. The State of Tamilnadu  
rep. by Inspector of Police  
S15, Selaiyur Police Station  
East Tambaram, Chennai - 73.  
(R-4 impleaded as per order dated 05.12.2012 by NPVJ in  
M.P.No. 3 of 2012 in W.P.No. 30425.2012)

.. Respondents

PRAYER:

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondents to thoroughly investigate and file a report about the petitioner's missing husband V.Purushothaman, and to not to take further disciplinary action pursuant to the charge sheet dated 22.10.2012 and not to evict the petitioner's family from the quarters till the result of the investigation into the case of the petitioner's husband is known and a proper departmental enquiry is held according to law.

For Petitioner               :: Mr.N.G.R.Prasad  
                                          for M/s. Row and Reddy

For RR 1 to 3               :: Mr.P.T.Ramkumar

For 4<sup>th</sup> Respondent       :: Mr.R.Pratap Kumar

ORDER

The husband of the writ petitioner by name V.Purushothaman was employed in Railway Protection Force. He joined in the year 1982 as Constable. The writ petitioner P.Shanthi married him in the year 1986. They have three daughters, namely, Vidya, Sathya Rajalakshmi and Nithya Mahalakshmi. He was promoted as Head Constable and was working in the Bungalow belonging to the Officers at Nungambakkam, Chennai. The family was allotted quarters in East Tambaram in 199-D Railway Colony, East Tambaram, Chennai.

2. The petitioner claimed that her husband was often depressed owing to pressure of work. He left for work on 15.09.2010 and did not return home and has been missing from that date. She had been forced to give a police complaint on 20.09.2010 at Selaiyur Police Station, East Tambaram. The Railway Protection Force straight away initiated disciplinary proceedings against him and it is the claim of the petitioner that she was not given copies of the charge sheet, but asked to sign in some documents. She then received a letter dated 19.07.2011 from the Assistant Security Commissioner, Southern Railway enclosing a copy of the report of the Enquiry Officer and asking for explanation within 15 days. She then filed W.P.No. 18933 of 2011 seeking protection from eviction from the quarters. That Writ Petition was allowed on 23.11.2011 and this Court had observed that when a member of the force does not report for duty, publication has to be issued and it was also observed that notice regarding disciplinary action was not

served on the member of the force but on the petitioner. The entire proceedings were quashed and the order of dismissal dated 24.08.2011 was also quashed. Thereafter the respondents issued paper publication in "Dinathanthi" on 13.08.2012 and in "News Today", on 16.08.2012. They however did not take any other steps to investigate the cause for the disappearance of the husband of the petitioner. The respondents then issued a charge sheet on 22.10.2012 in the name of the husband of the petitioner. She was forced to receive the same. They also affixed a copy on the front wall of the quarters. A notice was again issued in the name of the husband of the petitioner on 30.10.2012 stating that an enquiry was fixed on 02.11.2012 at 10.00 a.m. The notice was received only by the petitioner. The enquiry was proceeded ex-parte. It is under these circumstances that the writ has been filed in the nature of a Mandamus for a direction against the respondents to thoroughly investigate and file a report regarding the husband of the petitioner, V.Purushothaman and not to take further disciplinary proceedings pursuant to the charge sheet dated 22.10.2012 and not to evict the petitioner till the result of the investigation is known and a proper departmental enquiry is held according to law.

3. A counter had been filed by the respondents. They stated that V.Purushothaman, the husband of the petitioner, Head Constable, Railway Protection Force, did not turn up for duty from 16.09.2010. Notices were issued to his official residence. The petitioner had given a complaint to the Inspector of Police, Selaiyur Police Station on 20.09.2010 based on which an First Information Report was registered in Cr.No. 814 of 2010 for man missing. The averments that he was depressed was denied. Thereafter a charge memo dated 01.04.2011 for major punishment under Rule 153 of RPF Rules 1987 was issued fixing enquiry on 10.04.2011. It was stated that the enquiry was conducted in a fair and proper manner. Finally, he was dismissed from service on 24.08.2011. The petitioner then filed W.P.No. 18933 of 2011 and this Court had set aside the entire disciplinary proceedings and granted liberty to take action in accordance with law. Thereafter, a Special Team of RPF consisting of an Inspector / Crime Intelligence Branch / Head Quarters with 3 staff was formed on 06.02.2012 and they were directed to conduct discreet enquiry. They gave a representation on 20.02.2013 that though they enquired his friends, relatives and visited the places where he used to visit and where he performed duty, they could not trace him. His photograph also did not match with the bodies in the police website/album and in hospitals. However, they stated that he was alive. Thereafter, publication was also issued in "Dinathanthi" and "News Today". Thereafter a fresh charge sheet was issued on 22.10.2012 and an Enquiry Officer had also been appointed. At that stage, this Court had granted an

order of injunction from proceeding further with the enquiry. It was stated that the writ petition should be dismissed.

4. This Court had on an earlier occasion dealt with the issues raised. In the order dated 20.11.2018, it was observed that the police had issued a certificate on 20.12.2017 that the case was undetected. It was also observed that since the husband of the petitioner was missing from 15.09.2010 and since the report was given on 20.12.2017, a presumption under law had arisen that very unfortunately the person was deemed to have been dead. This Court had also observed that the said Purushothaman was a permanent employee, employed from 1982 till 2010 and had put in 28 years of service which qualified by him for grant of family pension and other benefits. The Additional Public Prosecutor was directed to file a status report regarding the investigation. The learned counsel for the respondents was directed to disclose the stand of the respondents on the status of the husband of the petitioner in view of the fact that a presumption had arisen in law that he was dead.

5. Heard arguments advanced by Mr.N.G.R.Prasad for M/s. Row and Reddy, learned counsel for the petitioner and Mr.P.T.Ram Kumar, learned counsel for the respondent Nos. 1 to 3 and Mr.R.Pratap Kumar, learned Government Advocate for the fourth respondent.

6. The husband of the writ petitioner V.Purushothaman had joined the respondent Railway Protection Force as Constable in the year 1982. He had put in continuous service for 28 years. He was working in the Officers' Banglow at Nungambakkam, Chennai.

7. It is the claim of the writ petitioner that he used to leave home early in the morning and return back late in the evening. This statement has not been controverted in the counter affidavit filed by the respondents. He went missing from 15.09.2010, after he left for duty from his house. He did not return back. A police complaint had been lodged in this regard by the writ petitioner on 20.09.2010 which had been registered in Cr.No. 814 of 2010 by S-15, Selaiyur Police Station and a case of 'man missing' had been registered. In the First Information Report, it had been specifically stated that he had been missing from 8.00 a.m., on 15.09.2010. The writ petitioner had also filed H.C.P.No. 2289 of 2010 and a Division Bench of this Court by order dated 02.03.2011 had given a direction to the respondent police to complete the investigation and file a final report at an early date.

8. Even though the husband of the petitioner had gone missing, the respondents herein continued to proceed with the

departmental enquiry in absentia. This initially resulted in punishment of dismissal from service. This was challenged by the writ petitioner in W.P.No. 18933 of 2011. By order dated 23.11.2011, this Court had set aside the said punishment imposed on the husband of the petitioner. The respondents were directed to continue fresh enquiry once again. They were also directed to take effective steps to determine the whereabouts the husband of the petitioner.

9. In the counter affidavit, it had been stated that the respondents had formed a Special Team, to investigate into the entire issue and they filed a report that he was alive. However, it is seen that the fourth respondent, namely, the Inspector of Police, S-15 Selaiyur Police Station, East Tambaram, Chennai, had filed a final report stating that no progress could be made. This was filed on 20.12.2017. A certificate was also issued that the case was undetected. It is to be reiterated that the husband of the petitioner went missing on 15.09.2010. The police finally stated that they could not deduct him on 20.12.2017. Since seven years has lapsed, a presumption has to be drawn that in law he is dead. However, the respondents continued to proceed with conducting another departmental enquiry. This act of the respondents cannot be countenanced by this Court. An enquiry cannot be conducted against a dead man.

10. The petitioner had sent a representation pending the writ petition dated 05.07.2018 seeking family pension. It is to be noted that the petitioner has three daughters and have to look after her family life after the sudden disappearance of her husband. The respondents have not even offered to take one small step to alleviate her grievances. In this connection, a reference can be made to an Official Memorandum dated 25.06.2013 issued by the Government of India, Ministry of Personnel, P.G & Pensions Department of Pension & Pensioners' Welfare. The Official Memorandum is extract below in full for better appreciation:-

“ OFFICE MEMORANDUM

sub: Grant of family pension and gratuity to the eligible member of the family of an employee/pensioner/family pensioner reported missing - consolidated instructions - regarding.

The provisions regarding grant of gratuity and family pension to the members of families of the deceased Government servants/pensioners who were appointed on or

before 31<sup>st</sup> December 2003 and who are/were born on pensionable establishments are contained in Rules 50-54 of the Central Civil Services (Pension) Rules, 1972. The instructions regarding grant of family pension and gratuity under these rules to the eligible member of the family of an employee reported missing had been issued vide this Department's earlier office memorandum No.1/17/86-P& PW, dated 29<sup>th</sup> August 1986. Clarifications/amendments in this regard were issued vide OM No. 1/28.04-P& PW (E) dated 31<sup>st</sup> March 2009 and 2<sup>nd</sup> July, 2010, O.M. of even number, dated 14<sup>th</sup> September, 2011 and on merits No. 1/17/2010-P&PW(E), dated 2<sup>nd</sup> January, 2012.

2. A reference has been received in this Department to clarify whether in a situation where SHO states that First Information Report is not required to be lodged in the case of person gone missing, the eligible member of the family can be granted family pension. The matter has been examined in consultation with the Ministry of Home Affairs. Section 154(1) of the Criminal Procedure Code mandates filing of an First Information Report by the Police authorities on a report received of the commission of a cognizable offence. A missing person per se does not point to commission of a cognizable offence. In view of this, cognizance of a person's disappearance can be taken by the Head of Office on the basis of an authenticated Daily Dairy (DD)/General Diary Entry (GDE), filed by the Police authorities concerned, as per the practice prevalent in that State/UT.

3. It has now been decided to issue consolidated instructions in supersession of previous instructions regarding grant of family pension to the eligible members of family of the employee/pensioner/family pensioner reported missing and whose whereabouts are not known. It includes those kidnapped by insurgents/ terrorists but does not include those who disappear after committing frauds/crime etc.

4. In the case of a missing employee/pensioner/family pensioner, the family can apply for the grant of family pension, amount of salary due, leave encashment due and the amount of GPF and gratuity (whatever has not already been received) to the Head of Office of the organisation where the employee/pensioner had last served, six months after lodging of police report. The family pension and/or retirement gratuity may be sanctioned by the Administrative Ministry/Department after observing the following formalities:-

(i) The family must lodge a report with the concerned police station and obtain a report from the police, that the employee/pensioner/family pensioner has not been traced despite all efforts made by them. The report may be a First Information Report or any other report such as a Daily Diary/General Diary Entry.

(ii) An Indemnity Bond should be taken from the nominee/dependants of the employee/pensioner/family pensioner that all payments will be adjusted against the payments due to the employee/pensioner/family pensioner in case she/her appears on the scene and makes any claim.

5. In the case of a missing employee, the family pension, at the ordinary or enhanced rate, as applicable, will accrue from the expiry of leave or the date up to which pay and allowances have been paid or the date of the police report, whichever is later. In the case of a missing pensioner/family pensioner, it will accrue from the date of the police report or from the date immediately succeeding the date till which pension/family pension had been paid, whichever is later.

6. The retirement gratuity will be paid to the family within three months of the date of application. In case of any delay, the interest shall be paid at the

applicable rates and responsibility for delay shall be fixed. The difference between the death gratuity and retirement gratuity shall be payable after the death of the employee is conclusively established or on the expiry of the period of seven years from the date of the police report.

7. Before sanctioning the payment of gratuity, the Head of Office will assess all Government dues outstanding against the employee/pensioner and effect their recovery in accordance with Rule 71 of the CCS (Pension) Rules, 1972 and other instructions in force for effecting such recoveries.

8. The amount of salary due, leave encashment due and the amount of GPF will be paid to the family in the first instance as per the nominations made by the employee/pensioner on filing of a police report and submission of an indemnity bond as indicated above.

9. The benefits to be sanctioned to the family/nominee of the missing employee/pensioner will be based on and regulated by the emoluments drawn by him/her and the rules/orders applicable to him/her as on the last date he/she was on duty including authorised periods of leave.

10. Formats of separate Indemnity Bonds to be used in the case of missing employees, missing pensioners and missing family pensioners are available at this department's website [www.persmin.nic.in](http://www.persmin.nic.in). "

11. It is seen that the Government of India had given specific instructions that when a Government servant was reported missing, then the family can apply for grant of family pension amount of salary due, leave encashment due and the amount of GPF, Gratuity. Specific time limits have been given within which the said amount had been paid. In this case, the petitioner had lodged a police complaint, and they had also filed a final report stating that the husband of the petitioner is not traceable.

12. The respondents after extracting the blood and sweat of the husband of the petitioner for 28 years have simply deserted him and deserted his wife in their hour of need. There is no allegation that he had any crime or fraud. He had simply gone missing. If he had gone missing for whatever reason, may be even domestic, the family cannot be faulted by the respondents. The police have given a report that the case is undetected. The petitioner had given a further letter dated 04.10.2018 seeking family pension. The respondents replied that the petitioners should produce a legal heirship certificate. For this, the petitioner has replied on 08.01.2019 stating that a legal heirship certificate can be issued only when the person is dead. The writ petitioner is therefore caught in a quagmire. She can neither go forward by seeking pensionary benefits nor does not she know the fate of her husband and the respondents have also simply deserted her.

13. Even though in the writ petition, the petitioner had sought protection from eviction from the Official Quarters, I hold that in the interest of justice, since a reasonable presumption had arisen that the husband of the petitioner is dead, taking recourse to the Official Memorandum dated 24.06.2013 referred above, a direction is given to the respondents to disburse the family pension, amount of salary due, leave encashment due and the amount of GPF and gratuity to the petitioner. The respondents have the details of the family members in the service register of the employee V.Purushothaman, who was Head Constable, and who had served for 28 years with the respondents. There are no rival claimants for these pensionary benefits. There is an obligation on the respondents to make good the payments due to the writ petitioner and her family members. The respondents cannot hide behind a screen and deny that obligation to its employee. I hold that even though the relief sought in the writ petition cannot be granted still under Article 226 of the Constitution of India, this Court can step in to redress the grievance of the petitioner and direct the respondents to provide and settle the pensionary benefits of V.Purushothaman in accordance with the Official Memorandum dated 24.06.2013 issued by the Ministry of Personnel, P.G & Pensions Department of Pension & Pensioners' Welfare.

14. The respondents are directed to comply with the directions relating to disbursements of family pension and gratuity in accordance with the Official Memorandum cited supra within a period of two months from the date of receipt of a copy of this order finally. The petitioner on receipt of such family pension and other benefits shall vacate the official quarters within a further period of two months from the date of receipt

of such benefits. The Writ Petition is disposed of with the above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vsg

To

1. The Chief Security Commissioner  
Railway Protection Force  
Southern Railway  
MMC/Park Town, Chennai - 600 003.
2. Assistant Security Commissioner/CIB/MAS  
Southern Railway  
Railway Protection Force  
Office of the CSC/RPF/MAS.3  
MMC/Park Town, Chennai - 600 003.
3. R.Duraisamy  
IPF/CIB/Hqrs/MMC & Enquiry Officer  
C/o. Assistant Security Commissioner/CIB/MAS  
Southern Railway, Railway Protection Force,  
Office of the CSC/RPF/MAS.3  
MMC/Park Town, Chennai - 600 003.
4. The Inspector of Police  
The State of Tamilnadu  
S15, Selaiyur Police Station  
East Tambaram, Chennai - 73.

+1cc to Mr.P.T.Ramkumar, Advocate, S.R.No.27032  
+1cc to M/s.Row and Reddy, Advocate, S.R.No.26670

W.P.No.30425 of 2012  
And  
M.P.No. 1 of 2012

SAI (CO)  
CS/24/04/2019