



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.12.2021

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.17908 of 2013

G.Maria Thangam

... Petitioner

vs.

1.The Secretary to Government,
Home (Prison-2) Department,
Fort St.George, Chennai 600 009.

2.The Inspector General of Police,
Government of Tamilnadu,
Chennai 600 008.

3.The Superintendent,
Central Prison,
Palayamkottai,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the first respondent, vide Letter No.8508/Prison2/2010-7, dated 06.09.2012, to quash the same and consequently to direct the respondents to treat the service of the husband of the petitioner before his mental disorder as qualifying service for pensionary benefits and to pay all the terminal benefits including pension to the petitioner within a stipulated period.

For Petitioner : Mr.B.Brijesh Kishore

For Respondents : Mr.D.Sasi Kumar

Additional Government Pleader

O R D E R

This Writ Petition is filed for issuance of Writ of Certiorarified Mandamus, to quash the impugned proceedings of the first respondent, vide Letter No.8508/Prison2/2010-7, dated 06.09.2012 and consequently to direct the respondents to treat the service of the husband of the petitioner before his mental disorder as qualifying service for pensionary benefits and to pay all the terminal benefits including pension to the petitioner within a stipulated period.

2.The petitioner's husband has joined the respondent department on 27.01.1973 at Pudukottai and then transferred to Kancheepuram on 01.05.1974. His probation period was completed on 08.04.1976, then, he was transferred to Nagercoil Sub Jail and was



continuously serving till 28.02.1983, thereafter sought medical leave from 29.04.1981 to 31.08.1982. Then he was admitted in Mental Hospital at Thiruvananthapuram on 03.07.1983 and took treatment till 06.08.1983 as inpatient. The third respondent directed the delinquent to appear before the Medical Board for examination. But, due to medical illness and his violent behaviour, he could not appear before the Medical Board. Thereafter, the third respondent declared the delinquent as deserted, vide proceedings, dated 28.02.1983.

3.On 02.09.2000, the delinquent died due to mental illness. Thereafter, the petitioner submitted a representation to grant a compassionate appointment and the same was rejected, vide order, dated 28.09.2005. The petitioner again submitted another representation to grant family pension, since the deceased delinquent has completed ten years, one month and one day of service. However, the respondent declined the same, stating that he has been declared as deserted and therefore, he is not entitled to any monetary benefits and consequently family pension cannot be granted. Aggrieved over the impugned order, the present Writ Petition is filed.

4.The respondents have filed a counter affidavit stating that the deceased delinquent was appointed on 27.01.1973 as Grade II Warder on temporary basis. The deceased delinquent absented himself from duty from 27.04.1981 to 06.03.1981 and 08.04.1981 to 26.04.1981. He reported to duty for 25 days and salary was also paid for that period. Thereafter, he did not appear. Since the deceased delinquent absented from duty for more than 21 days, he was declared as deserted, vide proceedings, dated 28.02.1983. The respondents have stated that a petition was submitted by the delinquent's wife stating that her husband was admitted in Mental Hospital and requested to regularize his leave. The said petition was reviewed by the respondents and they had directed the delinquent to appear before the Medical Board, Nagercoil. But, the delinquent did not appear and hence, his leave was not regularized.

5.Heard Mr. B. Brijesh Kishore, learned Counsel appearing for the petitioner and Mr. D. Sasi Kumar, learned Additional Government Pleader appearing for the respondents.

6.The deceased delinquent was suffering from serious mental illness and in order to confirm the same, the delinquent was directed to appear before the Medical Board. It is the case of the petitioner that her husband was mentally ill and she could not bring her husband to appear before the Medical Board, because of his violent behaviour. Since the delinquent had not appeared before the Medical Board, his leave was not regularized. The petitioner also approached the respondent for compassionate appointment. That was also declined stating that the deceased delinquent was dismissed after declaring him as deserter, therefore, the



compassionate appointment cannot be considered. Now the petitioner has come forward praying for granting family pension.

7. On perusing the records, it is seen that the respondents have not regularized the leave of the delinquent. As per the petitioner, the deceased delinquent has served the department for ten years, one month and one day. But, the respondents stated that the deceased delinquent is having only eight years and three months of service, as per their records, which is including the service rendered under temporary basis. But it is accepted by the respondents that the period of absence could not be regularized because, the deceased delinquent did not appear before the Medical Board.

8. It is seen that the deceased delinquent joined the service on 27.01.1973, thereafter until 26.04.1981 had attended the duty and has received salary. Then the delinquent fell mentally ill and was declared as deserter on 28.02.1983. Therefore, this Court directs the respondents to regularize the absent period until the "deserter order" was passed i.e. until 28.02.1983 and consequently grant the family pension to the petitioner. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

9. With the above direction, the Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar (CS-I)

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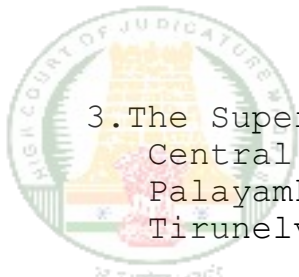
Sub Assistant Registrar(CS)

Tmg

To

1. The Secretary to Government,
Home (Prison-2) Department,
Fort St. George,
Chennai 600 009.

2. The Inspector General of Police,
Government of Tamilnadu,
Chennai 600 008.



3.The Superintendent,
Central Prison,
Palayamkottai,
Tirunelveli District.

+1 CC to M/s.B.BRIJESH KISHORE, Advocate (SR-38037[F]
dated 09/12/2021)

+1 CC to M/s.SPL GP (SR-38128[F] dated 10/12/2021)

Order made in
W.P. (MD) No.17908 of 2013
09.12.2021

NSN (CO)
GC(11.01.2022) 4P 6C