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IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 24.01.2022

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.7441 of 2015
and
M.P.No.1 of 2015

Tmt.A.John Mary

...Petitioner

Vs

1.The Commissioner of Police,
Coimbatore City,
Coimbatore - 641 018.

2.The Deputy Commissioner of Police,
Head Quarters,
Coimbatore City,
Coimbatore District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the 2nd respondent in his F Order Rc.No.F3/WP-38054/2006 PR - 104/1997 dated 27.02.2015 with covering letter F1/PR.104/1997 u/r 3(b) dated 27.02.2015 and the consequential order passed by the 1st respondent in his proceedings Rc.No.F3/WP-38054/2006 dated 28.02.2015 and quash the same and direct the respondents to settle all the benefits, i.e. salary for the period from 06.04.1997 to the date of death of the petitioner's husband viz., 17.06.2013 and sanction pension and other terminal benefits to the petitioner's husband and confer all the consequential benefits to the petitioner.

For Petitioner : Mr.C.Selvaraj, Senior Counsel
for M/s.C.S.Associates

For Respondents : Mr.E.Veda Bagath Singh,
Special Government Pleader

ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.



2. The petitioner herein is the wife of one late Anthony Rajamani, who was working as a Police Constable from the year 1984 onwards. On the basis of a charge memo dated 28.04.1997, the petitioner's husband was subjected to a departmental enquiry and based on the proved charges, he was removed from services, by an order dated 07.09.1997. The appeal and review filed by him against the order of punishment were rejected.

3. In this background, the petitioner's husband had challenged the punishment before this Court in W.P.No.38054 of 2006 and by an order dated 25.03.2010, this Court had categorically held that the impugned order of punishment cannot be sustained, since it lacks reasoning. However, for the purpose of modifying the punishment, the matter was remanded back to the original authority for passing orders on merits.

4. Though this Court had passed orders way back on 25.03.2010, the respondents had waited for about 5 years and through an order dated 27.02.2015, had awarded the punishment of removal from service. Incidentally, the petitioner's husband had expired on 17.06.2013 itself. The Disciplinary Authority was very much aware of the death of the petitioner's husband, since he had chosen to send the order of punishment to the deceased employee's wife, who is the petitioner herein. Likewise, when the petitioner had made a request for compassionate appointment and disbursement of the retirement/pensionary benefits, the first respondent herein, though had made a reference to the death of the petitioner's husband, had referred to the earlier punishment of removal from service and thereby rejected the petitioner's request. Aggrieved against these orders, the present writ petition has been filed.

5. It is settled proposition in service jurisprudence that an order of punishment of any employee, cannot be passed against a dead person. The very fact that the order dated 27.02.2015 was dispatched to the wife of the deceased employee, would infer that the second respondent was very much aware of the petitioner's husband's death. Thus, the impugned punishment order dated 27.02.2015 cannot be sustained.

6. In this background, it is seen that this Court had already quashed the original punishment imposed on 07.09.1997, as well as the orders passed in the appeal and review dated 29.03.1997 and 10.03.1998 respectively. As such, when the petitioner's husband died on 17.06.2013, there was no order of punishment as against her husband. Furthermore, when this Court had quashed these punishments on 25.03.2010, there was absolutely no justification on the part of the second respondent to keep the matter pending for 5 years, which delay is inordinate. Though this Court, in its earlier order dated



25.03.2010, had not stipulated a time limit for passing the said orders, there is a duty cast on the respondents to pass such orders expeditiously and 5 years of delay is unreasonable.

7. Since this Court in its earlier order dated 25.03.2010 had dealt with the original punishment imposed and had come to the conclusion that the impugned orders lack reasoning and had accordingly set aside the same, the petitioner's husband was deemed to have been in service as on the date of his death, i.e. 17.06.2013. In view of the same, the petitioner herein, who is the widow of the employee, would be entitled for all the death-cum-retirement benefits, including the family pension. Likewise, when the regulation governing the respondents entitles the petitioner to seek for compassionate appointment on behalf of the legal heirs of the deceased employee, the same also requires consideration by the respondents.

8. In the light of the above observations, the impugned orders dated 27.02.2015 and 28.02.2015 passed by the second respondent and the first respondent respectively, are quashed. Consequently, there shall be a direction to the first respondent herein to forthwith disburse the death-cum-retirement benefits of late Anthony Rajamani to the petitioner herein, as expeditiously as possible, in any event, within a period of 4 weeks from the date of receipt of a copy of this order. The first respondent shall also pass appropriate orders for disbursing the family pension in favour of the petitioner. The legal heirs of late Anthony Rajamani are at liberty to make an appropriate application seeking for compassionate appointment, within a period of 4 weeks from the date of receipt of a copy of this order. In case such an application is made for compassionate appointment, the first respondent shall consider the same on its own merits and pass appropriate orders in accordance with law, within a period of 6 weeks from the date of receipt of such an application, without reference to the delay in filing the application.

9. The Writ Petition stands allowed, accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

hvk



To

1. The Commissioner of Police,
Coimbatore City,
Coimbatore - 641 018.

WEB COPY

2. The Deputy Commissioner of Police,
Head Quarters,
Coimbatore City,
Coimbatore District.

+1cc to M/s.C.S.Associates, Advocate, S.R.No.4141

+1cc to the Government Pleader, S.R.No.4744

W.P.No.7441 of 2015
and
M.P.No.1 of 2015

PCH(CO)
SB(07/02/2022)