

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2022

Coram

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MRS.JUSTICE. N.MALA

W.A.No.3035 of 2021
and CMP.No.20186 of 2021

A. Ezhilarasi ... Appellant/ Petitioner

Vs

1. The Deputy Commissioner of Police
Headquarters, I/c AR
Coimbatore City.

2. The Commissioner of Police
Coimbatore City.

3. The Director General of Police,
Government of Tamil Nadu,
No.601, Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004.

... Respondents

R3 Suo Motu impleaded vide order dated 25.03.2022 made in
W.A.No.3035 of 2021.

Prayer: Writ appeal is filed under clause 15 of the Letter
Patent praying to allow the Writ Appeal and set aside the order
dated 26.04.2021 in W.P.No.24544 of 2013.

PRAYER IN Writ Petition No.24544 of 2013: Writ Petition filed
under Article 226 of the Constitution of India praying for the
issuance of a Writ of Certiorarified Mandamus calling for the
records of the respondents in connection with the impugned order
passed in C No.F3/WP 38907/2006 dated 03.11.2011, CPO
No.1854/2011, C No.F3/WP 38907/2006 dated 29.11.11 and
Na.Ka.No.O-1/39492/2013 dated 03.08.2013 and quash the same and
direct the respondents to settle the death benefits of late
S.Anandan, formerly AR Nayak 2056, as if he died while he was in
service along with interest @ 12% p.a. and further direct the
respondents to appoint the petitioner on Compassionate ground
and further direct the respondents to grant all attendant
benefits to the petitioner.

For Appellant : Mr.M.Vignesh Raj

For Respondents: Mr.Abhishek Murthy
Government Advocate

J U D G M E N T

S.VAIDYANATHAN, J.

&

N.MALA, J.

The present writ appeal has been preferred against the order of the learned Single Judge in W.P.No.24544 of 2015 in rejecting the plea of Compassionate Appointment.

2. The brief facts of the case are as follows:

2.1 It is the case of the Writ petitioner/Appellant herein that her husband, by name, S.Anandan, was directly recruited as Gr.II Police Constable in TSP VIII Battalion, Veerapuram on 28.02.1995. Subsequently, he was transferred to District Armed Reserve, Coimbatore City in November 1998. Thereafter, he was promoted as Nayak in the Armed Reserve on 14.02.2005. While so, on 14.07.2005, he applied for one day casual leave and went to his native place, however, due to his family circumstances, he did not report for duty continuously for a period of 21 days, as a result of which, he was declared as deserter on 19.08.2005.

2.2 On receipt of the Desertion Order, the Appellant's husband contacted the Assistant Commissioner of Police, Armed Reserve, Coimbatore and explained the reason for his absence and requested to take him back for duty. Thereafter, he was permitted to join duty on 23.08.2005 and accordingly, he reported for duty and was serving as Nayak. In the meanwhile, the Appellant's husband was issued with a charge memo dated 24.11.2005 in PR.No.94/F4/2005 under Rule 3(b) of the TNPS (D&A) Rules for his unauthorized absence from duty without leave or permission for a continuous period of 21 days, to which he submitted a detailed explanation on 19.12.2005. Being dissatisfied with the same, enquiry was conducted and the enquiry officer submitted a report dated 30.12.2005 holding that the charges framed against the petitioner's husband have been proved.

2.3 The Disciplinary Authority / first respondent accepted the findings of the Enquiry Officer and passed an order dated 19.03.2005, imposing the punishment of removal from service with effect from 04.03.2006. Challenging the aforesaid order of punishment, the Appellant's husband preferred an appeal, but, belatedly due to his family circumstances which was rejected by

the second respondent, as time barred without deciding the same on merits by order dated 25.09.2006.

2.4 Aggrieved over the orders passed by the respondents 1 and 2, the petitioner's husband filed W.P.No.38907 of 2006, during the pendency of which, he died on 08.03.2008 due to heart ailment. Therefore, the said writ petition was contested by the substituted petitioners.

2.5 By order dated 22.09.2011, the aforesaid writ petition was disposed of, setting aside the orders passed by the respondents 1 and 2 and remitting the matter to the respondents for fresh consideration with regard to quantum of punishment, for which, three month's time was granted. Pursuant to the aforesaid order, the first respondent, by order dated 03.11.2011 modified the punishment imposed on the petitioner's husband to that of compulsory retirement. A consequential order of modification of punishment was also passed on 29.11.2011. However, the monetary benefits payable were not disbursed to the Appellant. Therefore, the Appellant submitted a representation dated 29.07.2013 seeking compassionate appointment, which was rejected on 03.08.2013. Aggrieved by the same, the petitioner filed W.P.No.24544 of 2013, whereby the petition was dismissed, however directed the monetary benefits payable to the Appellant, if any, pursuant to the order of the second respondent dated 29.11.2011, shall be paid to her, if not already paid. Aggrieved by the same, the petitioner filed the present appeal.

3. The learned counsel for the Appellant submitted that the order imposing punishment of compulsory retirement from service for a deceased Government servant is unknown to law. Once the order of removal from service is set aside by the orders of the Court and on the date of passing the order, if the Government servant, against whom, the said punishment has been imposed has expired, the entire disciplinary proceedings abates and nothing survives. Hence, the order imposing punishment on the deceased Government servant cannot be passed and the first respondent, without knowing the consequences has passed the order. He has further submitted that the deceased died at the age of 35 years and the learned single Judge ought to have taken into account the family circumstances of the writ petitioner and ordered for compassionate ground.

4. Per contra, learned counsel appearing for the respondents, relying on the counter affidavit, submitted that the Appellant's husband was a chronic deserter and he was awarded punishment on earlier occasions. He further submitted that the legal heirs of the deceased employee have no right to claim compassionate appointment, as the employee had not expired while he was in service. It is well settled principle that by

death of a party, charge memo pending against him only abates and not the punishment. It is submitted that pensionary benefits were also settled to the Appellant.

5. Heard both sides.

6. The petitioner's husband Anandan faced with an order of removal from service on 03.11.2011 for absenting himself for 21 days. As the appeal was also rejected, he preferred W.P.No.38907 of 2006 and during the pendency of the writ petition, he died and the legal heirs have been brought on record in this Writ Appeal. The learned Single Judge, taking note of the fact that the punishment was harsh and disproportionate to the gravity of the misconduct, set aside the punishment and remanded the matter for fresh consideration. Once the employee is no more and died during the pendency of the writ petition and the legal heirs have also been brought on record, learned Single Judge ought to have granted relief, instead of remanding the matter to the Authorities, as neither Disciplinary Authority nor the Appellate Authority is empowered to pass orders against a dead person. The Department has not preferred any appeal against the order of remand dated 22.09.2011 made in W.P.No.38907 of 2006. The Authority concerned, pursuant to the remand has passed an order of compulsory retirement from service from the date of original order dated 04.03.2006, consequent to which the benefits, if any, would be paid to the wife and legal heirs separately. While modifying the order into the one of compulsory retirement, the request for compassionate appointment was rejected, on the ground that a person, who suffered a punishment of compulsory retirement, would not be entitled to compassionate appointment and the relevant paragraph of the communication dated 03.08.2013 at Paragraph No.5 and P.No.23 is extracted below.

Na.Ka.No.01/39492/2013 dt: 03.08.2013 Deputy Commissioner Office Coimbatore City

MEMO

Sub: Police - Compassionate appointment - Nayak 2056 Anandan's wife Tmt.Ezhilarasi - request for compassionate appointment.

Ref: Letter dt: 29.07.2013 of Ezhilarasi, w/o.late.Anandan, Nayak 2056, Paramanandam PO, Chengam Taluk, Thiruvannamalai District.

Nayak 2056 Anandan of Coimbatore City Armed Police was imposed with a punishment of removal from service in PR

No.94/2010 dt: 04.03.2006.

Nayak 2056 Anandan challenged the punishment before the Hon'ble High Court in WP.No.38907/2008. During the pendency, Nayak 2056 died on 08.03.2008. Based on the orders of the Hon'ble High Court dt:22.09.2005, the punishment on deceased Nayak Anandan was modified from removal service into compulsory retirement by this office proceedings F3/WP/38907/2006 dt:03.11.2011. The said order was served on the wife of the deceased Nayak Anandan has submitted a petition on 29.07.2011 for appointment on compassionate ground.

The compassionate appointment is made only to such of those individuals who have died while in service. But since your husband was compulsorily retired from service from 04.02.2006, there are no rules to appoint the legal heirs on compassionate ground. Hence your request is rejected.

Sd/- on behalf of Commissioner
Coimbatore City

7. Once the order is set aside and remanded to the authorities concerned, without being heard, no punishment could be modified. In the present case on hand, such issue was not at all possible, as the employee is no more. Hence, the order of compulsory retirement passed it is illegal. The order of compulsory retirement has been challenged by the legal heirs. The original order dated 22.09.2011 in W.P.No.38907 of 2006 in remanding the matter to the authorities to pass order against a dead person itself is illegal. Similarly, the order passed by the Authority in imposing the punishment of compulsory retirement is also illegal. However, the learned single Judge has held that a person, who faced with an order of compulsory retirement, would not be entitled to compassionate appointment. This finding may be applicable to cases, where the employee is alive and not to a dead person. Unless the order dated 03.08.2013 is set aside, the legal heirs would not be entitled to compassionate appointment. Since the employee was not in service, we are of the view that the employee is entitled to monetary benefits, namely, back wages and other promotional benefits up to the date of dismissal order passed by the Authority. Since the employee is deemed to have been in employment till the date of his death, the request for compassionate appointment has got to be considered, as the order of compulsory retirement has been passed against the dead person, which cannot be valid in the eye of law. For the risk of repetition, we make it very clear that except for the terminal benefits due to the employee for the actual services rendered up

to the date of compulsory retirement order dated 03.08.2013 no other monetary benefits would be entitled to, except compassionate appointment and the Government is expected to extend the benefits of compassionate appointment within a period of four months from the date of receipt of a copy of the order.

8. It is represented by the learned counsel in order to comply the directions of this Court, modified the punishment of compulsory retirement was passed modifying the order of removal against the dead person. We reiterate that the order dated 22.09.2011 in W.P.No.38907 of 2006 cannot be quoted against the present petitioner as no order either by this Court or by any other authority be passed against a dead person.

9. With the above direction the Writ Appeal is disposed of. No costs. Consequently connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

dpq

To

1. The Deputy Commissioner of Police
Headquarters, I/c AR
Coimbatore City.

2. The Commissioner of Police
Coimbatore City.

3. The Director General of Police,
Government of Tamil Nadu,
No.601, Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004.

+1 cc to Mr.M.Muthappan, Advocate Sr.NO. 22890
+1 cc to Government Pleader Sr.NO. 23376

W.A.No.3035 of 2021

GSM(CO)
A.SK(20/07/2022)