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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 23743 of 2018

M.Bakiyalakshmi

... Petitioner

-vs-

1. Government of Tamil Nadu,
Represented by Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat,
Chennai - 600 009.
 2. The Director of Medical Education,
Kilpauk,
Chennai - 600 010.
 3. The Senior Civil Surgeon,
Government Peripheral Hospital,
K.K. Nagar,
Chennai - 600 078.
 4. The Principal Accountant General (A&E),
Tamil Nadu, Teynampet,
Anna Salai,
Chennai - 600 018.
 5. The Inspector of Police,
E4, Abhiramipuram Police Station,
Abiramipuram,
Chennai - 600 028.
- ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the First to Fourth Respondents to pass appropriate orders declaring that the Petitioner's husband Thiru. T.L.Madhana Gopal, Hospital Servant in the Third Respondent Hospital is deemed to have retired from service as on 2011 and presumed to have been dead to grant all the following benefits due and payable to the Petitioner's Husband to the Petitioner herein with interest on delayed payment (i) Duty Pay, (ii) VI Pay Commission Arrears, (iii) Encashment and Surrender of Earned Leave and Un-earned Leave on Private Affairs, (iv) GPF & SPF Benefits, (v) DCRG Benefits, (vi) Family Pension Benefits within a limited time frame as deemed fit by this Court.



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For Petitioner : Mr. M.Ravi

For Respondents: Mr. S.Balamurugan,
Government Advocate
(for R1 to R3 and R5)

Mrs. T.S.Selvarani (for R4)

O R D E R

Heard Mr. M.Ravi, Learned Counsel for the Petitioner, Mr. S.Balamurugan, Learned Government Advocate appearing for the First to Third and Fifth Respondents and Mrs. T.S.Selvarani, Learned Counsel for the Fourth Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. According to the Petitioner, the whereabouts of her husband, viz., T.L.Madhana Gopal, who was working as Hospital Servant in the Hospital of the Third Respondent, remains untraceable from 20.09.2008 onwards. The son of the Petitioner had lodged a complaint in Crime No. 73 of 2009, but no action has been taken by the Respondents to disburse the terminal benefits of the said T.L.Madhana Gopal even after the production of the copy of First Information Report in that regard. In that backdrop, the Petitioner has filed this Writ Petition to declare the said T.L.Madhana Gopal as deemed to have retired from service in 2011 as he is presumed to have been dead and to grant all the monetary benefits due and payable to the said T.L.Madhana Gopal to her with interest for delayed payment within the time limit that may be fixed by this Court.

3. It has been brought to the notice of this Court by Learned Counsel for the Petitioner that the Government of Tamil Nadu in G.O. Ms. No. 478, Finance Pension Department dated 04.06.1987, Government Letter No. 75868/Pension/ 87-2, Finance (Pension) Department dated 21.07.1987, G.O. Ms. Nos. 540 and 541, Finance Department dated 05.07.1995, Government Letter No. 98007/ Pension/87-3, Finance dated 09.03.1898 and Government Letter No. 21396 A/Pen./91-2, Finance dated 09.04.1991 had issued directions for disbursement of terminal benefits to Government Servants who could not be traced after all efforts made by the Police and necessary statutory provisions have been made in that regard by inserting Rule 49-A in the Tamil Nadu Pension Rules, 1978, with effect from 04.06.1987, which reads as follows:-

"Benefits to the family of a disappearing Government Servants:- When a Government Servant disappears leaving his family, the family of such Government servant shall be entitled immediately for the payment of dues of salary, leave encashment, General Provident Fund and Special Family Pension-cum-Gratuity and after lapse of a period of [two years]



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of such disappearance, for the payment of dues of Death-cum-Retirement Gratuity and Family Pension in accordance with the nomination made by such Government Servant, subject to the following conditions, namely:-

- (i) a complaint must have been lodged with the police station concerned and a report obtained that the Government Servant has not been traced despite all efforts made by the police; and
- (ii) an Indemnity Bond must have been executed by the nominee or dependents of the such Government Servant to the effect that all payments shall be adjusted against the payment due to the such Government Servant in case he appears later and makes any claim."

Learned Counsel further contended that the aforesaid statutory benefits ought to have been extended to the Petitioner by the concerned authorities on their own accord and the failure on the part of the concerned authorities has the effect of depriving those benefits that she is legitimately entitled. It is also pointed out that the power to relax the conditions for grant of family pension, if the operation of any of those rules under the Tamil Nadu Pension Rules, 1978, causes undue hardship could also be exercised by the concerned authority under Rule 82 of those Rules, which reads as follows:-

"82. Power to relax:- Where any Department of the Government is satisfied that the operation of any of these rules causes undue hardship in any particular case, the Department may by order for reasons to be recorded in writing, dispense with or relax the requirement of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner.

Provided that no such order shall be made except with the concurrence of the Finance Department."

4. In such circumstances, the following order is passed:-

- (i) the Petitioner may make necessary representation along with supporting documents to the concerned authority in terms of Rule 49-A read with Rule 82 of the Tamil Nadu Pension Rules, 1978, so as to entitle her for grant of family pension and all other benefits with interest due;
- (ii) if such representation is made, the concerned authority shall immediately consider the claim made by the Petitioner for the said benefits;
- (iii) if it is found that the Petitioner has not produced any details or supporting documents satisfying the eligibility criteria for the benefits claimed, the deficiencies in that regard shall be informed in writing to her requiring the same to be furnished within a time



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frame of not less than 15 working days;

- (iv) in the event of the concerned authority not being satisfied with the compliance of the requirements even thereafter, an enquiry shall be conducted affording full opportunity of personal hearing to the Petitioner to explain her position in that regard and the concerned authority shall pass reasoned orders dealing with each of the contentions raised on merits and in accordance with law and communicate the decision taken to the Petitioner under written acknowledgment; and
- (v) if the Petitioner is found entitled to the relaxation of the relevant rules for grant of family pension and other monetary benefits as claimed, it shall be ensured that the same including the eligible amount of arrears of family pension (after permissible deductions) is paid within three months from the date of passing of that order, apart from monthly family pension for future months on the due dates.

In the result, the Writ Petition is disposed on the aforesaid terms. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

vjt

To

1. The Secretary to Government of Tamil Nadu,
Health and Family Welfare Department,
Secretariat,
Chennai - 600 009.
2. The Director of Medical Education,
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Chennai - 600 010.
3. The Senior Civil Surgeon,
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5. The Inspector of Police,
E4, Abhiramipuram Police Station,
Abiramipuram,
Chennai - 600 028.

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+1cc to Mr.M.Ravi, Advocate, S.R.No. 27512
+1cc to the Special Government Pleader, S.R.No. 27697

W.P. No. 23743 of 2018

RP (CO)
GN (09/06/2022)