



W.P.(MD)No.22680 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.09.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.22680 of 2015

Booma Devi

... Petitioner

vs.

1. The Director General of Police,
Government of Tamil Nadu,
Chepauk, Chennai – 4.
2. The Deputy Inspector General of Police,
Madurai Range, Madurai – 625 007.
3. The Superintendent of Police,
Virudhunagar District, Virudhunagar.

... 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 pertaining to the impugned order passed by the 1st Respondent in his proceedings RC.No.186721/AP2(3)/2014 dated 05.08.2015 and quash the same on the ground that the same is arbitrary, illegal and without any legal basis and without jurisdiction and consequently directing the Respondents to pay all service and



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monetary benefits to the Petitioner payable to the account of the deceased husband of the petitioner K.Viswanathan (SSI- 1230).

For Petitioner : Mr.S.R.Aravindan
Respondents : M/s.D.Farjana Ghoushia,
Special Government Pleader

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order, dated 05.08.2015 passed by the 1st Respondent in RC.No.186721/AP2(3)/2014 on the ground that the same is arbitrary, illegal and without any legal basis and without jurisdiction and also sought for a consequential direction to the Respondents to pay all service and monetary benefits to the Petitioner payable to the account of the deceased husband of the petitioner, namely, K.Viswanathan (SSI- 1230).

2. The brief facts are that the petitioner's husband namely, Viswanathan (SSI- 1230) was initially appointed as Grade-II Police Constable on 25.10.1984 and subsequently promoted as Special Sub Inspector of Police and



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had served nearly 30 years. On 07.08.2019, at Nathampatti Police Station, Virudhunagar District, the petitioner's husband was wrongly implicated in a criminal case in Crime No.116 of 2012, for the offences under Sections 4(1) of Tamil Nadu Mines and Minerals Act, read with Sections 109, 353, 307 and 379 of IPC and Sections 3 and 4 of TNPPDL Act, on the ground that the petitioner's husband was allegedly involved in the illegal sand quarrying. Hence the petitioner's husband was suspended from his service on 07.08.2012, subsequently, his suspension was revoked on 05.05.2013. In the meanwhile, a charge memo was issued under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, and three charges were framed and in the departmental enquiry the charges were held to be proved and punishment of "Stoppage of increment of three years" was imposed vide order, dated 04.02.2014. The petitioner's husband has preferred an appeal before the 2nd respondent on 13.04.2014. In the meanwhile, the 2nd respondent has issued a show cause notice, dated 30.06.2014 for Suo moto review of the punishment. The petitioner's husband had submitted a detailed reply and after considering the reply, the 2nd respondent vide, order, dated 01.08.2014 dismissed the petitioner's husband from service.



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3. The contention of the petitioner is that the 2nd respondent has not followed the procedures as contemplated under the Service Rules. The petitioner's husband had preferred a statutory appeal before the 1st respondent against the original order of punishment dated 04.02.2014 through proper channel, but the same was not forwarded by the concerned authority. But without advertng to this fact, the suo moto review was ordered. Infact the 2nd respondent had passed an order in the Suo Moto review only on the ground that the delinquent had not filed any statutory appeal against the original order of punishment. Now the petitioner had also filed an appeal against the review order dated 01.08.2014.

4. In the meanwhile, the petitioner's husband had filed a Direction Petition before this Court in CrI.O.P(MD)No.16774 of 2014 for filing of final report in the criminal case. Thereafter, charge sheet was filed before the Criminal Court. The petitioner's husband has submitted an Appeal Memorandum before the 1st Respondent on 27.08.2014. Pending appeal, the petitioner's husband died on 22.06.2015. The petitioner's husband had consumed poison on account of



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mental depression suffered by him at the relevant period of time. Now, the petitioner is living with her two children. The petitioner's husband's death was immediately informed to the 1st respondent. The 1st respondent has recorded the death of the petitioner's husband and has passed an order of dismissal, dated 05.08.2015, thereby, confirmed the order of the dismissal by *Suo Moto*. Aggrieved over the same, the present Writ Petition is filed by the wife of the deceased.

5. The claim of the petitioner is that there is no evidence adduced before the Enquiry Officer to show that the petitioner's husband was illegally quarrying sand without any permission and without obtaining any report from the Director of Mines and Minerals. Even the allegation in the show cause notice is that the petitioner's husband failed to do the duty of law and order and had given protection to the illegal quarrying, which the petitioner's husband denied in the enquiry proceedings. The delinquent had taken a plea that the case is foisted against the delinquent because of previous enmity. Hence, the learned counsel appearing for the petitioner contended that, without any material evidence, the petitioner's husband was alleged that he had indulged in illegal quarrying.



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Because of the false allegation, the petitioner's husband went into depression and thereafter, consumed poison and died.

6. The respondents have filed counter statement and stated that the petitioner's husband has not preferred any appeal within the stipulated time, atleast while considering the *Suo Moto* Review. The petitioner's husband was shown as A-12 in the Crime No.116 of 2012 on the file of the Nathampatti Police Station. Since the petitioner's husband was involved in the criminal case he was suspended from service and thereafter, reinstated. In the enquiry proceedings, an opportunity was afforded to appear himself in person. The Disciplinary Authority has awarded a punishment of '*Postponement of next increment for a period of three years*'. However, the 2nd respondent has taken *Suo Moto* proceedings under 15(A) of the TNPSS (D & A) Rules, and thereafter, the delinquent was awarded punishment of "*dismissal from service*". Since the allegation against the petitioner is serious in nature, but the 3rd respondent has awarded lesser punishment. Hence the *Suo Moto* proceeding was initiated, in which, it has been recorded that the delinquent has not preferred any appeal against the lesser punishment. If the *Suo Moto* proceeding was not initiated the petitioner would be



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left scot-free with lesser punishment. After perusing the records and considering the allegations against the petitioner, in the Suo Motto petition an order of dismissal of service was passed and the same was confirmed in the appeal. While considering the appeal it was represented that the petitioner's husband died on 22.06.2015, after removal from service. Based on the order of the Suo Motto review, the petitioner is not entitled to pensionary benefits. Hence, the respondents prayed to dismiss the Writ Petition.

7. Heard Mr.S.R.Aravindan, learned counsel appearing for the Petitioner and M/s.D.Farjana Ghoushia, learned Special Government Pleader, appearing for the respondents and perused the records.

8. The allegation against the petitioner's husband is that he has indulged in illegal quarrying. But the charge memo states that the delinquent had given protection to the persons who had indulging in illegal quarrying. However the petitioner claims her husband had neither indulged nor supported and person to illegal quarrying.



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9. The petitioner further contended that the Village Administrative Officer has preferred the criminal complaint against the deceased and the Village Administrative Officer is not a competent authority to lodge the complaint. Moreover, the petitioner contended that her husband was included in the complaint based on previous enmity.

10. The next plea that was raised is that, even though, the finding by the respondents is that a criminal misconduct, the charges are not framed for criminal misconduct. Hence, the contention of the charge memo and the enquiry proceedings are based on different allegations. Hence, the allegations against the deceased are not proved. Moreover, the charge memo is on different charges and the allegation in the enquiry is on different charges. When both are different, the entire disciplinary proceedings ought to be quashed. However, the learned Special Government Pleader appearing for the respondents submitted that the charge memo is only for illegal quarrying. Moreover, the First Information Report was registered against the deceased and based on the FIR contentions the charge memo was issued and proper enquiry was conducted and such a plea was not raised before the Enquiry Officer. Therefore, the said plea cannot be considered



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now. Moreover, the allegation against the deceased is serious in nature, more so when the deceased being in uniformed service and hence the punishment is proportionate, and therefore, the punishment cannot be modified.

11. At this juncture, the learned counsel appearing for the petitioner submitted that, when the criminal case was taken up for trial the death of the petitioner's husband was recorded and the criminal case was closed as 'abated'. Therefore, he further submitted that, it has to be taken on account that the death, the delinquent was acquitted from the criminal case and prayed that the punishment ought to be modified. Moreover, this petition is filed by the deceased employee's wife and who is having two children. The delinquent has also submitted before the authority that he had served for more than 30 years with unblemished record and had received more than 50 appreciation and prayed to quash the false allegations.

12. On the basis of the records and considering the rival submissions made by the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents, this Court is of the



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considered opinion that the petitioner is wife of the deceased and moreover, the deceased has committed suicide by consuming poison, due to mental depression and therefore, for the mistake committed by the deceased the family members need not suffer. Accordingly, the punishment awarded to the petitioner's husband, namely, K.Viswanathan (SSI- 1230), is modified as Compulsory Retirement. The respondents are directed to implement this modified punishment and disburse all the terminal benefits and other benefits to the petitioner, within a period of 12 weeks from the date of receipt of a copy of the order.

13. With this direction, this Writ Petition is disposed of. No Costs.

Index : Yes / No
Internet : Yes
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