



W.P.No.4470 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2023

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

W.P.No.4470 of 2022

S.Banumathi

.. Petitioner

Versus

1.The Chennai Port Trust,
Rep. by its Chairman,
Rajaji Road,
Chennai – 600 001.

2.The Inspector of Police,
(Law and Order),
H5, New Washermenpet Police
Station,
Chennai – 600 081.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the 1st respondent to disburse the terminal benefits and other dues payable to the petitioner in view of the civil death of her husband late R.Balasubramani, Mazdoor Traffic, Shour Labour bearing Employee Code 53861, with effect from 12.04.2021 by considering the petitioner's representation dated 22.11.2021 in tune with the presumption under Section 108 of the Evidence Act, 1872.



W.P.No.4470 of 2022

For Petitioner

: Ms.Adhisree
for Mr.N.Manokaran

For Respondents

For R1

: Mr.S.Haja Mohideen Gisthi

For R2

: Mr.P.Balathandayutham
Special Government Pleader

ORDER

This writ petition has been filed to direct the 1st respondent to disburse the terminal benefits and other dues payable to the petitioner in view of the civil death of her husband late R.Balasubramani, Mazdoor Traffic, Shore Labour bearing Employee Code 53861, with effect from 12.04.2021 by considering the petitioner's representation dated 22.11.2021 in tune with the presumption under Section 108 of the Evidence Act, 1872.

2. The writ petitioner is the wife of one R.Balasubramani, who was working as Mazdoor Traffic (Shore Labour) under the 1st respondent and he was found missing from 13.04.2014. In this regard, FIR has been filed on 02.06.2014 under the caption of “man missing”. Thereafter, his exgratia



W.P.No.4470 of 2022

pension was sanctioned in 2016. The 2nd respondent police also issued Non-Traceable certificate on 18.10.2021. Based on which, the petitioner has submitted a representation on 22.11.2021, requesting the 1st respondent to pay the terminal benefits of her husband. However, the 1st respondent refused to pay the benefits on the ground that Civil Death certificate has to be obtained from the competent Civil Court.

3. The learned counsel appearing for the 1st respondent on instruction submitted that the family pension of the said R.Balasubramani is drawn periodically from time to time and with regard to terminal benefits, 50% of DCRG amount of Rs.4,83,107/- have been settled to the petitioner herein. As far as terminal benefits are concerned, if the certificate of Civil Death is produced by the petitioner, the remaining amount will be paid.

4. This Court is of the view that the very contention of the respondents cannot be countenanced for the simple reason that it is not the case of the respondents that the petitioner's husband was still alive. It is established that he was found missing in the year 2014 and FIR also came to be registered by the 2nd respondent police on 02.06.2014. Thereafter, even during



W.P.No.4470 of 2022

WEB COURT

investigation, they could not make any breakthrough and ultimately they issued the Non-Traceable certificate on 18.10.2021.

5. In such view of the matter, when the respondents themselves is not disputing the fact that the petitioner's husband was found missing for more than seven year, they cannot force the parties to go to the Court to obtain the certificate of Civil Death. Law is well settled that once the person is missing and his whereabouts are not known for more than a period of seven years, it shall be deemed that he is dead. Once the person, who is deemed to have died, as per law, onus lies on the person disputing such fact. Such a situation arises only when the question arises as to whether the man is alive or dead. Whereas it is not the case of the respondents that the petitioner's husband is very much alive. In such a case, directing the petitioner to produce the civil death certificate is not required.

6. In this regard, it is relevant to rely upon the judgment of the Division Bench of this Court dated 07.12.2018 passed in W.A.No.1304 of 2013 and paragraph No.4 of the judgment is extracted hereunder;-



“4.Even according to the respondents, the employee did not turn up from the year 1994 onwards. The order of dismissal was passed exparte. Even the Superintendent of Police has stated that whereabouts are not known. Therefore, it is not the case of the respondents that the husband of the appellant was and is alive. It is the specific case of the appellant that her husband was not traceable for quite some time and in any case, more than seven years, as mandated under Section 108 of the Indian Evidence Act. Once the aforesaid position is not disputed, the onus shifts to the person who claims the other as alive. We are not even having the abovesaid situation in the case on hand. In the judgment referred supra, the scope of Rule 49A of the Tamil Nadu Pension Rules was taken into consideration. The question of delay and laches will have to be seen on the facts of each case. The appellant merely seeks to step into the shoes of her husband and only for the purpose of getting the pensionary benefits apart from any other. Therefore, we are of the view that considering the peculiar facts of the case and in the light of the judgment referred supra, the respondents will have to be directed to pay the



W.P.No.4470 of 2022

pensionary benefits by treating that the appellant's husband was in service till 11.05.1994. For the purpose of claiming any other incidental benefits also, the order or dismissal shall not stand. These benefits must have accrued in favour of the husband of the appellant on or before 11.05.1994.”

7. In a similar case, this Court by an order dated 29.03.2010 in W.P.No.16665 of 2007 in paragraph No.11 held as follows;-

“ 11. In the present case, even as per the stand taken by the respondents that the petitioner's husband was not traceable from 03.07.1992 and therefore, the seven year period from that time will end on 03.07.1999. It is unnecessary for the respondents to drive the petitioner to the Court of law for getting a declaration that her husband is dead. In such a contingency even the Court will have to proceed only on the basis of the materials already available with the respondents. Directing the widow to such a course of action will be nothing but harassment. It is not as if the respondents always direct persons aggrieved to go before the Civil Court and establish the death of an individual concerned.”



W.P.No.4470 of 2022

8. Considering the facts and circumstances and the above judgments cited by the learned counsel for the petitioner, this Court is inclined to direct the 1st respondent to pay the terminal benefits to the petitioner within a period of two months from the date of receipt of a copy of this order.

9. With the above direction, the writ petition stands disposed of. There shall be no order as to costs.

10.07.2023

ata

Index : Yes / No

Speaking Order : Yes / No

To

1.The Chairman,
The Chennai Port Trust,
Rajaji Road,
Chennai – 600 001.

2.The Inspector of Police (Law and Order),
H5, New Washermenpet Police Station,
Chennai – 600 081.

N.SATHISH KUMAR, J.



WEB COPY



W.P.No.4470 of 2022

ata

W.P.No.4470 of 2022

10.07.2023