



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2023

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.29318 of 2023

S.Anwer Basha

... Petitioner

Vs

1.The Principal Secretary to Government of Tamil Nadu
Home Prohibition and Excise Department,
Secretariat, Chennai – 9.

2.The Director General of Police,
Office of the Directorate General of Police,
Santhome High Road,
Chennai – 600 004.

3.The Superintendent of Police,
District Police Office,
Cuddalore District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents to give employment to the petitioner on compassionate grounds considering the pathetic situation of the petitioner's family due to the death of petitioner's father, within a time to be specified by this Court by considering the representation dated 11.07.2023.

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For Petitioner : Mr.C.Vediappan

For Respondents : Mr.V.R.B.Elamparithi
Additional Government Pleader

ORDER

This writ petition has been filed seeking for issuance of a Writ of Mandamus directing the respondents to give employment to the petitioner on compassionate grounds considering the pathetic situation of the petitioner's family due to the death of petitioner's father, within a time specified by this Court by considering the representation dated 11.07.2023.

2. The case of the petitioner is that his father Sheik Umar joined as Police Constable in the Tamil Nadu Police Department in the year 1978 and was promoted as Head Constable in 1998. The petitioner's father was transferred to Sozhatharam Police Station Cuddalore District in 2009. On 28.11.2009 onwards the whereabouts of the petitioner's father was not

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known as he did not return home after the above said date.

3. The petitioner's mother lodged a complaint to the respondent on 21.11.2011 and a case in Crime No.553 of 2011 under the caption 'man missing' was registered. Since, no action was taken by the respondent to consider the service benefits of his father, the petitioner was constrained to file CrI.O.P.No.19917 of 2015 before this Court to direct the respondent/police to take action against the complaint given by the petitioner's mother. The said CrI.O.P. was disposed on 07.08.2015, wherein, this Court had stated that as regards the claim of the petitioner for the service benefits of the missing person, it has to be worked out only before the Civil Forum. Even after which the police authorities have not taken any steps to consider the petitioner's grievance.

4. The petitioner has also taken various steps to identify his father along with the photographs of unclaimed dead bodies maintained by the



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Government of Pondicherry. One such photograph, in the opinion of the officers, matched with the identity of the petitioner's father and hence, it was concluded that it was petitioner's father, since, there is no possibility for the father to be alive. While that being so, the petitioner and his family was called upon to testify whether the photograph with the officer in any way matches with the identity of his father. However, petitioner's grand father had stated that the photograph did not in way resemble his son ie., the petitioner's father. Based on the above investigation, it was concluded that no further investigation was required and that the criminal case was closed and a report, dated 28.01.2017, and was sent to the learned District Munsif Cum Judicial Magistrate, Kattumannarkudi to that effect stating that the petitioner's father could not be traced. A post-mortem report was also sent along with the said report, suggesting that it was the dead body which resemble the petitioner's father over which post-mortem was conducted. In the said report it was admitted by the Investigation Officer that whether the deceased was petitioner's father or not could not be proved scientifically.



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5. Even if it is assumed that the petitioner's father been alive, he would have retired on 31.01.2014 and according to the petitioner's family, his father is not alive and for more than nine years his whereabouts were not known. The Deputy Superintendent of Police, Tittagud Sub-Division, initiated an enquiry against the petitioner's father under Rule 3(b) of Tamil Nadu Police Subordinate Service Rules in PR No.25 of 2011 for the alleged desertion from service and treated him as a deserter. The charge against the petitioner's father is that he deserted the force for more than 21 days with effect from 28.11.2008 and therefore, his name was stuck of as a deserter vide District Order No.1495 of 2009 in C.No.M1.2988/2009 dated 25.12.2009 as per Police Standing Order 95(1) of Volume-I. It was further stated that since, petitioner's father did not turn up for duty with any valid reason for his desertion for more than 60 days, as per the Rules, the order of desertion was confirmed vide District Order 191 of 2010 in C.No.M1.2988/2009 dated 08.02.2012 as per Police Standing Order 95(2) of Volume-I. Therefore, departmental



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action was initiated against the petitioner's missing father by pointing him as a deserter.

6. While that being so, the order of the Deputy Superintendent of Police, Tittakudi Sub-Division sent a report to the 3rd respondent for further action based on which the 3rd respondent passed an order of removal from service in S.O.No.65 of 2017, dated 07.07.2017 (in PR.No.25/2011). The order of removal passed by the 3rd respondent is legally not sustainable as it was passed without application of mind. In such circumstances, challenging the order of removal, the petitioner filed a petition in W.P.No.28455 of 2017 before this Court and this Court vide its order dated 07.07.2017 dismissed the same on the ground of delay in challenging the order of dismissal. Aggrieved over the said order, the petitioner preferred an appeal in W.A.No.735 of 2019 before the Division Bench of this Court and this Division Bench vide its order dated 24.04.2019 stating that in a departmental proceeding, if an allegation of unauthorised absence from duty was made, the disciplinary



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authority is required to prove that the absence is willful and in absence of such a finding, the absence will not amount to misconduct. Following that binding ruling which squarely applies to the facts of this case and to quash the impugned order passed therein by the 3rd respondent and further directed the concerned respondents to consider the petitioner's representation, dated 24.04.2019, made for disbursement of salary and other monetary benefits and also for relaxation of grant of family pension. Taking into account the undue hardship suffered by the petitioner and his mother on account of the traceability of her husband and after affording opportunity of personal hearing and to pass orders in exercise of powers under Rule 49A and 82 of the Tamil Nadu Pension Rules, 1978. The petitioner was also directed to send a representation along with the copy of the order to the concerned authorities. The family pension was granted to the petitioner and his sister died recently due to cancer and he had sent a representation on 12.07.2023 seeking for request to consider his request for compassionate appointment as per the Rules of Tamil Nadu Civil Services (Appointment of Compassionate



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Grounds Rules, 2023. As per this Rule 3 as follows:-

3. Eligibility for appointment – (1) The members of the family of the following categories of Government servants are eligible for appointment on compassionate grounds namely:- (a) Government servants including those who are under suspension who died in harness; (b) Government servants, who retired on medical invalidation, with not less than five years of left over service; and (c) Missing Government servants, who are declared to be dead with effect from a date anterior to the date of their superannuation, by a competent Court under Sections 107 or 108 of the Indian Evidence Act, 1872 (Central Act 1 of 1987).

7. The said application for appointment under these Rules shall be made within a period of three years from the date of death of the Government servant or from the date of retirement on medical invalidation or from the date of receipt of Court order declaring the missing Government servant as dead, under Section 107 or 108 of the

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Indian Evidence Act, 1872 (Central Act 1 of 1972). According to the petitioner, as per Section 108 – Burden of proving that person is alive who has not been heard for seven years, provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is on the person who affirms it.

8. Heard, Mr.C.Vediappan, learned counsel for the petitioner and Mr.V.R.B.Elamparithi, learned Additional Government Pleader appearing for the respondents and perused the materials placed before this Court.

9. The learned counsel for the petitioner submitted that though it has to be presumed that the petitioner's father is dead in the eyes of law after a lapse of seven years and once the petitioner's father has been



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acknowledged to be dead during the course of service, the petitioner as a dependent should be given an employment on compassionate ground and also for relaxation of age and other qualifications. It is further submitted that the object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to ride over the sudden crisis due to the death of the bread-earned which has left the family in penury and without any means of livelihood. The petitioner submits that he has no alternative remedy except to file this petition to seek for a direction to the respondents to consider his representation.

10. Mr.V.R.B.Elamparithi, learned Additional Government Pleader appearing for the respondents would submit that the death of the petitioner's father itself has not been confirmed by the competent Civil Court and only when a competent Civil Court declares that the petitioner's father is dead, further proceedings can be initiated. So far, the petitioner had taken only criminal proceeding and he had not approached



any Civil Court for appropriate orders. That being the case, there is no chance for considering the petitioner's claim.

11. It is to be seen that the petitioner's father left the house in the year 2009 and the petitioner approached the criminal Court only in the year 2011 and in 2015 appropriate orders have been passed and till date the petitioner has not chosen to approach the competent civil Court under the Evidence Act, 1872 to prove that the said person is dead and not obtained any appropriate orders for the civil death, the respondents cannot proceed further as his father is only non-traceable and also as per the petitioner, if his father was alive, he would have been retired from service in the year 2014. In the year 2002 itself the petitioner has completed his XII standard, at that time itself the he was a major. Therefore, on the ground of delay and laches itself this petition is liable to be dismissed.

12. The second ground is that till date the petitioner has not chosen



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to approach the competent Civil Court to declare the said person's death as a civil death as contemplated under Section 108 of the Evidence Act, 1872.

13. The third ground is that regarding the compassionate appointment, it is only to ride over the sudden demise and the circumstances and during that period itself the petitioner was having a qualification of XII standard has not stated or not approached the competent person regarding his claim and now he is 39 years and there is no provision for considering his case, at this juncture, when the petitioner has not produced appropriate documents to show that how he had travelled from the year 2009 to till date.

14. With the above observations, this Writ Petition is dismissed.

No costs.

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Speaking order : Yes/No

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