



W.P(MD)No.15528 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.03.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.15528 of 2020

N.Kalaiselvi

... Petitioner

Vs.

1.The Director General of Police,
O/o. Director General of Police,
Chennai-600 004.

2.The Deputy Inspector General of Police,
Ramanathapuram Range,
Ramanathapuram.

3.The Superintendent of Police,
Ramanathapuram District,
Ramanathapuram.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the first respondent vide his proceedings in Rc.No.261354/API(2)/2010, dated 20.03.2011 and the impugned order passed by the third respondent in P.R.No.126/2009, dated 28.05.2010 and set aside the same as illegal and further direct the third respondent to disburse the terminal benefits of the petitioner's husband.



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For Petitioner : Mr.K.Sivabalan

For Respondents : Mr.K.Balasubramani
Special Government Pleader

ORDER

Heard the learned counsel on either side.

2. The petitioner's husband Nagarajan joined the police department as constable in the year 1979. He absented himself from duty in the year 2009. Hence, charge memo under Rule 3(B) of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 was issued. The petitioner's husband did not appear for enquiry. Hence, he was removed from service. He submitted a mercy petition on 30.11.2010. That was also dismissed on 20.03.2011. The petitioner's husband failed to challenge the same. He died in the year 2016. Now, the petitioner has come forward to question the said orders.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned orders and allow the writ petition as prayed for.



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4. The respondents have filed counter affidavit and the Special Government Pleader took me through its contents. He raised three fold objections.

(i) The first objection is that the writ petition is hopelessly barred by laches.

(ii) The petitioner has no locus standi to maintain the writ petition.

(iii) Thirdly, when a member of the disciplined force deserts from duty, the disciplinary authority is left with no other option but to impose the punishment of removal from service, particularly, when the delinquent did not even respond to the charge memo. He pressed for dismissal of the writ petition.

5. I carefully considered the rival contentions and went through the materials on record.

6. It is true that the petitioner's husband did not question the impugned orders. But that would not mean that the petitioner cannot challenge the same. This is because if the impugned orders are set aside, the petitioner will be



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entitled to certain monetary and pensionary benefits. Since the petitioner's interests are at stake, the petitioner is definitely having locus standi. It is true that challenge is being mounted after a gap of almost a decade after passing of the impugned order. The doctrine of laches can be pressed into service if in the mean while certain developments had taken place and the parties have altered their position. Such is not the case here. The petitioner on the other hand has filed an affidavit stating that she will forego her claim for payment of arrears and that she will be satisfied if the benefits are paid to her from the date of this order. The affidavit filed by the petitioner is placed on record.

7. The moot question that arises for consideration is whether the respondents were justified in passing the order of removal from service. Admittedly, the petitioner's husband had served the department for almost 30 years. He had gone on medical leave from 27.07.2009 to 03.08.2009. It was further extended to 11.08.2009. Instead reporting for duty, he continued to remain absent from 11.08.2009. Since he did not report for duty for a period of 21 days, he was declared as deserter. Even thereafter, the petitioner's husband continued to remain unresponsive. That is why, the impugned orders came to be passed.



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8. My attention is drawn to the order dated 07.04.2022 made in *W.P.No. 14901 of 2014 (Kamalakannan Vs. the Deputy Commissioner of Police)*. It has been held therein that the punishment of 'dismissal/removal from service' nor 'compulsory retirement' should not be imposed for the charge of desertion.

9. Respectfully following the said order which incorporates various departmental circulars, I modify the order of punishment imposed on 28.05.2010 as one of retirement. Thiru.Nagarajan/petitioner's husband will be deemed to have retired from service on 28.05.2010. Since Nagarajan's mercy petition was dismissed on 20.03.2011 and he also did not challenge the same, the question of paying pension to him does not arise at all. The petitioner has also not come to the Court immediately. She has also filed an affidavit stating that she will be content if the benefits are paid to her with effect from the date of this order.

10. The Writ Petition is therefore disposed of by setting aside the order impugned in the writ petition and by declaring that the petitioner is entitled to payment of pensionary benefit to which she may be entitled with effect from 08.03.2023. The other benefits payable will be quantified and paid to the petitioner within a period of twelve weeks from the date of receipt of a copy of



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this order. The question of paying interest does not arise.

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11. The Writ Petition is allowed. No costs.

03.03.2023

Index : Yes / No
Internet : Yes/ No
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To

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G.R.SWAMINATHAN, J.



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