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W.P.(MD)No.21658 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**W.P.(MD)No.21658 of 2016**

**and**

**W.M.P.(MD)Nos.15475 and 15476 of 2016**

Arulselvi

... Petitioner

vs.

1.The Chairman,  
Tamil Nadu Electricity Board and  
Tamil Nadu Generation and Distribution  
Corporation,  
No.144, Anna Salai, Chennai-2.

2.The Superintending Engineer,  
Pudukkottai Electricity Distribution Circle,  
Tamil Nadu Electricity Board,  
Pudukkottai.

3.The Executive Engineer (Distribution),  
Tamil Nadu Electricity Board,  
Pudukkottai.

... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of



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India for issuance of Writ of Certiorarified Mandamus, to call for records relating to the impugned order of the 2<sup>nd</sup> respondent in கு.ஆ.எண். 713/65/நிபி2/உதவி3/கோ.ஒ.ந/2014, dated 05.09.2014 and to quash the same and to direct the respondents to provide family pension and other benefits to the petitioner.

For Petitioner : Mr.K.Anand

For Respondents : M/s.M.Parameswari

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### **ORDER**

This writ petition is filed for writ of Certiorarified Mandamus, to quash the impugned order dated 05.09.2014 of the 2<sup>nd</sup> respondent and to direct the respondents to provide family pension and other benefits to the petitioner.

2. This writ petition is filed by the wife of the absconding employee. The petitioner's husband namely N.Nagarajan was working as Commercial Inspector in the respondent Corporation. The marriage



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between the said employee and the petitioner was solemnized on 11.11.2002 and they have two children. The petitioner registered FIR on 24.02.2015 that the petitioner's husband is not traceable and Crime No. 85 of 2015 was registered as man missing. The petitioner submitted a representation, dated 16.04.2015, to the respondents 2 and 3 seeking family pension and other benefits. The 3<sup>rd</sup> respondent replied to the representation vide letter dated 18.06.2015 stating that her husband was removed from service for unauthorized absence vide order, dated 05.09.2014.

3. The 3<sup>rd</sup> respondent passed an order, dated 18.06.2015, stating that if the FIR was registered about the petitioner's husband as man missing, necessary action would be taken. Hence, the petitioner filed an appeal before the 1<sup>st</sup> respondent through RPAD, dated 26.06.2015 and the appeal was rejected on 24.07.2015. The reasons cited in the letter is that the family pension is applicable only to the missing persons and not to



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the persons who are already removed from service. Aggrieved over the same, the petitioner filed W.P.(MD)No.10081 of 2016 and this Court, vide order, dated 13.06.2016, has granted opportunity to the petitioner to challenge the order passed by the 2<sup>nd</sup> respondent, dated 05.09.2014. Thereafter, the petitioner sought the impugned order of punishment of removal from service, dated 05.09.2014 and the respondents served the same on 22.08.2016. However, the respondents have given only the photocopy and not the original copy.

4.The contention of the petitioner is that the impugned order of removal from service was passed without hearing the petitioner's husband and there was no notice issued to the petitioner's husband. Moreover, the petitioner's husband did not participate in the enquiry and an ex-parte order was passed. The petitioner's husband was missing from 27.11.2013 onwards. Therefore, the petitioner prays to quash the



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impugned order, dated 05.09.2014.

5. The contention of the respondents is that the present writ petition is filed belatedly and the impugned order was challenged belatedly. Moreover, the missing employee was already punished for three separate delinquencies, one among them is bribe to the tune of Rs. 300/- wherein the employee was imposed a punishment of stoppage of increment for a period of one year with cumulative effect. The other two delinquencies were unauthorized absence. The delinquent has absented twice without obtaining prior permission and in both the cases, stoppage of increment for one year with cumulative effect was granted. Since the said missing employee was inflicted with three punishments, this is the 4<sup>th</sup> time. Therefore, the respondents submitted that the delinquent employee frequently absented himself and therefore, the plea of the petitioner cannot be reconsidered. As per the G.O.(Finance) Par III



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Payment B.P. (Ch) No.233, dated 02.08.1991, family pension can be granted only to the missing employee but the delinquent was already removed from service 05.09.2014. The petitioner approached this Court after passing the order of punishment. Moreover, the FIR which was registered on 24.02.2015 for man missing is also after passing the punishment order. Therefore, the respondents prayed to dismiss the writ petition.

6. Heard Mr.K.Anand, learned Counsel appearing for the petitioner and M/s.M.Parameswari, learned Standing Counsel appearing for the respondents and perused the records.

7. It is an admitted fact by the petitioner as well as the respondents that the delinquent employee was absent from service from 27.11.2013



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onwards. The petitioner has registered FIR on 24.02.2015. The respondents have passed the impugned ex-parte punishment order of removal from service on 05.09.2014. Admittedly, the FIR is subsequent to the removal from service. The delinquent employee was not traceable from 27.11.2013 onwards. In such circumstances, when the family of the delinquent is approaching the respondent employer for family pension, the respondent employer is bound to reconsider the punishment order.

8. More so when both the petitioner as well as the respondents have accepted that till date the delinquent is not traceable. This writ petition is filed in the year 2016 and until today the employee is not traceable. When any person is not traceable for more than seven years, he ought to be considered as a dead person. On this angle also, the petitioner is entitled to be considered.



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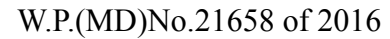
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9. The learned Counsel for the petitioner relied on the judgment rendered in W.A.(MD)No.1101 of 2013 reported in **2016 (1) CTC 698** and the relevant portion of the judgment is extracted here under:

*“24. As a matter of fact, the Government itself had taken note of the contingencies of this nature and amended the Tamil Nadu Pension Rules, 1978, by G.O Ms. No.540, Finance (Pension), dated 5.7.1995. Rule 49-A inserted by way of amendment, reads as follows:*

*"49-A. Benefits to the family of a disappearing Government servant - 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 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."*

10. Since both the parties have accepted that the delinquent is not traceable for more than seven years, this Court is of the considered opinion in the light of the judgment state supra, the respondents are



11. With the above said observation, the writ petition is allowed.

Index : Yes / No  
Internet : Yes  
NCC : Yes / No

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**S.SRIMATHY, J**

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