



W.P.No.19599 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2024

CORAM

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.19599 of 2021

and W.M.P.Nos.20890 & 20891 of 2021

T.C.Thenmozhi

...Petitioner

Vs.

- 1.The Additional Chief Secretary to Government,
Home Department,
Secretariat,
Chennai-9
- 2.The Principal Secretary to Government,
Social Welfare and Women Empowerment Department,
Secretariat,
Chennai-9
- 3.The Commissioner of Social Welfare,
No.1, Panagal Maligai Buildings 2nd Floor,
Jeenis Road,
Saidapet, Chennai-15.
- 4.The State Commissioner for the Disabled,



W.P.No.19599 of 2021

No.5, Lady Willington College Campus,
Kamarajar Salai,
Triplicane, Chennai-5.

5.The Director General of Police,
Director General of Prisons and
Correctional Services,
Whannels Road,
Egmore, Chennai-8

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, directing to call for the records leading to the impugned order imposing punishment of pension cut off Rs.250/-(Rupees Two Hundred and Fifty only) per month for a period of one year and to recover a sum of Rs.4200/-(Rupees Four thousand and Two hundred only) from the DCRG issued by the 1st respondent in G.O.(2D) No.146. Home (Prison-I) Department dated 03.03.2016 and quash the same and consequently direct the 1st respondent to treat the period of suspension from 11.06.1998 to 31.08.2006 as duty for all purposes as per Rule 54-B 1 (3) and (4) of Fundamental Rules.

For Petitioner : Mr.D.Sivaraam

For Respondents : Mr.M.Murali

Government Advocate



W.P.No.19599 of 2021

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ORDER

This petition has been filed by the petitioner challenging the orders issued by the 1st respondent in G.O.(2D).No.146 Home (Prison-I) Department dated 03.03.2016 and sought for quashing of the said order. The further relief sought is to treat the period of suspension from 11.06.1998 to 31.08.2006 as on duty for all purposes in terms of the Rule 54-B3 (3) and (4) of Fundamental Rules.

2.Through the impugned Government Order, punishment of cut in pension was imposed on the deceased husband of the petitioner besides ordering for recovery of a sum of Rs.4,200/- and the period of suspension i.e., from 11.06.1998 to 31.08.2006 was ordered to be regulated as Eligible leave/Extraordinary leave as per FR 54-B-1(5) & 7. The Government issued G.O.(D).1034 Home (Prison-I) Department dated 04.09.2018 regularizing the period of suspension as eligible leave/Extraordinary leave. In the meanwhile, the husband of the petitioner passed away in the month of November 2017. Thereafter, the death cum retirement benefits of the husband of the petitioner



W.P.No.19599 of 2021

WEB COPY

were released in favour of the petitioner in the year 2020 and it is thereafter, that the petitioner approached this Court by filing the present writ petition challenging the impugned order.

3.The brief facts of case that are relevant for disposal of the petition are as under:

While the petitioner's husband, was working in the Home Department of the 1st respondent, he was sent on deputation as an Administrative Officer, Government Rehabilitation Home, Selliampaati on 11.06.1998 and on certain allegations, the husband of the petitioner was placed under suspension on 11.06.1998 by the 3rd respondent. His suspension continued till 31.08.2006 i.e., the date of retirement of the petitioner on attaining the age of superannuation. However, the petitioner's husband was not allowed to retire from service on attaining the age of superannuation and he was continued in service by issuing a separate Government Order. However, finally through Government Order in G.O(D).No.975 Home (Prison-I) Department dated 26.08.2008, the suspension was revoked and the petitioner had retired from service with effect from 31.08.2006. Though, the petitioner



W.P.No.19599 of 2021

was placed under suspension as early as on 11.06.1998, the disciplinary proceedings were initiated by issuing a charge memo to the petitioner by the 4th respondent for the first time through Memo Na. Ka. No.8284/RHA (2)/97 on 01.06.2005, containing four charges. In response to the same, the husband of the petitioner submitted a representation dated 11.07.2005 and thereafter, submitted a detailed explanation on 22.06.2006 and on 28.07.2006. Thereafter, the disciplinary proceedings were concluded in the year 2016 when the impugned order came to be issued by imposing the punishment as noted above. Immediately, thereafter, the husband of the petitioner passed away in the month of November 2017. Aggrieved by the said Government Order dated 03.03.2016 the petitioner approached this Court by filing the present writ petition mainly on the ground of delay and also contending that the said delay has caused prejudice to the husband of the petitioner especially in the context of continued suspension for a prolonged period.

4. Though a specific contention is raised in the affidavit filed in support of the writ petition about the delay at every stage i.e., from the year 1998 to 2005 and also from 2005 to 2016, when the impugned order came to



W.P.No.19599 of 2021

be passed concluding the disciplinary proceedings, there is no explanation offered in the entire counter affidavit or in the impugned order for such delay. Further, said abnormal delay in initiation of the disciplinary proceedings by issuing charge memo in the year 2005, though, the husband of the petitioner was placed on suspension in the year 1998 and also abnormal delay of a decade from 2006 to 2016 in concluding the disciplinary proceedings. Further, in the disciplinary proceedings to intimate finding charge that out of four charges two charges were proved and one charge was partly proved and the fourth charge has held not proved. The punishment that was imposed on the husband of the petitioner is also cut in pension of Rs.2,250/- for a period of one year and ordered for recovery of Rs.4,200/- which is said to have been misappropriated by the petitioner's husband.

5.From the nature of punishment that was imposed, the charges appears to be minor in nature as it was not a major penalty. The charges that were proved against the petitioner's husband are also not of serious nature. The disciplinary proceedings were initiated against the husband of the petitioner who is under continued suspension for about 8 years, instead the



W.P.No.19599 of 2021

WEB COPY

respondent ought have concluded the disciplinary proceedings immediately after placing the husband of the petitioner under suspension. Assuming that the punishment that was imposed, is not contested by the husband of the petitioner, that would not have caused any prejudice the husband of the petitioner or the petitioner. It is only the continued suspension of the petitioner for a period of 8 years that caused great prejudice to the petitioner as well as her husband.

6.In the absence of any explanation either impugned order or in the counter affidavit filed by the respondent in the present writ petition, this Court is unable to accept and acknowledge the said abnormal delay in 18 years in concluding the disciplinary proceeding. It is only because of the negligence on the part of the respondents in concluding the disciplinary proceedings for such a long period, the husband of the petitioner was forced continue to be in suspension till the date of his superannuation on 31.08.2006. Treating the period of suspension as the leave for which the petitioner is entitled or as EOL cannot be said to be a part of punishment. The punishment that was imposed on the petitioner's husband is only a cut in pension and recovery of certain



W.P.No.19599 of 2021

amounts. Continuing the disciplinary proceedings for such prolonged period and continuing to keep the husband of the petitioner under suspension for about 18 years, would have caused great prejudice to the husband of the petitioner, especially because of the failure on the part of respondents in concluding the disciplinary proceedings. Thus, the prolonged suspension for more than 18 years and the delay in concluding the disciplinary proceedings for more than about 18 years, has caused great prejudice to the petitioner as well as husband of the petitioner. Time and again, this Court as well as Hon'ble Apex Court have considered the aspect of the delay in concluding disciplinary proceedings would cause great prejudice to the delinquent employee and held that such abnormal and unexplained delay in concluding the disciplinary proceedings should not be allowed to stand to cause prejudice to the delinquent employees who is not responsible for delay. This Court in the case of *A.Obaidhullah vs, The State of Tamil Nadu* reported in **2005 (2) CTC 380** has considered the very same aspect and held as under:

"19. One M.Senthur Pandian, Assitant Jailor, working at the relevant time in Central Prison, Chennai has filed O.A. No. 5298/1992 before the same Tribunal praying for quashing the disciplinary proceedings



W.P.No.19599 of 2021

issued by the Government in letter No. 45033/Ser.D/82-52, dated 23.5.90. The Tribunal after finding the inordinate delay (12 years) and after referring to the orders passed in the case of M.A. Khyum and S. Mahalingam by the very same Tribunal, allowed the application of M. Senthur Pandian and quashed the disciplinary proceedings. The Tribunal has also directed the Government to regularise the suspension period undergone by him, treating the period of suspension as one of duty for all purposes, with consequential increase in pensionary benefits. It is brought to the notice that the said order of the Tribunal has also been implemented by the Government."

7.In the light of the above, this Court has no hesitation to hold that the abnormal delay to conclude the disciplinary proceedings and also prolonged suspension of the husband of the petitioner has caused great prejudice and have an effect on the pensionary benefits and the family pension of the petitioner. But, for the inaction or negligence on the part of the respondent in concluding the disciplinary proceedings, the husband of the petitioner would not have been continued under suspension for such a



W.P.No.19599 of 2021

prolonged period of more than 8 years. In the above circumstances, this Court has no other alternative, except to conclude that prolonged suspension and delay in concluding the disciplinary proceedings had caused great prejudice to the petitioner as well as her deceased husband and the same is liable to be made good by passing appropriate orders. In the circumstances, the impugned order treating the period of suspension from 11.06.1998 to 31.08.2006 as leave/extraordinary leave and regularizing the same as such is bound to be declared and illegal and arbitrary.

8.In the light of the above discussion and facts and circumstances of the case, this Court is inclined to interfere with the punishment that was imposed on husband of the petitioner in the impugned order and to declare that the period of suspension is to be treated as on duty for the purpose of fixing the pension and other terminal benefits of the deceased husband of the petitioner. Accordingly, the impugned order is set aside by duly treating the period of suspension as on duty only for the purpose of pensionary and retirement benefit of the husband of the petitioner. Accordingly, the respondent is directed to work out the benefits that are payable to the



W.P.No.19599 of 2021

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petitioner in terms of the above order as expeditiously as possible at any rate within a period of 12 weeks from the date of receipt of at copy of this order and to pay all such amounts to the petitioner.

9.In the result, the writ petition stands partly allowed. Consequently, connected miscellaneous petitions are closed, if any. No costs.

05.06.2024

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Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order



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W.P.No.19599 of 2021

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