



WP.(MD).No.20173 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 29.02.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.20173 of 2023

N.Arunkumar

... Petitioner

Vs.

- 1.The Secretary,
Ministry of Public Health & Family Planning,
Government of Tamil nadu,
Secretariat Buildings, Chennai, Tamilnadu.
- 2.The Director,
Directorate of Public Health & Preventive Medicine,
359, Annasalai, DMS Complex,
Theynampet, Chennai, Tamilnadu.
- 3.The Deputy Director of Health Service,
Public Health Department,
Madurai, Tamilnadu.
- 4.The Block Medical Officer,
Government Primary Health Centre,
Chekkanoorani, Madurai.
- 5.The Chief Registrar of Birth and Death
for the State of Tamil Nadu
Annasalai, Chennai. ... Respondents
(R5 is suo motu impleaded vide Court order
dated 29.02.2024 in W.P.(MD)No.20173 of 2023
by LVGJ)



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the second respondent to give compassionate appointment to the petitioner, without death certificate of his missing father S.Natarajan, who is presumed to be dead as per law by the Court order in vide W.A. (MD)No.440 of 2020 in W.P.(MD)NO.12181 of 2018 dated 01.07.2020 along with the strength of Government order in vide G.O.Ms.No.18, Labour and Employment (Q1) Department dated 23.01.2020 by considering the petitioner representation dated 26.07.2023 to the second respondent for the reply of his official Letter R.No.2302077/E4/S3/2022 dated 12.04.2023.

For Petitioner	: Mr.P.Murughadasan
For Respondents	: Mr.J.John Rajadurai Government Advocate

ORDER

This Writ Petition has been filed for issuance of a Writ of Mandamus, seeking to direct the second respondent to give compassionate appointment to the petitioner, without death certificate of his missing father S.Natarajan, who is presumed to be dead as per law by the Court order in vide W.A.(MD)No.440 of 2020 in W.P.(MD)NO.12181 of 2018 dated 01.07.2020 along with the strength of Government order in vide G.O.Ms.No.18, Labour and Employment (Q1) Department dated 23.01.2020 by considering the



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petitioner representation dated 26.07.2023 to the second respondent for the reply of his official Letter R.No. 2302077/E4/S3/2022 dated 12.04.2023.

2.The petitioner's father, late S.Natarajan, worked as a Health Inspector in the Primary Health Center, Kamati, Pudupatti, Thirumangalam Taluk, Madurai district. While in service, he missed from 02.05.2003 and his whereabouts could not be traced thereafter. The petitioner has yet another sister named Shanmuga Selvi. The petitioner's mother, Tmt.Ponni, gave a complaint to the Superintendent of Police, Madurai on 25.06.2003 in reference number GDP/689/SPMD/03 with respect to the missing of Thiru S. Natarajan from 02.05.2003. On the direction of the Superintendent of Police, Madurai, the petitioner's mother gave a complaint to the Thirumangalam Police Station, subsequently. However, Thirumangalam police dragged on the matter for 9 years and thereafter, filed a FIR on 27.07.2012 in Crime No.480 of 2012 under the man missing case category.

3.Despite the petitioner's continuous correspondence to all the respondents about his father's man missing case, the second



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respondent initiated disciplinary action against the petitioner's father by proceedings in R.No.90014/DA/12/S2 dated 18.03.2013 and removed the petitioner's father permanently from service. The said proceedings came to be issued by the respondents without giving weightage to the petitioner's mother's man missing complaint. Hence, the petitioner's mother filed a writ petition in W.P.(MD)No.12181 of 2018 and this Court was pleased to pass an order on 10.09.2018 as follows:-

“ 10.Taking into consideration of the fact that the petitioner's husband has worked from 08.02.1982 to 31.03.2003 in the respondents / Department and he is found missing from 2003 and that the presumption is he dead, the terminal benefits due to him have to be paid to the petitioner. Accordingly, the respondents are directed to settle the terminal benefits due to the the petitioner's husband within a period of 3 months from the date of receipt of a copy of this order. In case the petitioner's husband appears, then the property of the petitioner will be attached apart from initiation of criminal and other proceedings against the petitioner. The Writ petition is disposed of accordingly.”

4.Even pursuant to the order passed by this Court in W.P. (MD)No.12181 of 2018, the respondents did not comply the order. Hence, the petitioner's mother filed a contempt petition in



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Contempt (MD)No.1183 of 2019, in which, the statutory notice was issued. While so, the respondent Health Department preferred a Writ Appeal with delay condonation in W.A.(MD)No.440 of 2020 against the order of this Court in W.P.(MD)No.12181 of 2018. In the meanwhile, the petitioner's mother obtained death certificate and legal heir certificate of Thiru.Natarajan from the competent authority based on the order passed by this Court in W.P.(MD)No. 12181 of 2018. Pending disposal of the said writ appeal, the petitioner's father's dismissal order was set aside by the second respondent/Director of Public Health and Preventive Medicine Department through his official proceedings in R.No. 022894/DA/S2/2020 dated 13.03.2020. In the meanwhile, the Writ Appeal in W.A.(MD)No.440 of 2020 was dismissed by the Hon'ble Division Bench of this Court on 01.07.2020. In the aforesaid order, the Hon'ble Division Bench of this Court was pleased to set aside the death certificate of the petitioner's missing father Natarajan issued by the Registrar of Births and Deaths of Thirumangalam municipality vide D-2019: 33-5249-000147 dated 02.09.2019, since death certificate is not necessary for a missing person.

5.That apart, the Hon'ble Division Bench also directed the



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Thirumangalam Police Station to issue non traceable certificate and thereafter, file a final report within 2 weeks. Based on the same, a final report was filed by the Sub-Inspector of Police, Thirumangalam Police Station before the learned Judicial Magistrate, Thirumangalam as action dropped in Crime No.480 of 2021-man missing case. The final report was accepted and accordingly, the order was also passed by the learned Judicial Magistrate, Thirumangalam vide R.C.S.No.05 of 2020 on 16.10.2020. Based on rule 49A of G.O.Ms.No.540, Finance Pension Department dated 05.07.1995 with respect to the benefit of the family of missing government servants as per the direction of the Hon'ble Division Bench of this Court in W.A.(MD)No.440 of 2020 dated 01.07.2020, the petitioner's mother applied for the terminal benefits and obtained terminal benefits on 31.01.2022 including pension.

6.In addition to that, an application for appointment on compassionate ground was also made by the petitioner as per G.O.Ms.No.18, Labour and Employment (Q1) Department dated 23.01.2020. Following which, the second respondent/Director of Health Department sought for the death certificate of the



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petitioner's father. Since the death certificate obtained by the petitioner's mother has been set aside by the Hon'ble Division Bench of this Court in W.A.(MD)No.440 of 2020 by order dated 01.07.2020, on 26.07.2023, the petitioner had sent a comprehensive representation to the respondents regarding the petitioner's father's man missing case and the order of the Hon'ble Division Bench in W.A.(MD)No.440 of 2020. Since the said representation was not considered, this Writ Petition came to be filed.

7.The learned counsel for the petitioner submitted that based on the order passed by this Court in W.P.(MD)No.12181 of 2018 dated 10.09.2018, the respondent Department has sanctioned all the terminal benefits to which the petitioner's father was entitled to and also has sanctioned family pension to the petitioner's mother. Further he submitted that the Hon'ble Bench of this Court in W.A.(MD)No.440 of 2020, which was preferred as against the order of this Court in W.P.(MD)No.12181 of 2018, the Hon'ble Division Bench was pleased to set aside the death certificate issued by the Registrar of Births and Deaths, Thirumangalam Municipality on 02.09.2019 recording the death of the petitioner's father



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S.Natarajan. In addition to that, the Hon'ble Division Bench held that, the said S.Natarajan is not a person who has died, but a person who is presumed to have died under section 108 of the Indian Evidence Act, 7 years after he went missing in May 2003. The learned counsel for the petitioner insisted that the respondents ought not to have sought for the death certificate of his father in view of the judgment of the Hon'ble Division Bench in W.A.(MD)No. 440 of 2010 to consider his application seeking appointment on compassionate ground and should have dispensed with the production of death certificate and on that basis, pressed for allowing the Writ Petition.

8.Per contra, the learned Government Advocate for the respondents produced G.O.Ms.No.324, Revenue and Disaster Management RA-3(2) Department dated 28.06.2023. The guidelines and procedures for ordering late registration of birth and death, which has not been registered within one year of his occurrence by the Executive Magistrate provided with an annexure to the said G.O. mandating that, in a case of missing persons for a period of 7 years, the delayed registration of death is to be carried out by the Civil Court order declaring as dead. Relying upon the same, the



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learned Government Advocate submitted that unless and until the petitioner is able to produce a Civil Court order declaring the petitioner's father as dead, the registration of death cannot be carried out. Until and unless the registration of death is carried out and the relevant death certificate is produced, the question of considering the petitioner's application for compassionate appointment will never arise and on that basis, he pressed for dismissal of the Writ Petition.

9.Heard the rival submissions made by the respective parties and anxiously perused the materials available on record.

10.This is a case where the legal heir of a missing person has made an application seeking compassionate appointment, whose application is kept pending endlessly without consideration for want of production of death certificate of the missing person by the applicant seeking appointment on compassionate grounds. The petitioner's father S.Natarajan missed from 02.05.2003 onwards. The petitioner's mother gave a complaint to the Superintendent of Police, Madurai on 25.06.2003 in Reference No.GDP/689/SPMD/2003. Following which, the Thirumangalam



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Police Station accepted and acknowledged the complaint given by the petitioner's mother on the direction of the Superintendent of Police, Madurai. However, a FIR came to be filed only on 27.07.2012 in Crime No.480 of 2012 under the category man missing case. Even then the Thirumangalam police did not proceed to investigate the matter and conclude the same by filing a final report before the competent Jurisdictional Magistrate Court. Hence the petitioner's mother filed W.P.(MD)No.12181 of 2018 seeking disbursal of her husband's terminal benefits by the respondents presuming that her husband is dead as per law. This Court by order dated 10.09.2018 in the aforesaid Writ Petition directed the respondents to presume that the said S.Natarajan is dead and thereafter, directed the respondents to disburse the terminal benefits due to him to his wife and other legal heirs who are entitled to. Based on the order passed by this Court in W.P.(MD)No. 12181 of 2018, the petitioner's mother in the interregnum period obtained death and legal heir certificate of missing S.Natarajan. While so, the respondents preferred W.A.(MD)No.440 of 2020 before the Hon'ble Division Bench of this Court. The Hon'ble Division Bench of this Court by judgment dated 01.07.2020, setting aside the death certificate obtained by the petitioner's mother, has



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passed an elaborate order and the relevant portion of the same is extracted as follows:-

“16. While going through the papers, we observed that on some ill advice, N.Ponni has applied for issuance of a Death Certificate for her husband - S.Natarajan by submitting an application before the Registrar of Births and Deaths, Thirumangalam Municipality to the effect that S.Natarajan died on 10.09.2018. We were wondering as to how the date of death was determined as '10.09.2018' and on a careful scrutiny of the application submitted by N.Ponni, it is seen that the date on which the learned Single Judge had disposed of the Writ Petition in W.P.(MD)No.12181 of 2018, viz., 10.09.2018 has been determined as the date of death of S.Natarajan. We are at loss to understand how the Registrar of Births and Deaths, Thirumangalam Municipality, issued such a Death Certificate.

17. Since the Death Certificate has been improperly obtained, we set aside the Death Certificate bearing Registration No.D-2019:33-5249-000147, issued by the Registrar of Births and Deaths, Thirumangalam Municipality, on 20.09.2019. We hold that S.Natarajan is not a person who has died, but a person who is presumed to have died under Section 108 of the Indian Evidence Act seven years after he went missing in May 2003.

18. After obtaining the Non-Traceable Certificate from Thirumangalam Town Police Station, Madurai



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District, four weeks time is granted to N.Ponni to approach the Director of Public Health and Preventive Medicine, Chennai and submit the indemnity bond as required under Rule 49-A of the Tamil Nadu Pension Rules, 1978. Thereafter, eight weeks time is granted to the authorities to disburse her legal entitlements. If S.Natarajan is found to be alive, the properties of N.Ponni can be attached apart from initiation of criminal and other proceedings against her.'"

11.By the aforesaid judgment, the Hon'ble Division Bench of this Court categorically setting aside the death certificate obtained by the mother as the one which has been obtained improperly, has held that the case of S. Nadarajan is not that of a person who has died, but a person who is presumed to have died under Section 108 of the Indian Evidence Act, that is, 7 years after the date from which he went missing in May 2003. In view of the same, this Court directed that, instead of death certificate, on the basis of the non-traceable certificate to be issued by Thirumangalam police station Madurai, the petitioner's mother could approach the Director of Public Health and Preventive Medicine, Chennai for grant of pensionary benefits. Pursuant to the same, adopting the directives of the Hon'ble Division Bench in the aforesaid judgment, the



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pensionary benefits were also sanctioned to the petitioner's mother.

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12.The learned Government Advocate drew my attention to a clarification issued by the Ministry of Home Affairs, Government of India in letter No.8/4/2011- VS (CRS) dated 26.09.2012 to all the Chief Registrar of Births and Deaths. The relevant portion of the said clarification issued by the Ministry of Home Affairs, Government of India to the State Governments is extracted as follows:-

“2.In response to above clarification, few State Governments have raised certain query on determination of place of death in such situation, where Court has not mentioned the place of death in its order. In view of the above, this Office has again referred the matter to Union Law Ministry for their advice. The Ministry has advised that:

When provisions of Section 13(3) of the RBD Act, 1969 provide for registration of death in such cases by the competent Court orders only and when 'date of death' may be mentioned as the date when plaintiff approached the Court, it appears to be prudent that 'place of death' may be that place where plaintiff approached the court. In case of ambiguity, suitable clarifications may be sought from the Court itself.”



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13.A combined reading of the guidelines and procedure for ordering late registration of birth and death enclosed in the annexure to G.O.Ms.No.324 dated 28.06.2023, the clarification letter of the Government of India dated 26.09.2012 and the judgment of the Hon'ble Division Bench of this Court in W.A. (MD)No.440 of 2020 dated 01.07.2020 would churn out the solution for the lis in hand as follows:-

(i)Mr.S.Natarajan is not the person who had died, but a person who is presumed to have dead under Section 108 of the Indian Evidence Act, 7 years after he went missing from May 2003.

(ii)In the case of missing persons, the question of obtaining death certificate from the competent authority will not arise. On the other hand, a non-traceable certificate has to be obtained from the jurisdictional police station based on which the legal heirs of the missing person could apply for legal heir certificate, terminal/pensionable benefits of the deceased, insurance claims and all the other claims pertaining to the missing person.

(iii)The various provisions of the Registration of Births and Deaths Act, 1969, do not provide for the registration of death of missing persons, who went missing for a period of 7 years.

(iv)Clause 12(3) of the Guidelines and Procedure for Ordering



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late registration of birth and death which has not been registered within a period of one year of its occurrence by the Executive Magistrate (not below the rank of Revenue Divisional Officer) provided in the annexure to G.O.Ms.No.324, Revenue and Disaster Management Department dated 28.06.2023, specifically provides that, in the case of missing persons for a period of 7 years, the delayed registration of death is to be carried out by the Civil court order declaring as dead. In the absence of specific provisions in the Registration of Birth and Death Act, 1969, which provides for the registration of death of a missing person, a death certificate cannot be issued by the Registrar of Births and Deaths for a missing person, but the Registrar of Births and Deaths can issue only a certificate of presumption of death for a missing person that too after a period of 7 years on the order passed by a Competent Court.

(v)As far as the determination of the date and place of death of the missing person, the clarification issued by the Ministry of Home Affairs, Government of India to all the Chief Registrars of Birth and Death vide letter No.8/4/2011- VS (CRS) dated 26.09.2012 shall be followed.



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14. In view of the said analogy, which has been derived as above, the Chief Registrar of Birth and Death for the State of Tamil Nadu, Annasalai, Chennai, is suo motu impleaded in this case as the fifth respondent. Section 8 of the Registration of Birth and Deaths Act, 1969 provides for the persons required to register births and deaths. Section 8 of the Registration of Birth and Death Act, 1969 is extracted as follows:-

“8. Persons required to register births and deaths.—(1) It shall be the duty of the persons specified below to give or cause to be given, either orally or in writing, according to the best of their knowledge and belief, within such time as may be prescribed, information to the Registrar of the several particulars required to be entered in the forms prescribed by the State Government under sub-section (1) of section 16,—

(a) in respect of births and deaths in a house, whether residential or non-residential, not being any place referred to in clauses (b) to (e) the head of the house or, in case more than one household live in the house, the head of the household, the head being the person, who is so recognised by the house or the household, and if he is not present in the house at any time during the period within which the birth or death has to be reported, the nearest relative of the head present in the house, and in the absence of any such person, the oldest adult male person present therein during the said period;



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(b) in respect of births and deaths in a hospital, health centre, maternity or nursing home or other like institution, the medical officer in charge or any person authorised by him in this behalf;

(c) in respect of births and deaths in a jail, the jailor in charge;

(d) in respect of births and deaths in a choultry, chattram, hostel, dharmasala, boarding-house, lodging-house, tavern, barrack, toddy shop or place of public resort, the person in charge thereof;

(e) in respect of any new-born child or dead body found deserted in a public place, the headman or other corresponding officer of the village in the case of a village and the officer in charge of the local police station elsewhere:

Provided that any person who finds such child or dead body, or in whose charge such child or dead body may be placed, shall notify such fact to the headman or officer aforesaid;

(f) in any other place, such person as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), the State Government, having regard to the conditions obtaining in a registration division, may by order require that for such period as may be specified in the order, any person specified by the State Government by designation in this behalf, shall give or cause to be given information regarding births and deaths in a house referred to in clause (a) of sub-section (1) instead of the persons specified in that clause."



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15. Section 10 of the aforesaid Act provides for the duty of certain persons to notify births and deaths and to certify cause of death and the same is extracted as follows:-

“10. Duty of certain persons to notify births and deaths and to certify cause of death.—(1) It shall be the duty of—

(i) the midwife or any other medical or health attendant at a birth or death,

(ii) the keeper or the owner of a place set apart for the disposal of dead bodies or any person required by a local authority to be present at such place, or

(iii) any other person whom the State Government may specify in this behalf by his designation, to notify every birth or death or both at which he or she attended or was present, or which occurred in such areas as may be prescribed, to the Registrar within such time and in such manner as may be prescribed.

(2) In any area, the State Government, having regard to the facilities available therein in this behalf, may require that a certificate as to the cause of death shall be obtained by the Registrar from such person and in such form as may be prescribed.

(3) Where the State Government has required under subsection (2) that a certificate as to the cause of death shall be obtained, in the event of the death of any person who, during his last illness, was attended by a medical practitioner, the medical practitioner shall, after the death of that person, forthwith, issue without charging any fee, to the person required under this Act to give information concerning the death, a certificate in the prescribed form stating to the best of his knowledge and belief the cause of death; and the certificate



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shall be received and delivered by such person to the Registrar at the time of giving information concerning the death as required by this Act.”

16. Section 13 of the aforesaid Act provides for the delayed registration of births and deaths and the same is extracted as follows:-

“13. Delayed registration of births and deaths.—(1) Any birth or death of which information is given to the Registrar after the expiry of the period specified therefor, but within thirty days of its occurrence, shall be registered on payment of such late fee as may be prescribed.

(2) Any birth or death of which delayed information is given to the Registrar after thirty days but within one year of its occurrence shall be registered only with the written permission of the prescribed authority and on payment of the prescribed fee and the production of an affidavit made before a notary public or any other officer authorised in this behalf by the State Government.

(3) Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order made by a magistrate of the first class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee.

(4) The provisions of this section shall be without prejudice to any action that may be taken against a person for failure on his part to register any birth or death within the time specified therefor and any such birth or death may be registered during the pendency of any such action.”



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17. Section 21 of the Act provides for the power of registrar to obtain information regarding birth or death and the same is extracted as follows:-

“21. Power of Registrar to obtain information regarding birth or death.—The Registrar may either orally or in writing require any person to furnish any information within his knowledge in connection with a birth or death in the locality within which such person resides and that person shall be bound to comply with such requisition.”

18. Section 22 of the Act provides for the powers of the Central Government to give directions to the State Governments and the same is extracted as follows:-

“22. Powers to give directions.—The Central Government may give such directions to any State Government as may appear to be necessary for carrying into execution in the State any of the provisions of this Act or of any rule or order made thereunder.”

19. A careful reading of the aforesaid provisions would reveal that the registration of the death of a missing person who has gone missing for a period of more than 7 years has not been provided in



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the aforesaid Act. However, in terms of Section 21 of the aforesaid Act, the Registrar is the competent authority to require any person to furnish any information within his knowledge in connection with a birth or death in the locality within which such person resides and that if the Registrar requires any information in this regard to any person, such person shall be bound to comply with such requisition. That apart Section 13(3) of the aforesaid Act provides for the delayed registration of birth and death, which mandates that such registration could be made only on an order made by a Magistrate of First Class or a Presidency Magistrate. Based on the said mandate, the Ministry of Home Affairs, Government of India by its clarification letter dated 26.09.2012 has clarified that registration of delayed death could be made only on the orders of a competent Court. Section 108 of the Indian Evidence Act, 1872 provides for the burden of proving that the person is alive, who has not been heard of for 7 years and the same is extracted as follows:-

"108. Burden of proving that a person is alive who has not been heard of for seven years.

[Provided that when] [Substituted by Act 18 of 1872, Section 9, for "When".] the question is whether a man is alive or dead, and it is proved that he has not been heard of 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 [shifted to] [Substituted by Act 18 of 1872, Section 9, for "on".] the



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person who affirms it.”

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20.Hence, it is needless to state that whenever a person is not heard for 7 years and more, under Section 108 of the Indian Evidence Act, he shall be deemed to have been dead. Once a person is deemed to have been dead by a competent Court then such information has to be furnished to the Registrar of Birth and Death and it is the power vested under Section 21 of the Registration of Birth and Deaths Act, 1969 to obtain such information. However, the aforesaid Act do not provide for the issuance of death certificate to missing persons.

21.In view of the same, in case of missing persons who has gone missing for a period of more than 7 years, on production of an order issued by a Competent Court declaring the said missing person is presumed to have died under Section 108 of the Indian Evidence Act, then the competent District Registrars of the Jurisdictional Revenue District shall issue a **“Certificate of presumption of death of the aforesaid missing person”**. The Registrar of Birth and Death is hereby directed to issue immediate instructions to all the Registrar District Registrars of Birth and



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Deaths across the State in this regard.

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22.Coming back to the lis in hand, the issue with respect to the missing case of S. Natarajan, that is the father of the petitioner has been seized by the Hon'ble Division Bench of this Court in W.A. (MD)No.440 of 2020. Hence, as far as this case is concerned, the competent Court would be this High Court. However, the legal heirs of missing persons can seek declaration of presumption of death of a missing person after 7 years from the date of missing before any other Competent Civil Court.

23.This Court in the case of ***N.Chandra Babu v. The Sub Inspector of Tamil Nadu and others*** reported in 2017 (3) CTC 493, has dealt with a case of renewal of passport wherein this Court has observed that when the High Court has seized of the quash proceedings then the expression concerned Court would be the High Court and not the trial Court. The relevant portion of the same is extracted as follows:-

“5. From a reading of the aforesaid Notification, in the opinion of this Court, the expression 'concerned Court' will mean the Court before whom the person is facing the prosecution. In this case, had there not



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been a quash petition pending, the 'concerned Court' would be the learned Judicial Magistrate No.V, Trichy before whom the petitioner is facing trial in C.C.No.21 of 2015. However, this Court, in exercise of its power under Section 482 of Cr.P.C., has admitted Crl.O.P. (MD)No.3533 of 2017 and has granted stay of all further proceedings in C.C.No.21 of 2015 on the file of Judicial Magistrate No.V, Trichy. Under such circumstances, the expression 'concerned Court' in the context of the present case will mean the High Court and not the Judicial Magistrate No.V, Trichy."

24. Even in this case, in the matter of man missing of Mr. Natarajan, the Hon'ble Division Bench of this Court already seized the matter in W.A.(MD)No.440 of 2020 and had declared that the said person is deemed to have been dead, since he is missing for more than seven years. In view of the same, the question of approaching the jurisdictional Civil Court again for declaring the death of the missing person will not arise. Now coming to the petitioner's application seeking appointment on compassionate ground on 23.11.2020, the same has been submitted well within a period of three years from the date of declaration of the presumption of S. Natarajan to have died by the Hon'ble Division Bench of this Court in W.A.(MD)No.440 of 2020 dated



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01.07.2020. In terms of G.O.Ms.No.18, Labour and Employment Department dated 23.01.2020, the application seeking appointment on compassionate ground should be submitted within a period of three years from the date of death of employee. Even in this case, the application has been duly made within a period of three years.

25.Hence, brushing aside the arguments putforth by the learned Government Advocate that the petitioner has to approach the competent Civil Court under Section 108 of Indian Evidence Act and obtain a decree declaring the death of missing person Mr.Natarajan, I hereby hold that the matter has already been seized by the Hon'ble Division Bench of this Court in W.A.(MD)No. 440 of 2020 and the presumption of death of the missing person has already been declared by the Hon'ble Division Bench of this Court.

26.With that observation, considering the fact that the application seeking appointment has been submitted within three years from the date of declaration of presumption death of the missing employee, I direct the respondents to consider the application of the petitioner seeking appointment on compassionate



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grounds and issue him with appointment order in a suitable post, which would commensurate to his educational qualification within a period of four weeks from the date of receipt of copy of this order.

27. Accordingly, this Writ Petition stands allowed. There shall be no order as to costs. Consequently connected miscellaneous petition is closed.

29.02.2024

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

- 1.The Secretary,
Ministry of Public Health & Family Planning,
Government of Tamil nadu,
Secretariat Buildings, Chennai, Tamilnadu.
- 2.The Director,
Directorate of Public Health & Preventive Medicine,
359, Annasalai, DMS Complex,
Theynampet, Chennai, Tamilnadu.
- 3.The Deputy Director of Health Service,
Public Health Department,
Madurai, Tamilnadu.
- 4.The Block Medical Officer,
Government Primary Health Centre,
Chekkanoorani, Madurai.
- 5.The Chief Registrar of Birth and Death
for the State of Tamil Nadu,
Annasalai, Chennai.



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L.VICTORIA GOWRI, J.

Mrn

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