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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.25704 of 2014
and
M.P.No.1 of 2014 and W.M.P.No.19805 of 2018

1.V.Ezhilarasi,
W/o.V.A.Vanmeeganathan

2.Elavarasi,
D/o.V.A.Vanmeeganathan

3.Vadivukkarasi,
D/o.V.A.Vanmeeganathan

4.Tamilarasi,
D/o.V.A.Vanmeeganathan

5.Elavendan,
S/o.V.A.Vanmeeganathan

6.Elamaran,
S/o.V.A.Vanmeeganathan ... Petitioners

Vs.

1.State of Tamil Nadu,
Represented by Secretary to Government,
Finance Department,
Fort St. George, Chennai.

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2.The Commissioner,
Kanchipuram Municipality,
Kanchipuram. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the order dated 18.07.2014 bearing Ref.ந.க.எண்.8559/2009/சி1 on the file of the 2nd respondent and quash the same and consequently direct the 2nd respondent to pay all the terminal benefits of Mr.Vanmeeganathan, as per G.O.Ms.No.43 dated 22.01.1991 to the petitioners.

For Petitioners	:	Mr.T.Sathiyamoorthy
For Respondents	:	
For R1	:	Mr.E.Vijay Anand Additional Government Pleader
For R2	:	Mr.P.Srinivas Standing Counsel

ORDER

In this Writ Petition, the petitioners who are the dependants of the deceased, one V.A.Vanameeganathan, have challenged the Impugned Order passed by the 2nd respondent on 18.07.2014 bearing Ref.ந.க.எண்.8559/2009/சி1.

2. By the Impugned Order, the 2nd respondent has terminated the services

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of the deceased V.A.Vanmeeganathan, who is the husband of the 1st petitioner and the father of the other petitioners (2nd to 6th petitioners).

3. The 1st petitioner's husband was employed under the 2nd respondent Municipality as a Bill Collector in the year 1976 and was thereafter promoted as a Junior Assistant in the year 1991. It appears that the 1st petitioner's husband went missing on 14.05.2010 and thereafter, his whereabouts were not known.

4. Under these circumstances, the petitioners family had also filed FIR on 26.07.2010 before B1 Sivakanchi Police Station, Kanchipuram in Crime No.535 of 2010.

5. The petitioners have also filed H.C.P.No.1628 of 2012 before this Court to produce the body of the said V.A.Vanmeeganathan. However, the 1st petitioner's husband, the said V.A.Vanmeeganathan was found untraceable. During the Interregnum, a Charge Memo was however issued on 18.11.2011 which has culminated in the Impugned Order dated 18.07.2014 whereby, the services of the said V.A.Vanmeeganathan had been terminated for his unauthorised absence between 14.05.2010 and 18.07.2014.

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6. Learned counsel for the petitioners would submit that under similar circumstances, the dependants of such missing Government Employees, are entitled to the benefit of Rule 49-A of the Tamil Nadu Pension Rules, 1978.

7. Learned counsel for the petitioners has also drawn attention to a decision of the Division Bench of this Court in W.A.(MD) No.1101 of 2013 rendered on 05.11.2015 in **"The Managing Director, State Express Transport Corporation Tamil Nadu Limited, Pallavai Salai, Chennai and others** Vs. **E.Tamilarasi"**, 2016 (1) CTC 698.

8. Defending the Impugned Order dated 18.07.2014, in the Counter Affidavit filed by the 2nd respondent, it has been stated that unless unauthorized absence is properly explained and justified by the 1st petitioner's husband namely V.A.Vanmeeganathan, Order dated 18.07.2014 cannot be interfered with.

9. It is therefore the contention of the 2nd respondent that the burden of proof is on the petitioners and therefore this Writ Petition is liable to be dismissed.

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10. That apart, G.O.Ms.No.43, dated 22.01.1991 stipulating that death-cum-retirement gratuity and family pension may be granted to the family of the missing employees after 2 years but that should be given only after death of person has to be declared. Here, the death of the person has not been declared so far legally. If the petitioners feel that the 1st petitioner's husband is no more or unheard for 7 years, they have to approach the appropriate Court to obtain the decree of civil death in terms of Section 108 of the Indian Evidence Act, 1872. The petitioners so far have not obtained such a decree before the appropriate Court.

11. The aforesaid Government Order envisages that "*Death-cum-Retirement Gratuity and Family Pension may be granted to the family of missing employees after two years ....*" which means that the death should be proved and declared and unless and until death is declared, the petitioners are not entitled. It is also mentioned that the Family Security Fund/Group Insurance Scheme amount shall be withheld till the disappearance of the employee is definitely established in terms of the Indian Evidence Act, 1872. Hence, prays for dismissal of the Writ Petition.

12. Having considered the submissions made by the learned counsel for

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the petitioners, learned Additional Government Pleader for the 1st respondent and the learned Standing Counsel for the 2nd respondent, this Court is of the view that this is a fit case for granting relief sought for by the petitioners.

13. There is a presumption under the provisions of the Indian Evidence Act, 1872 (since repealed) that if a person is not seen or found for a period of 7 years, the person is deemed to have died. This is a statutory presumption under Section 107 and Section 108 of the Indian Evidence Act, 1872.

14. Taking note of the above provisions and the decision of the Division Bench of this Court in **"The Managing Director, State Express Transport Corporation Tamil Nadu Limited, Pallavai Salai, Chennai and others** Vs. **E.Tamilarasi"**, in W.A.(MD) No.1101 of 2013 rendered on 05.11.2015, has held as under in Paragraph No.14:-

> ***"14. Thus, Section 108 is an exception to Section 107. If Section 107, provides the rule, Section 108, provides the exception. Once it is established that a person was alive within 30 years, the burden of proving that he is dead is on the person, who affirms it. This is the rule under Section 107. But, if it is proved that such a person, despite being alive within 30 years, 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 the person, who affirms that he is alive."***

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15. Rule 49-A was inserted by way of an amendment to the Tamil Nadu Pension Rules, 1978 vide G.O.Ms.No.540, Finance (Pension) dated 05.07.1995 in line with Section 107 and Section 108 of the Indian Evidence Act, 1872. The said Rule reads as under:-

> "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:
>
> i. a Complaint must have been lodged with the Police Station concerned and a report obtained that the Government servant has not been traced despite all efforts made by the Police; and
>
> ii. An Indemnity Bond must have been executed by the nominee or dependents of such Government servant to the effect that all payments shall be adjusted against the payment due to the such Government servant in case he appears later and makes any claim."

16. A reading of the above Rule indicates that when a Government Servant disappears leaving his family, the family of such Government servant are entitled to payment of dues of salary leave encashment, General Provident Fund and Special Family Pension-cum-Gratuity and after a lapse of 2 years, the

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family is also entitled to payment of dues of Death-cum-Retirement Gratuity and Family Pension in accordance with the nomination made by the Government servant while he/she in service.

17. Therefore, there is no merit in the Impugned Order dated 18.07.2014 passed by the 2nd respondent dismissing a missing Government employer from service. Consequently, the Impugned Order dated 18.07.2014 is liable to be quashed and is accordingly quashed with consequential relief.

18. The incident is of the year 2015. The family has been deprived of all the benefits that should have been granted to them within 2 years from the date of disappearance of the Government employee.

19. Considering the same, I direct the respondents to pay all the Terminal Benefits and regularize the Family Pension to the petitioners within a period of 6 months from the date of receipt of a copy of this order.

20. Needless to state, for the delay in payment of dues of salary leave encashment, General Provident Fund, Special Family Pension-cum-Gratuity *et cetera*, the petitioners shall be paid statutory rate of interest.

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21. This Writ Petition stands disposed of with the above observations. No costs. Connected Miscellaneous Petitions are closed.

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Neutral Citation : Yes / No

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<u>To</u>:

1.The Secretary,
Government of Tamil Nadu,
Finance Department,
Fort St. George, Chennai.

2.The Commissioner,
Kanchipuram Municipality,
Kanchipuram.

<u>C.SARAVANAN, J.</u>

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