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**Jeyabharatham Vs. Deputy Inspector General of Police (Technical Side)
Reserve Police (incharge) Police Radio Branch,**

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Reserve Police (incharge) Police Radio Branch,**

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Court : Chennai

Decided On : Mar-29-2010

Judge : K. Chandru, J.

**Acts : Evidence Act - Section 108; ;Tamil Nadu Police Subordinate Service (D and
A) Rules - Rule 3**

Appeal No. : W.P. No. 16665 of 2007 and O.A. No. 2326 of 2003

Appellant : Jeyabharatham

**Respondent : Deputy Inspector General of Police (Technical Side) Reserve
Police (incharge) Police Radio Branch,;**

Advocate for Def. : N. Senthil Kumar, AGP

Advocate for Pet/Ap. : G. Bala, Adv.

Disposition : Petition allowed

Judgement :

ORDER

K. Chandru, J.

1. The petitioner filed O.A. No. 2326 of 2003 before the Tamil Nadu Administrative Tribunal, seeking to challenge the order of the first respondent - Deputy Inspector General of Police, Reserve Police, Chennai -4 dated 10.03.2003 and for a consequential direction to the respondents to pay the petitioner pensionary benefits due to her on account of the disappearance of her husband S. Venkatasamy working as a Head Constable as well as the family pension without insisting for a declaration of death from a Court of law.

2. The Original Application was admitted on 09.07.2003. On notice from the Tribunal, the respondents had filed a reply affidavit dated 04.08.2003.

3. In view of the abolition of the Tribunal, the matter stood transferred to this Court and was re-numbered as W.P. No. 16665 of 2007.

4. It is seen from the records that the petitioner's husband was working as a Head Constable in the Police Telecommunication Branch at Nagapattinam since 20.06.1992. The petitioner's husband was sent to Madurai in connection with the Victory Conference meeting by a political party in which the Chief Minister of Tamil Nadu was to participate on 28th and 29th June 1992. His services were drawn for communication bandobust duty. He also reported for duty at Madurai on 27.06.1992. After completion of the bandobust duty, the Inspector General of Police, Law and Order, ordered to give two days rest to the men who were drawn for bandobust duty in their respective headquarters. They were also informed that on their report back in their place of work, they will be allowed to avail two days rest on 1st and 2nd July 1992 and then to report for duty on 03.07.1992.

5. It was the stand of the respondents that the petitioner's husband did not report for duty on 03.07.1992 as instructed by the incharge Sub-Inspector. He was also absent for duty without any leave and without prior permission. Since he was absent consecutively for 21 days, he was treated as a deserter by proceedings dated 24.07.1992 and in terms of the Police Standing Order 81. Subsequently, a charge memo under Rule 3(b) of the Tamil Nadu Police Subordinate Service Rules (D & A) Rules was framed against him for being unauthorisedly absent and allowing him to be declared as deserter. The respondents also claimed that an oral enquiry was conducted and he did not appear in the enquiry despite a notice being

pasted on the house of the petitioner's husband. Thereafter, a proved Minute was drawn and the husband of the petitioner was allegedly dismissed with effect from 03.07.1992 by an order dated 23.11.1993.

6. The petitioner however sent a letter to the respondents on 26.10.1992 stating that her husband who went for bandobust duty to Madurai did not report to Nagapattinam and her father also gave a complaint to the police. She also sent further representation on 08.10.1993 enclosing a First Information Report (FIR) which was registered in the Kariapatti Police Station in Crime No. 228 of 1995 as a man missing case. Thereafter, the petitioner sent several representations to the respondents. The Inspector of Police, Aruppukottai Taluk gave a certificate that despite their efforts, the case registered by them could not be detected. Since there was no clue in that case, the case was treated as un-detected.

7. In the meanwhile, the DIG Armed Reserve (Incharge) informed the Director General of Police that the petitioner's husband was dismissed from service and he was considered as a deserter. However, since the FIR was closed, the petitioner was directed to approach the Court for getting a death declaration that the petitioner's husband was no longer alive and thereafter, her request will be considered appropriately.

8. In view of the fact that the original enquiry proceedings said to have been held against the petitioner's husband was not available in the hands of the petitioner, this Court directed the respondents to produce the original file, which was also circulated for perusal by this Court.

9. It is seen from the file that none of the communications starting from the charge memo till the enquiry was ever served on the petitioner's husband. Even the order of dismissal dated 23.11.1993 does not show that the copy was ever served on the petitioner's husband. Therefore, the respondents routinely proceeded to deal with the case and after declaring the petitioner's husband as a deserter had also passed the order of dismissal. Such proceedings would have been valid if efforts were taken to serve the notices on the petitioner's husband in the manner known to law. On the contrary, subsequent to 03.07.1992, there was no trace of the petitioner's husband. Even the police on the FIR registered, could not trace him.

Therefore, the presumption that the petitioner's husband was dead can be validly made.

10. Section 108 of the Evidence Act sets out the burden of proving that person is alive who has not been heard of for seven years. The question whether a man is alive or dead, and if 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 the person who affirms it.

11. In the present case, even as per the stand taken by the respondents that the petitioner's husband was not traceable from 03.07.1992 and therefore, the seven year period from that time will end on 03.07.1999. It is unnecessary for the respondents to drive the petitioner to the Court of law for getting a declaration that her husband is dead. In such a contingency even the Court will have to proceed only on the basis of the materials already available with the respondents. Directing a widow to such a course of action will be nothing but harassment. It is not as if the respondents always direct persons aggrieved to go before the Civil Court and establish the death of an individual concerned.

12. In this context, Mr. G. Bala, learned Counsel for the petitioner produced a copy of the Government order in G.O. (Ms) No. 76 Animal Husbandry and Fisheries Department dated 12.06.2003, in which the Government on the strength of an FIR lodged by a widow and the subsequent closure of the file by the police as a sufficient proof for the death of a government servant.

13. Therefore, this Court is not inclined to accept the stand of the respondents that the petitioner must move the Court for getting such a declaration. On the basis of the available records, it can be safely calculated that the petitioner's husband at least is not alive and he can be presumed to be dead with effect from 02.07.1999. If that is held to be true, the other question whether the action of the respondents in declaring the petitioner's husband as a deserter and subsequently dismissing him from service on the ground that he proved to be a continued deserter also must fail. That dismissal order came to be passed ex-parte and without serving notices on him and he was said to be missing. Therefore, the respondent's action in proceeding with the enquiry and passing an order of penalty has no bearing on

the present case. Inasmuch as no attempt was made to serve on the petitioner's husband and there is no presumption that he was alive, the proceedings initiated by the respondents are non est in law.

14. Though the Supreme Court vide its judgment in LIC of India v. Anuradha reported in : (2004) 10 SCC 131 had held that though the death of a person can be presumed, but the date and time of the death cannot be presumed and the same will have to be proved before an appropriate civil Court. But in the present case, there is no difficulty that the presumption can be from the date on which the petitioner's husband disappeared namely 03.07.1992 and FIR was also lodged in the appropriate police Station. The question of proving any time or date of the death is not necessary since more than 18 years have elapsed since the date of lodging of the FIR.

15. Under the circumstances, the writ petition stands allowed and the impugned order of the respondents stand set aside. No costs. The respondents are directed to process the representation made by the petitioner and grant her family pension with effect from 02.07.1999. The respondents are also directed to pay the other dues payable towards the terminal benefits of the late S. Venkatasamy Head Constable 587 attached to Police Radio Branch. This exercise shall be undertaken within a period of eight weeks from the date of receipt of a copy of this order and necessary communication should be sent to the petitioner in this regard.

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