

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No. 2139 of 2006

ORDER:

Inspite of the matter being adjourned number of times there is no representation on behalf of the respondents though the name of Smt. Balarani appears as counsel for the respondent.

The present Writ Petition came to be filed by one Dr.Prabhavathi wife of late Dr.Y.V.Narasimha Rao, seeking issuance of writ of mandamus directing the respondents to release the arrears of salaries, pensionary and death-cum-retiral benefits of her husband with interest and costs.

The husband of the petitioner by name Y.V.Narasimha Rao worked as an Assistant Professor, Anesthesiology in Osmania Medical College and Hospital. Due to ill-health of his mother and to settle family problems he claims to have gone on leave. After availing leave between June 1989 to 31.12.1990 the husband of the petitioner approached the respondent for a posting. A show-cause notice was issued to him on 29.04.1993, for which he gave reply dated 30.07.1993. It is said that respondents herein, instead of giving him posting order issued G.O.Rt.No.262 dated 11.07.1997 removing him from service, as a counterblast to O.A.No.6743 of 1997

filed by him seeking issuance of posting orders. Questioning the termination orders he filed O.A.1121 of 1998. Both the O.As., were disposed of on 15.03.2002 by setting aside the G.O.Rt.No.262, Health, Medical and Family Welfare (A2) Department dated 11.07.1997 with a liberty to the respondents to examine the explanation of the applicant to the show-cause notice dated 29.04.1993 and pass appropriate orders as per rules and other relevant instructions of the Government. Since there was no action on the part of the respondents, the husband of the petitioner filed O.A. No.11130 of 2002. On 30.12.2002 the said O.A. was disposed of directing the respondents to reinstate the husband of the petitioner into service forthwith. However, the Tribunal said that the same will not preclude the respondents to take such disciplinary action as they deem fit in accordance with rules. Thereafter the respondents served a copy of G.O.Ms.No.481 dated 20.12.2002 confirming the punishment of removal from service imposed against the husband of the petitioner. The same was challenged in O.A.No.526 of 2003 before the A.P. Administrative Tribunal. By an order dated 24.01.2003, the Tribunal quashed the issuance of G.O.Ms.No.481 and consequently directing the respondents to reinstate the applicant into service forthwith as directed by the Tribunal in the order dated 30.12.2002 passed in O.A. 11130 of 2002. Challenging the same, the respondents herein filed

W.P.No.23303 of 2003 before this Hon'ble Court. By an order dated 05.11.2003 a Division Bench of this Court dismissed the said Writ Petition, but however held that the same will not preclude the petitioner therein i.e., the State of Andhra Pradesh from initiating the disciplinary action against the respondent therein in accordance with Rules 20 and 21. While things stood thus, the petitioner herein who is the wife of the Officer, filed the present Writ Petition seeking release of the arrears of salary, pensinoary, death-cum-retiral benefits with interest.

The learned counsel for the petitioner submits that pending the Writ Petition the husband of the petitioner died on 08.02.2005. Such being the position, the question of proceeding further with the disciplinary enquiry or initiating any other action against the husband of the petitioner as per rules would not arise. Hence, he submits that the petitioner, who is the wife of the Officer, is entitled for all the benefits.

The same was opposed by the Government Pleader contending that pursuant to the above interim orders of the Hon'ble High Court, the husband of the petitioner was reinstated into service and posted at S.V.Medical College, Tirupathi vide Proceedings No.4779/E11A/89 dated 08.02.2005. In view of the above, he submits that since the disciplinary proceedings against him are already concluded, which resulting in

removing him from service, the question of granting relief sought for in the petition would not arise.

It is to be noted that though the husband of the petitioner was removed from service, the same was set-aside by the Tribunal in O.A.No.526 of 2003. While setting aside the same, the Tribunal further directed the respondents to pass appropriate orders on the explanation submitted by the appellant by giving proper and cogent reasons. The said order of the Tribunal was passed on 24.01.2003. Challenging the said order, the respondents filed W.P. No.23303 of 2003 before this Court. Pending the said Writ Petition, the husband of the petitioner died on 18.01.2005. This Court while disposing of the Writ Petition confirmed the orders of the Tribunal, holding that the same will not preclude the petitioner therein from initiating disciplinary action against the respondent in accordance with rules. Issue identical to the case on hand came up for consideration before the Apex Court in **Basudeo Tiwary v. Sido Kanhu University and others**^[1]. Dealing with the said aspect, the Apex Court held as under :

“The appellant has since demised during the pendency of these proceedings, no further direction either as to further inquiry or reinstatement can be given. We declare that the termination of the appellant by the respondent as per the notification referred to by us is invalid. Consequently, it would be deemed that the appellant had died in harness. Needless to say that the appellant would become entitled to the payment of arrears of salary from the date of termination of his services up to the date of his death on the basis of the last pay drawn by him.”

In view of the above judgment and also since no proceedings are initiated pursuant to the orders of this Court or the orders of the Tribunal, it is to be held that the husband of the petitioner died in harness. Hence, the petitioner, who is the legal heir of Dr. Y.V.Narasimha Rao, would be entitled to all the monetary benefits, which her husband is entitled to.

Accordingly, the Writ Petition is allowed. No order as to costs. As a sequel to it, miscellaneous petitions pending if any in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Date:21.12.2015

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^[1] (1998) 8 SCC 194