THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.6203 OF 2002

ORDER:

This writ petition is filed seeking to issue a writ of *Mandamus* to declare that Sri N.D.Naik E.256066, Driver as having died while in service on 08.02.2001; and further, to direct the respondents herein to provide employment on compassionate grounds to the petitioner by setting aside proceedings P1/255(8)2002-RM.N, dated 21.3.2002, of respondent No.2.

2. Case of the petitioner is that while her husband – N.D.Naik, E.256066, Driver was working at Kodad Depot, he was removed from service on the ground of unauthorised absence vide proceedings No.P1/1(42)/98-KDD, dated 30.6.1999, of respondent No.3. He preferred an appeal against the order of removal and consequent on its rejection, a review appeal was preferred to respondent No.2. Respondent No.2, vide proceedings No.PA/19(4)/2000-RM NLG, dated 13.2.2001, considered the appeal modifying the penalty of removal to that of deferment of increment for a period of two years with cumulative effect treating the period from the date of removal till he reported for duty as 'Not on duty' and posted to Yadagirigutta Depot. Unfortunately, her husband expired on 08.02.2001 due to snake bite leaving her and three minor children aged 11 years, 9 years and 7 years respectively. The petitioner made representations to the authorities concerned and since there was no communication, she made a representation to respondent No.4, who in turn rejected her representation without assigning any reasons and the said order was communicated to the petitioner by the Personnel Officer, A.P.S.R.T.C., Nalgonda Region vide letter, dated 21.3.2002. Respondent No.2 had set aside the order, dated 30.6.1999, by which time her husband was

alive. The cause of action will not get abated just because the workman died during the pendency of disposal of the appeal, and as such, the workman shall be deemed to have been died while in service, as per the proceedings of respondent No.2, and the legal representatives shall be entitled to get all the service benefits eligible for an employee who died while in service. Hence, she filed the present writ petition.

3. Counter-affidavit is filed on behalf of the respondent Corporation stating that the husband of the petitioner was removed from service on 30.6.1999 for his unauthorised absence from his duties from 05.10.1998 to 18.10.1998. Thereupon, he preferred an appeal to the Deputy Chief Traffic Manager after a lapse of seven months. The period of limitation for preferring an appeal is two months from the date of receipt of the order. Therefore, the appellate authority rejected the appeal on 29.12.2000, as being barred by time. Thereupon, he preferred a review petition to the Regional Manager, Nalgonda. During the pendency of the appeal, he died on 08.02.2001 and his death was not brought to the notice of the authorities including the Regional Manager, Nalgonda. Without noticing the fact that the review petitioner died on 08.02.2001 and consequently, the review petition has to be abated, the Regional Manager considered the review petition and passed an order, dated 13.2.2001, modifying the penalty of removal to that of withholding of increment for a period of two years with cumulative effect besides treating the period from the date of removal till he reports for duty as 'Not on duty' and directing the petitioner's husband to report to the Depot Manager, Yadagirigutta within one week from the date of receipt of that order failing which, the order stands cancelled.

The petitioner made a representation, dated Nil, to the Regional Manager, Nalgonda requesting him to declare that her husband died while in service and for settlement accordingly. Though the review

order does not speak of “reinstatement”, the petitioner contended that reinstatement amounts to taking back of the removed employee to his original position duly treating the removal order as set aside. Her representation was considered and through proceedings, dated 21.3.2002, she was informed that her request was not accepted by the Executive Director.

It is further stated that since her husband died on 8.2.2001 and as he was not in service by the date of his death, the petitioner is not entitled for any benefits. All the settlement dues were paid to the petitioner.

The petitioner made a representation to appoint her on compassionate grounds under the Bread Winner Scheme, but since there is no provision in the scheme to provide employment to the dependents of the deceased employee, who was not in service by the date of his death, her request could not be accepted, and hence, prayed to dismiss the writ petition.

4. Heard both sides.

5. It is to be seen that the impugned order is vague and it does not convene meaning and the same was not passed on the ground that the petitioner’s husband was not in service on that date. In view of the same, on the sole ground that the impugned order does not contain any reasons, the impugned order is liable to be set aside.

6. Learned Standing Counsel appearing for the respondent Corporation states that since by the time the review petition was allowed and order of reinstatement was passed, husband of the petitioner was not in service and as such, the scheme for appointment on compassionate grounds is not applicable.

7. No doubt, the learned Standing Counsel for the respondent

Corporation produced a Notification bearing No.PD-02/2015, dated 10.02.2015, issued by the respondent Corporation regarding “Bread Winner Scheme”, which states that the dependants of the deceased employees, who died while in service during the ban period from 01.01.1998 to 04.01.2013 can apply as one time measure for consideration of their cases as per the scheme envisaged. Though technically, the husband of the petitioner was not in service on the date of his death, subsequently, review application was allowed and there is an order of reinstatement. Since fresh scheme was framed and admittedly, the respondent Corporation state that from 01.01.1998 to 04.01.2013, there was a ban regarding appointments on compassionate grounds and as an one time measure, the dependants of the deceased can apply afresh.

8. Learned Standing Counsel also relied upon a decision reported in **General Manager, State Bank of India and others v. Anju Jain**[1] and stated that past conduct of an employee is also a ground for appointment on compassionate grounds. But, the Apex Court, while considering the said issue, has specifically referred to the scheme wherein the scheme provides that for appointment on compassionate grounds, past conduct of the employee can be taken into account, but in the present case, the scheme, which is produced by the learned Standing Counsel for the respondent Corporation in the aforementioned notification, does not contain any such condition. As such, that decision cannot be made applicable to the facts of the present case. Judgments cannot be read as statutes. They have to be considered in the context they were rendered and in the present scheme, which is provided as one time measure by the respondent Corporation, no such condition is prescribed. In view of the same, it is open for the petitioner to make an application as per the new scheme in the Notification, dated 10.02.2015, and the respondent Corporation shall consider the same in accordance with the scheme and pass

appropriate orders thereon within a period of eight (8) weeks from the date when the petitioner makes such an application.

9. With the above direction, the Writ Petition is disposed of. There shall be no order as to costs.

10. Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

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JUSTICE A.RAJASHEKER REDDY

Date: 10.09.2015
AMD

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[1] (2008) 8 Supreme Court Cases 475