

HON'BLE SRI JUSTICE M.S.K. JAISWAL

WRIT PETITION No.4491 of 2004

ORDER:

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This writ petition is filed under Article 226 of the Constitution of India, questioning the dismissal order of the husband of the petitioner dated 03.12.2001 and sought for a direction to the respondent to disburse the retiral benefits of the husband of the petitioner and to fix the family pension.

2. The husband of the petitioner, by name G.Thirupathi Rao, worked as wireman in the respondent-University for about 20 years, and as he involved in a criminal case, he was placed under suspension and framed the following charges:

- i) The Station House Officer, Nacharam Police Station has reported that a Criminal Case under Sections 420 and 489 IPC has been registered against him and that he was also confined to Central Prison, Hyderabad from 23.03.1999 to 06.04.1999;
- ii) A memo was issued by the University Engineer on 20.01.1993 for not attending the duties/absconding and a Show Cause Notice was also issued on 14.03.1983 indicating punishment of down grading the pay scale;
- iii) He was awarded a punishment of stoppage of one annual grade increment without cumulative effect;
- iv) A memo was issued for faulty action resulting in burning of Air Conditioner on 08.03.1987;
- v) A memo was issued on 25.02.1995 for irregular attendance and absent for (12) days amounting to dereliction of duty;
- vi) He was placed under suspension for circulating fake notes as reported by the Deputy Commissioner of Police, Hyderabad. However this case was settled and he was acquitted after a period of over (7) years;
- vii) And thus it is seen that his conduct and activity out side the University are suspect;

3. On the above charges, the husband of the petitioner was directed to submit his explanation and he submitted his explanation. The Enquiry Officer, having considered the explanation given by the husband of the petitioner and the material placed on record held that the charges framed against the husband of the petitioner were proved.

Basing on the enquiry report, the husband of the petitioner was issued show cause notice proposing the punishment of removal for which, the petitioner submitted his explanation. Finally, by proceedings dated 03.12.2001 the respondent issued termination proceedings. It is stated that subsequently, the husband of the petitioner was killed on 14.11.2002.

4. It appears that the order of dismissal has not been challenged by the husband of the petitioner-employee. The petitioner being the wife of the deceased employee made a representation to the respondent to appoint the son of the deceased employee on compassionate grounds, and the same was rejected.

5. The contention of the respondent-University is that the legal heirs of the employee, who has been dismissed from service and thereafter died subsequently cannot seek appointment on compassionate grounds, apart from that, after dismissal from service on 03.12.2001, no steps have been taken challenging the dismissal order by the deceased employee, who died subsequently on 14.11.2002, therefore, the request of the petitioner to consider the case of appointment on compassionate grounds cannot be accepted.

6. The writ petition is filed by the wife of the deceased employee of Osmania University who has been dismissed from service on 03.12.2001 after conducting regular enquiry in which the deceased employee participated. Principles of natural justice were duly observed. The Enquiry Officer found the deceased employee guilty of the charges, stated supra. He was working as an Electrician. The substantive allegation against the employee was for his conduct

outside the employment. He was facing criminal prosecution for the offence under sections 420 and 489 IPC in a crime registered by Nacharam Police Station, due to which the employee was arrested on 23.03.1999 and was released on bail on 06.04.1999. In view of this, the employee was suspended from service and departmental enquiry was initiated. However, even before the employee could be tried for the said offences, he was murdered on 14.11.2002, due to which, the criminal case stood abated. The departmental enquiry was already concluded by then and on 03.12.2001 itself the employee was dismissed from service. He was alive nearly for one year after his dismissal. The employee did not prefer any appeal aggrieved by the said dismissal.

7. The criminal case against the employee was with regard to allegation that he was found in possession of fake currency notes. This was not the first time that he was suspected and arrested for the said offence. It is on record that even in the past, on a similar charge of being in possession of fake currency notes, the employee was charge sheeted as long back as on 01.09.1987. The offence alleged therein was punishable under section 489 IPC. He was suspended and that case was went on for nearly for 7 years. Ultimately, the employee was acquitted in that criminal case and consequently in proceedings No.472/21/82/Est.III, dated 03.02.1994 the employee was reinstated by treating the suspension period of about 7 years as on duty. It is also on record that subsequently on completion of certain specified years of service, the consequential benefits, such as, *ad hoc* promotion and special grade scales were given to the employee. However, as already noticed, he was once again apprehended on similar charge on 23.03.1999.

8. In view of the death of the employee, his wife appears to have made a representation for certain benefits, including compassionate appointment, but same were negated on the ground that no benefits

can be extended to a deceased employee who was already dismissed from service nearly a year prior to his death. Hence the wife filed the present writ petition questioning the dismissal order of her husband from service and also for consequential retiral benefits, including the family pension.

9. The contention of the petitioner is that the wife of the deceased employee is entitled to the family pension, gratuity and other terminal benefits which were wrongly denied to her. It is further contended that her husband could not challenge his dismissal order due to health grounds. However, within a year after his dismissal, he was murdered. The petitioner further contends that it is the S.I.of Police of Nacharam P.S who bore grudge against the deceased employee due to civil disputes, and therefore, the deceased employee was falsely implicated in a case and not being satisfied therewith, the S.I.of Police has also informed the University Authorities about his involvement, arrest, detention etc., which lead to initiation of departmental proceedings, including placing the employee under suspension.

10. On the other hand, the learned counsel for the respondent-University submits that out of total service of about 20 years, the employee was under suspension for nearly 11 years and even during course of employment, he committed certain acts of omissions and commissions which lead to taking action against him and imposing punishment, such as, withholding of one annual grade increment and also downgrading him in the pay scale. The learned counsel further contended that the allegation of the writ petitioner that it is the S.I.of Police, Nacharam P.S who is behind this episode is incorrect for the reason that as long back as in the year 1987 a similar charge was laid against the employee and he was under suspension for about 7 years and was ultimately reinstated in the year 1994 on being acquitted of the said charges by a criminal court. At that time, the reporting officer was then the Deputy Commissioner of Police and the present S.I.of

Police was nowhere in the picture. The learned counsel therefore submits that the S.I. of Police whatever may be dispute between him and the deceased employee did not in any way influence the departmental enquiry and except furnishing information to the University Authorities about involvement, arrest and detention of the employee in a criminal case, the S.I. of Police did nothing more. The learned counsel further submits that even though the employee was alive for about a year after his dismissal, he did not question the punishment. The learned counsel further submits that the claim of the writ petitioner/wife that due to health grounds, her husband did not pursue his legal remedies during his lifetime questioning his dismissal order is also without substance for the reason that it is not that the employee died due to any disease, but has met a violent death on 14.11.2002. Therefore, the laches on the part of the deceased employee speaks for itself and the wife cannot challenge the dismissal order, that too, in a writ petition without exhausting the remedies of appeal, revision or approaching the Industrial Tribunal. In support of these submissions, the learned counsel for the University relied upon certain authorities which shall be referred to hereinafter.

11. Having perused the material on record and the impugned proceedings, what is noticed is that the admitted fact is that the deceased employee was suspended from service for the second time in 1999 and ultimately dismissed on 03.12.2001. He died on 14.11.2002. He did not challenge his dismissal in any of the Forums when he was not granted any terminal benefits. When the employee who is legitimately entitled to any benefits springing out of his employment did not take any steps during his lifetime, the wife of the employee after his death, cannot claim that she is entitled to family pension, in view of the fact that the deceased employee himself was not given any pension in view of his dismissal from service even before his death and which became final. The Enquiry Officer has

conducted enquiry by following due procedure and ample opportunity was afforded to the deceased employee and by considering the material on record, the Enquiry Officer found the employee guilty and consequentially the disciplinary authority passed dismissal order on 03.12.2001.

12. Absolutely no material or circumstances shown to exist for interfering with the dismissal order which is based upon the involvement of the employee in a criminal case wherein he was alleged to be in possession of fake currency notes. As already stated, even in the year 1987, a similar charge was made against the employee by the Deputy Commissioner of Police and he was suspended at that time and criminal case was went on nearly for 7 years and after his acquittal therein, the employee was reinstated on 03.02.1994. Even before the present criminal trial is concluded, the employee died nearly one year after he was dismissed from service. The contention of the writ petitioner that her husband was falsely implicated in the present case by the S.I.of Police, Nacharam P.S in view of certain civil disputes cannot be said to be well founded for the reason that even in 1987 there was similar charge against the deceased employee and at that time, the present S.I.of Police did not have any role.

13. In view of the above, since the enquiry is conducted by following principles of natural justice, I see no reason to interfere with the impugned proceedings culminating in dismissal of the husband of the writ petitioner from service.

14. The next aspect of the matter is as to whether the writ petitioner can be given the terminal benefits, such as, family pension, gratuity etc.

15. The learned counsel for the petitioner submits that the petitioner being wife of the deceased employee is entitled to all retiral benefits of her husband, and that even a dismissed employee who

subsequently died is entitled to pension/family pension or gratuity, and in support of his contention, he relied upon the following decisions:

16. In ***State of Jharkhand v. Jitendra Kumar Srivastava***^[1]

wherein the Hon'ble Supreme Court held as under:

“It is an accepted position that gratuity and pension are not bounties. An employee earns these benefits by dint of his long, continuous, faithful and unblemished service. It is thus a hard earned benefit which accrues to an employee and is in the nature of “property”. This right to property cannot be taken away without the due process of law as per the provisions of Article 300-A of the Constitution of India.

A person cannot be deprived of the pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant State Government to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.”

17. In ***State of W.B v. Haresh C. Banerjee***^[2] the Hon'ble

Supreme Court held as under:

“Pension is not a bounty payable on the sweet will and the pleasure of the Government and to receive pension is a valuable right of a government servant is a well-settled legal proposition. The question in the present case, however, is not about the deprivation of the said right by the Government by an executive order but is about the constitutional validity of Rule 10(1) providing for withholding of pension or part thereof in certain cases.”

18. In ***Y.P. Sarbhai v. Union Bank of India***^[3] the Hon'ble

Supreme Court held as under:

“It is settled law that a person who is dismissed from service is entitled to get only the provident fund but no gratuity.”

19. The above authorities no doubt lay down the undisputed proposition of law that an employee on his retirement is entitled to

gratuity, pension and other benefits which cannot be denied. However, the authorities cited do not support the contention of the petitioner to the extent that even a dismissed employee who subsequently died is entitled to pension/family pension or gratuity. In ***Y.P.Sarbhai v. Union Bank of India*** (3 supra) it is held that the dismissed employee is entitled to get only the provident fund but not gratuity.

20. On the other hand, the learned counsel for the respondent University submits that the petitioner is not entitled for any benefits except the provident fund, if any, subscribed by the employee during his service. The learned counsel also contended that the writ petitioner has approached the Court belatedly and there is no justifiable reason for the delay. It is submitted that when the deceased employee was dismissed from service on 03.12.2001, he died on 14.11.2002. The dismissal order was not challenged by the employee during his lifetime, but the present writ petition came to be filed on 08.03.2004, i.e., nearly 1½ years after the death of the deceased employee and 2½ years after his dismissal. In support of his contentions, the learned counsel for the respondent-University relied upon the following authorities:

21. In ***Uttaranchal Forest Development Corporation V. Jabar Singh*** ^[4] the Hon'ble Supreme Court while considering the availability of alternative remedy and without exhausting the same entertaining the writ petition by the High Court held as under:

“The workmen have not made out any exceptional circumstances to knock the door of the High Court straightaway without availing the effective alternative remedy available under the Industrial Dispute Act. But the dispute relates to enforcement of a right or obligation under the statute and a specific remedy is, therefore, provided under the Statute. The High Court should not deviate from the general law and interfere under Article 226 of the Constitution except when a very strong case is made out for

making a departure.”

22. In ***Karnataka Power Corpn.Ltd. v K.Thangappan***^[5] the Hon'ble Supreme Court held as under:

“Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court.”

23. As noticed above, the employee was dismissed from service. He was alive for about a year after his dismissal. No pension was granted to him. When the employee being not entitled to any pension in view of his dismissal, the wife cannot be said to be entitled to family pension.

24. Therefore, while sustaining the order dismissing the husband of the petitioner from service what is felt desirable is that the writ petitioner should approach the Authorities by filing an application claiming provident fund, if any subscribed by the deceased employee during his service, and such other benefits to which a deceased employee would have been entitled had he been alive even after he being dismissed from service, and the Authorities shall consider the same and grant such benefits, if not already paid.

25. In the result, the Writ Petition is disposed of directing the writ petitioner to file an application before the Registry of the respondent University within a period of one month from today, and on filing such application, the respondent-University shall consider and pass appropriate orders thereon, in accordance with law, within a period of one month thereafter. In the circumstances, there shall be no

order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: .02.2016

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[\[1\]](#) (2013) 12 SCC 210

[\[2\]](#) (2006) 7 SCC 651

[\[3\]](#) (2006) 5 SCC 377

[\[4\]](#) (2007) 2 SCC 112

[\[5\]](#) (2006) 4 SCC 322