

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION No.25828 of 2016

Between:

1. The State of Andhra Pradesh rep. by its Special Chief Secretary to Government, Environmental Forest Science and Technology Department, Secretariat Buildings, Hyderabad, and others.

PETITIONERS

And

1. Smt. D. Shahara Banu, W/o. Late P.M. Basha, Forest Range Officer, Rayachoty, Government Servant Office of the Medical Superintendent, Government General Hospital Ananthapur, R/o. Plot No.52, Gowrav Homes, Pandit Nagar, Near American Nurshing School, Ananthapur – 515001, and another.

RESPONSENTS



THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION No.25828 of 2016

ORDER: (Per Hon'ble Sri Justice V. Ramasubramanian)

The State of Andhra Pradesh has come up with the above writ petition challenging the order passed by the A.P. Administrative Tribunal, directing the State to settle all pensionary benefits of a deceased Forest Range Officer.

Heard learned Government Pleader for Services (A.P) for the writ petitioners and Mr. Syed Mushtaq Ahmed, learned counsel for the 1st respondent.

Admittedly the 1st respondent's husband died in harness on 16.04.2007. When the pension papers were submitted by the 1st respondent, the competent authority called for no objection certificates from various divisions. Thereafter, the competent authority calculated that a total amount of Rs.6,58,650/- became recoverable from the deceased employee. This amount allegedly represented some financial improprieties committed by the 1st respondent's husband in 1996-97, 2002-03, 2005-06, 2006-07.

But admittedly no proceedings for recovery were initiated against the 1st respondent's husband when he was in service. There is no dispute about the fact that recovery is one of the penalties contemplated under the A.P. Civil Services (CCA) Rules. In any case, an order visiting a person with civil consequences cannot be passed without affording an opportunity.

There is no dispute about the fact that no penalty of recovery was ever imposed when the 1st respondent's husband was in service. Therefore, upon his demise, any proceedings, even if pending abated. If nothing was pending, they cannot be initiated thereafter.

Even Rule 9(2)(a) of the revised Pension Rules, 1980, merely enable the Government to initiate proceedings after the retirement of a Government servant, only if he is alive. If he is not alive there is no scope for invoking Rule 9(2)(a). However, reliance is placed by the learned Government Pleader upon Rule 9(7) of the revised Pension Rules, which reads as follows:

“Even though a Government servant has retired from service and was not before his retirement charge sheeted or called upon to explain why a pecuniary loss caused to the Government (or a local authority) due to his negligence, while he was in service, should not be recovered from him, the Government if they are satisfied that the loss is due to him, shall recoup the pecuniary loss besides all Government dues (or local authority dues) from the Retirement Gratuity. For this purpose, it shall not be necessary to get the consent of the Government servant or the consent of the members of his family in the case of a deceased Government servant, as the case may be. In such cases, it shall be indicated in the sanction clearly the amount of Retirement Gratuity admissible, a stated amount which shall be deducted from the retirement Gratuity on account of Government dues or local authority dues or loss sustained by the Government servants due to negligence and the net amount of Retirement Gratuity payable to the retired Government servant.”

All that the Rule extracted above states is that the Government need not obtain the consent of the Government Servant or the consent of the members of the family in the case of a deceased Government servant. Rule 9(7) does not and cannot dispense with the requirement of procedure prescribed by law for imposing penalty of recovery. Therefore, the Tribunal was right in allowing the application filed by the 1st respondent. We see no merit in the writ petition. Hence the writ petition is dismissed. There shall be no order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

JUSTI CE V. RAMASUBRAMANI AN

JUSTI CE G. SHYAM PRASAD

25th October, 2016
Js.



THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
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Date: 25-10-2016

Js.