HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

AND

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

WRIT PETITION No.4138 of 2004

Dated.10-08-2017

Between:

The Government of Andhra Pradesh,
Rep. by its Secretary, Revenue Department,
A.P., Hyderabad and another

..... Petitioners

AND

Smt.M.Veeramma, W/o. late Pullaiah
Gr.I Executive Officer, Plot No.1062,
Pragathi Nagar, Kukatpalli, Hyderabad.

.... Respondent

Counsel for Petitioners : Government Pleader for Services-II (TS)

Counsel for Respondent : Ms.B.Manjulatha Vedavally

This Court made the following:

ORDER: (*Per* Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The State of Andhra Pradesh and the Commissioner of Endowment Department have filed this writ petition feeling aggrieved by the order dated 11.11.2002 in O.A.No.6840 of 1998 on the file of the Andhra Pradesh Administrative Tribunal at Hyderabad, whereby it has set aside the order directing recovery of a sum of Rs.25,023-45 ps. from the pensionary benefits payable to the respondent consequent on the death of her husband, apart from directing that the suspension period from 25.02.1986 to 03.11.1989 to be treated as a period spent on duty for purposes of pay and allowances.

The facts of this case lie in narrow compass. The husband of the respondent, who was an Executive Officer Grade-I in Temples, faced departmental enquiry. Based on the enquiry report submitted by the Enquiry Officer, petitioner No.2 has issued a show cause notice dated 10.12.1993, proposing punishment of stoppage of two annual increments with cumulative effect besides recovery of Rs.25,023-45 ps. Before any final order was passed, the husband of the respondent died. Upon taking note of his death, petitioner No.1 has issued G.O.Rt.No.1659, Revenue (Endts.I) Department, dated 23.10.1996, wherein while holding that the disciplinary action against the deceased shall be treated as abated, it has directed that amount of

Rs.25,023-45 ps. representing the loss caused by the deceased to the Temples be recovered from the death-cum-retirement gratuity (DCRG) and settle all the pensionary benefits to his family. Two years later i.e., on 13.07.1998, petitioner No.1 has issued separate proceedings wherein it has held that suspension of the deceased employee was taken as justified, and that the suspension period shall be regularized as 'not on duty' in terms of sub-rule (7) read with Rule (5) of FR.54-B. It is accordingly rejected the proposal of petitioner No.2 to treat the suspension period as on duty.

Feeling aggrieved by both these proceedings, the respondent has filed the aforementioned OA. The Tribunal allowed the said OA by holding that consequent upon the death of the employee, the disciplinary proceedings stood abated and consequently recovery of the sum of Rs.25,023-45 ps., also stands abated. As regards the suspension period, the Tribunal has granted relief to the respondent by directing that the said period shall be treated as the employee on duty by relying upon the decision taken by the State Government in the case of one K.B.Ch.Manikumar, who was also an Executive Officer and who died on 30.05.1995.

The learned Government Pleader submitted that the impugned order of the Tribunal suffers from legal errors, in that, even though the employee has died and the proceedings have abated, still the petitioners are entitled to receive the loss caused by him as held proved in the enquiry report. He has further argued that K.B.Ch.Manikumar, whose case was made the basis by the Tribunal for treating the suspension period as on duty, was subjected to a completely different disciplinary proceedings, and that without looking into the nature of the charges and the circumstances under which his suspension period was treated as on duty, the Tribunal ought not to have relied upon the said instance for granting relief to the respondent.

Learned counsel for the respondent sought to justify the order of the Tribunal.

As regards the proceedings of petitioner No.1 in directing the recovery of alleged loss, we are entirely in agreement with the view of the Tribunal that once the disciplinary proceedings have abated, recovery also gets abated. The reason for this is not far to seek. Before the disciplinary proceedings were brought to its logical end, the delinquent died. Had he been alive, there would have been a possibility of his convincing the disciplinary authority to drop further action by submitting his explanation. Such an opportunity was lost with the death of the delinquent. It is precisely for this reason that the death of a delinquent before the conclusion of disciplinary proceedings would bring in the abatement of the disciplinary proceedings. Once the proceedings get abated, every aspect connected therewith will cease to exist in law. It, therefore, follows that the enquiry report which is part of disciplinary proceedings based on which petitioner No.1 has come to the conclusion that the deceased employee has caused loss also ceases to exist in law. In the absence of any determination of the employee's liability in the disciplinary proceedings, it is not permissible for the employer to mulct the liability on the family of the deceased based on an enquiry report which has not been taken to its logical end.

In this view of the matter, the proceedings of petitioner No.1 in directing the recovery of alleged loss cannot be sustained. As regards the proceedings dated 13.07.1998 under which the suspension period of the employee was directed to be treated not on duty, petitioner No.1 has failed to notice FR.54-B (2) which reads as under:

> " **F.R. 54-B:** (2) Notwithstanding anything contained in Rule 53, where a Government servant under suspension dies before the disciplinary or Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid."

In the light of the above reproduced provision, the petitioners had no option other than treating the suspension period as on duty for all purposes and the respondent is entitled to full pay and allowances for that period to which the deceased would have been entitled had he not been suspended, subject to adjustment of subsistence allowance already paid.

For the aforementioned reasons, the writ petition fails and the same is accordingly dismissed.

As a sequel, WPMP.Nos.5438 of 2004 and 25030 of 2011 shall stand dismissed as infructuous. There shall be no order as to costs.

C.V. NAGARJUNA REDDY, J

M.S.K. JAISWAL, J

Date: 10-08-2017

Note: L.R. Copies to be marked.
B/o. TJMR