

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION No. 46397 of 2016

ORDER: (*Per VRS,J*)

Aggrieved by the grant of relief by the Andhra Pradesh Administrative Tribunal to the widow of a deceased Police Constable, the State has come up with the above writ petition.

2. Heard the learned Government Pleader for services (T) appearing for the petitioners.

3. The 1st respondent's husband was appointed as a Reserve Police Constable on 07.01.1983. Pursuant to disciplinary proceedings, he was dismissed from service with effect from 24.10.1994. He filed an appeal, but the same was rejected by the Deputy Inspector General of Police on 23.06.1995. However, the revision filed by the 1st respondent's husband was allowed by the Inspector General of Police (Administration), by an order, dated 29.01.1996, and the order of dismissal was set aside, without prejudice to take action afresh, as per the Rules.

4. Pursuant to the order passed by the Revisional Authority, the 1st respondent's husband was reinstated into service by the

proceedings, dated 16.02.1996. But, it appears that the 1st respondent's husband did not join duty. Eventually, he died on 24.11.2005. Up to the date of his death, the Department never initiated either a *de novo* enquiry on the charges, pursuant to which he was dismissed from service, or any disciplinary action for unauthorized absence from 1996, even after the issue of the posting orders.

5. Therefore, the respondent filed an application in O.A.No.10634 of 2012, seeking service benefits. Finding that up to the date of his death, the 1st respondent's husband was not removed from service or terminated, the Andhra Pradesh Administrative Tribunal allowed the application. Therefore, the State has come up with the above writ petition.

6. There is no dispute about the fact that the 1st respondent's husband did not report for duty after February, 1996, till the date of his death in November, 2005. But, it is also an admitted fact that no disciplinary proceedings were initiated, either for his unauthorized absence from 1996 to 2005, or on the charges on which he was earlier dismissed from service. Therefore, the Tribunal was right in holding that the 1st respondent's husband continued to have the status of a Government servant up to the date of his death. As to what benefits

he would have been entitled had he survived, is a different question from the one whether the relationship of employer and employee continued or not.

7. The learned Government Pleader for services (T) relied upon the Fundamental Rule 18-A, which reads as follows:

“F.R.18-A – A Government servant shall be deemed to have resigned from the service if he –

a) is absent without authorization for a period exceeding ‘one year’; or

b) remains absent from duty for a continuous period exceeding five years with or without leave; or

c) continues on foreign service beyond the period approved by the State Government:

Provided that a reasonable opportunity to explain the reason for such absence or continuation on foreign service shall be given to the Government Servant before the provisions of this sub-rule are invoked.”

8. But, the proviso to Fundamental Rule 18-A makes it clear that even for the invocation of deemed resignation from service, an opportunity is necessarily to be given. Another important aspect is that the 1st respondent’s husband died on 24.11.2005. Fundamental Rule 18-A was inserted subsequently under G.O.Ms.No.128, Finance (FR-I) Department, dated 01.06.2007. Therefore, the order of the

Tribunal is perfectly justified and we see no reason to interfere with the same. Hence, the Writ Petition is dismissed.

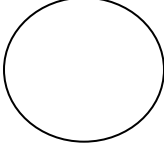
Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

G. SHYAM PRASAD, J

2nd January, 2017
cbs





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