

*THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE N.BALAYOGI*

WRIT PETITION No.19022 of 2016

ORDER: (per SK,J)

The petitioner is the applicant in O.A.No.3299 of 2015 on the file of the Central Administrative Tribunal, Hyderabad. Her prayer in the said O.A. was to release the entire pensionary benefits, including Gratuity, Leave Encashment etc., of her husband by duly refixing such pensionary benefits applying the Revised Pay Scales. By order dated 07.04.2016, the Tribunal disposed of the O.A. Dissatisfied therewith, she is before this Court.

It is an admitted fact that the petitioner's husband, a Mandal Parishad Development Officer in the service of the State, retired from service on 31.10.2001 during the pendency of criminal proceedings initiated against him. He died on 06.12.2012. The criminal case therefore stood abated vide order dated 28.11.2014 passed by the competent criminal Court. Disciplinary proceedings were initiated against him on 29.03.2000 by issuing a Charge Memo while he was still in service. However, the same could not be concluded during his lifetime. He was sanctioned provisional pension in the year 2004.

This being the situation, the Tribunal took recourse to Rule 9 (7) of the Andhra Pradesh Revised Pension Rules, 1980 (for short, 'the Rules of 1980'), and opined that the Government was empowered thereby to order recovery of the amounts misappropriated due to the irregularities committed by the deceased husband of the petitioner. The O.A. was accordingly disposed of directing the authorities to conclude the disciplinary proceedings by duly taking into consideration the enquiry

report dated 11.01.2007 submitted by the Additional Project Director, DPEP, Karimnagar, in the light of Rule 9(7) of the Rules of 1980 and to pass appropriate orders thereon. Subject to the said orders, the remaining retiral benefits, if any, were to be released to the petitioner, the widow of the deceased Government employee.

Significantly, the Tribunal did not take note of the law laid down by this Court in W.P.No.21465 of 2008 despite making a reference thereto in the body of the order. A distinction was sought to be drawn between the two cases by the Tribunal on the ground that there was no abatement of the disciplinary proceedings in the present case. Needless to state, abatement sets in by operation of law upon the death of the employee and there need not be a separate order of abatement. That apart, the Tribunal also failed to take note of the averments made by the Deputy Commissioner, Panchayat Raj and Rural Employment, Government of Telangana, in the counter affidavit, wherein he stated that departmental proceedings initiated against the husband of the petitioner were yet to be finalised. He further stated that a report is awaited from the Chief Executive Officer, ZPP, Karimnagar, and only after receipt of such report, a detailed report along with the office record would be submitted to the Government for finalisation of the case. It is therefore clear that the report dated 11.01.2007, referred to by the Tribunal, was not in the nature of an enquiry report as the authorities themselves state that a report is yet to be furnished to them.

Sri S.Gopal Rao, learned counsel for the petitioner, would state that a copy of the report dated 11.01.2007 was not even supplied to the husband of the petitioner and no show cause notice was issued to him in relation thereto.

Given the aforesaid facts, we are of the opinion that the departmental proceedings initiated against the husband of the petitioner as long back as in the year 2000 were not taken to their logical conclusion and in the meanwhile, he died in December, 2012, whereby the said proceedings stood abated. Rule 9(7) of the Rules of 1980 had no application whatsoever to the present case in terms of the provisions contained therein. The Tribunal therefore erred in applying the said rule to the instant case and directing the Government to dispose of the case in terms thereof.

The writ petition is therefore allowed holding that the disciplinary proceedings against the petitioner's husband stood abated on the date of his death and this was not a fit case for invocation of sub-rule 7 of Rule 9 of the Rules of 1980. The authorities shall settle the pensionary benefits, including Gratuity, Leave Encashment etc., by duly refixing the pay of the petitioner's husband as per the Revised Pay Scales and release the net amount payable in this regard to the petitioner. This exercise shall be completed expeditiously and, in any event, not later than eight weeks from the date of receipt of a copy of this order.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

JUSTICE SANJAY KUMAR

JUSTICE N.BALAYOGI

Date:30.03.2017

GJ