

The Hon'ble Sri Justice V. RAMASUBRAMANIAN
and
The Hon'ble Sri Justice M. GANGA RAO

WRIT PETITION No.39354 OF 2017

Date:22.11.2017

Between:

1. Sheikh Meeravelli (died) per L.R. wife
2. Smt .T. Jayasree W/ o.late Shikh Meeravelli
PC 710, aged about 47 years, Occ: House wife,
R/ o.M/ o.Shaik Sadhya Begum, Ameenapeta,
Near Mosque, Elugu, W.G. District, A.P.

...Petitioner

Vs.

The Government of Andhra Pradesh, Rep. by
its Principal Secretary to Government,
Home Department, Secretariat, Velagapudi,
Guntur District, Andhra Pradesh and others.

... Respondents

For Petitioner : Sri D.V. Madhusudhan Rao

For Respondents : Government Pleader for Home
(AP)



HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON' BLE SRI JUSTICE M. GANGA RAO

WRIT PETITION No.39354 OF 2017

ORDER: (per V. Ramasubramanian, J)

The wife of a deceased Government employee has come up with the above writ petition in the year 2017, challenging an order passed by the Andhra Pradesh Administrative Tribunal, about 23 years ago on 13.06.1994 in an Original Application filed by her husband challenging the order of removal from service.

2. Heard Mr.D.V. Madhusudhan Rao, learned counsel for the petitioner.

3. It appears that the petitioner's husband was appointed as a police constable in June 1981. He was promoted to the post of Junior Commando and Senior Commando, in the year 1989.

4. A criminal case was registered against the petitioner's husband for various offences punishable under Sections 120(B), 121, 122, 123, 124(A), 307 IPC read with Sections 25 and 27 of the Arms Act and Sections 3 and 4 of the Explosive Substances Act.

5. After registration of the said complaint, the petitioner's husband was dismissed from service under a summary proceeding, by G.O.Ms.No.446, dated 29.07.1991 without holding an enquiry. The dismissal was purportedly under Article 311(2)(c) of the Constitution of India.

6. Challenging the order of dismissal from service, the petitioner's husband filed an application in O.A No.1980 of 1992 on the file of the A.P. Administrative Tribunal. The Tribunal by order, dated 13.06.1994, dismissed the original application filed by the petitioner's husband.

7. Therefore, right or wrong, the dismissal of the petitioner's husband from service, on 27.09.1991, got a seal of approval from the Tribunal by its order dated 13.06.1994. The petitioner's husband allowed the said order of the Tribunal to attain finality, without choosing to challenge the same until he was alive.

8. It appears that the petitioner's husband died on 19.10.2007, after 13 years of dismissal of his O.A. by the Tribunal and 16 years of his dismissal from service.

9. In the criminal case registered against the petitioner's husband in the year 1991, charges were framed against the other accused in the year 2008 and it appears that some of the accused were acquitted by the Criminal Court, in November 2015. Based upon the acquittal of the co-accused, the petitioner made a claim that the original order of dismissal, which was *ab initio void* in the light of the constitutional provisions, should be ignored and she should be paid family pension from the date of death of her husband. But, finding that the dismissal of her husband's original application, challenging the order of his dismissal from service, is an impediment to her claim for family pension, the petitioner has come up with the above writ petition, challenging the order of the Tribunal.

10. The contention of the learned counsel for the petitioner is that as per the decision of the constitutional bench of the Supreme Court in Bk. Sardari Lal v. Union of India¹, the order of dismissal from service passed under Article 311 (2) (c) of the Constitution of India, is wholly void and that therefore, dismissal from service should be ignored and the petitioner granted family pension. It is also the contention of the learned counsel that for the grant of family pension, the question of

¹ 1971 (1) Supreme Court Cases 411

delay and laches would not apply, as seen from the decision in *Sk. Masthan Bee v. General Manager South Central Railway*².

11. We have carefully considered the above submissions. The ratio in *Bk. Sardarilal's* case (1 supra) cannot be invoked by the petitioner for the simple reason that her husband approached the Tribunal in O.A. No.1980 of 1992 challenging the order of dismissal passed on 27.09.1991. The Tribunal dismissed his original application by order, dated 13.06.1994. The petitioner's husband did not challenge the order of the Tribunal on the ground that his dismissal was contrary to the law laid down in *Bk. Sardarilal's* case. The petitioner's husband allowed the matter to attain finality for a full period of 13 years after the dismissal by the Tribunal in the year 1994 upto the date of his death in 2008.

12. The next contention of the learned counsel for the petitioner is that once a person is acquitted by the criminal Court, he need not even challenge the order of dismissal because automatically by operation of law, the dismissal goes. The said contention has to be rejected, since the petitioner's husband challenged the order of dismissal before the Tribunal, got the challenge dismissed by the Tribunal and kept quiet for 13 years. The decision in *Deputy Director of Collegiate Education (Administration), Madras v. S.Nagoor Meera*³ would have no application to the cases where the orders of penalty have attained finality.

13. The decision in *Masthan Bee's* case (2 supra) cannot go to the rescue of the petitioner. The petitioner herself has realised that without the order of dismissal from service being set aside, she is not eligible for family pension. That is why the petitioner has come up with

² 2003 (1) Supreme Court Cases 184

³ 1995 (3) Supreme Court Cases 377

the above writ petition challenging the order of the Tribunal, passed 23 years ago, so that she can thereafter reap the benefit of the decision in Masthan Bee's case.

14. As we have pointed out above, irrespective of the correctness of the order of dismissal from service, the petitioner's husband challenged the same before the Tribunal, lost the challenge way back in 1994 and failed to pursue the matter further till the year 2007 when he died. Therefore, the petitioner is not entitled to reopen the settled issue at this distance of time.

15. Hence, the writ petition is dismissed. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed. No order as to costs.



V. RAMASUBRAMANIAN, J

M. GANGA RAO, J

November 22, 2017
KTL