

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8484 of 2017

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Rima Devi Wife of Late Uday Pratap Singh, Resident of Village-Sonbarsa,
P.O.-Miun Sukharipur, P.S.-Belawa, District-Kaimur (Bhabhua) Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Home Secretary, Bihar, Patna.
3. The D.G. of Police, Bihar Patna.
4. The Superintendent of Police, Kaimur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sunil Kumar Singh
For the Respondent/s	:	Mr. Md. N.H. Khan- Sc1

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 18-05-2018

The writ petitioner by way of the present writ petition has challenged the order of termination as contained in Memo No. 1191 dated 22.04.2017 whereby and whereunder the deceased husband of the petitioner herein namely, Uday Pratap Singh has been dismissed from his services as constable in Kaimur district with effect from 05.03.2012.

The brief facts of the case are that the Director General of Police issued an order dated 15.01.1998 directing for appointment of Home guards including the husband of the petitioner herein whereafter, the Sergeant Major, Police Line, Mohaniya, sent a letter to the Inspector, Home guard, Kaimur on 27.07.1998 regarding appointment of three Home guards including the husband of the petitioner herein. After the husband of the



petitioner was appointed and was working to the satisfaction of all concerned, suddenly, the appointment of the husband of the petitioner on the post of Home guard / constable was cancelled by an order dated 08.05.2003. The said order dated 08.05.2003 was challenged by the husband of the petitioner and two other constables in C.W.J.C. No. 10603 of 2003, which was allowed by an order dated 08.01.2007 and the husband of the petitioner was directed to be reinstated in service, however, the authorities were given liberty to proceed against the petitioner if they so wish. Thereafter, the husband of the petitioner was reinstated in service on 03.08.2007 and continued to work without any impediment.

The further case of the petitioner is that her husband was proceeded departmentally on the allegation of his appointment being irregular and illegal, however, during the pendency of the departmental proceeding, the husband of the petitioner died in harness on 05.03.2012 while discharging his duties. Nonetheless, the Superintendent of Police, Kaimur (Bhabhua) by the impugned order dated 22.04.2017 has passed the order of punishment against the husband of the petitioner herein directing that the husband of the petitioner be deemed to have been dismissed from service with effect from the date of his death i.e. 05.03.2012. It has further been directed in the said order dated 22.04.2017 that except what the



husband of the petitioner has received during his service period, no further benefit would be payable to him. It may be pertinent to mention here that in the impugned order dated 22.04.2017 itself, it has been admitted that since the husband of the petitioner had died in the intervening night of 04 / 05.03.2012 while he was on duty, no final show cause notice could be issued regarding his dismissal from service.

The Respondent No. 4 has filed a counter affidavit, bringing on record the order dated 29.07.2017 passed by the Superintendent of Police, Kaimur (Bhabhua) wherein it has been stated that in view of Clause 11(2) of the Bihar Government Servant CCA Rules, 2005, the ongoing departmental proceeding shall abate as against the delinquent, hence, the file of the departmental proceeding is being consigned and the husband of the petitioner would get nothing else than what has been paid to him during his service period. The Respondent No. 4, in the counter affidavit, has also annexed the clarification dated 18.07.2017 issued by the Additional Secretary to the Government, General Administration Department, Bihar, Patna, addressed to the relevant authorities whereunder OM No. 11012 /7/99-Estt. (A) dated 20.10.1999 has been referred to and the relevant portion thereof has been reproduced, which is as follows:-



“After careful consideration of all the aspects, it has been decided that where Government Servant dies during the pendency of the inquiry i.e. without charges being proved against him, imposition of any of the penalties prescribed under the CCS(CCA) Rules, 1965, would not be justifiable. Therefore, disciplinary proceedings should be closed immediately on the death of the alleged Government Servant. {Deptt. Of Personnel & Training OM No. 11012/7/99-Estt. (A) dated 20th October, 1999}”.

In the said letter dated 18.07.2017, it has been thus concluded that in case, the delinquent Government servant dies during the course of pendency of the departmental proceeding, the said departmental proceeding shall stand abated automatically.

The learned counsel for the petitioner has argued that even according to the stand of the respondent and the OM dated 20.10.1999, once a Government servant dies during the pendency of the inquiry, the departmental proceedings should be closed immediately upon the death of the alleged Government servant and the proceedings would stand abated. It is submitted that the husband of the petitioner had died in the intervening night of 4 / 5. 03.2012 whereas the impugned order of punishment, dismissing the petitioner from services with effect from the date of his death, has been passed on 22.04.2017 i.e. much after the death of the husband of the petitioner, hence, the said order of punishment is



null and void in view of the fact that the departmental proceeding stood abated immediately upon the death of the petitioner on 05.03.2012. It has also been pointed out that the Superintendent of Police, Kaimur (Bhabhua), realizing his mistake, has passed an order subsequently on 29.07.2017 stating that though the departmental proceeding has stood abated and the departmental proceeding is being consigned, the husband of the petitioner would get nothing else other than what has been paid to him during his service period.

I have heard the learned counsel for the parties and gone through the materials on record.

It is a trite law that if a departmental proceeding is pending against a delinquent and the said delinquent dies during the course of the pendency of such departmental proceeding, the departmental proceeding stands abated and no order of punishment can be passed against a dead person. In this regard, it would be relevant to refer to a judgment reported in **1986 LAB. I.C. 248 (Hirabai Deshmukh and another Vs. State of Maharashtra)**, rendered by the Hon'ble Bombay High Court (Nagpur Bench), paragraph No. 6 whereof is reproduced hereinbelow:-

“6. The provisions with regard to dismissal, removal and suspension of the civil servant do not permit holding of any further enquiry into the conduct of such a civil servant after his



death. Such proceedings are intended to impose departmental penalty and would abate by reason of the death of civil servant. The purpose of proceedings is to impose penalty, if misconduct is established against the civil servant. That can only be achieved if the civil servant continues to be in service. Upon broader view the proceedings are quasi-criminal in the sense it can result in fault finding and further imposition of penalty. The character of such proceedings has to be treated as quasi-judicial for this purpose. In the light of the character of the proceedings and the nature of penalty like dismissal or removal, or any other penalties, minor or major, it has nexus to the contract of service. Therefore, if the person who has undertaken that contract is not available, it should follow that no proceedings can continue. Thus when the proceedings are quite personal in relation to such a contract of service, the same should terminate upon death of the delinquent. By reason of death, such proceedings would terminate and abate. We think that such a result is also inferable from the provisions of Rule 152-B of the Bombay Civil Services Rules”.

In a judgment reported in *(2001) 3 BLJR 2179 (Jayanti Devi Vs. State of Bihar and others)*, rendered by the Hon’ble Jharkhand High Court, it has been held that an order of dismissal passed by the Disciplinary Authority after the death of the deceased employee is vitiated in law and is null and void. It would be relevant to reproduce the relevant portion of the aforesaid judgment rendered in the case of *Jayanti Devi* (supra) hereinbelow:-



“In the instant case admittedly the delinquent-employee died on 24.3.1999 and the Enquiry Officer submitted his report on 30.8.1999. In the enquiry report (Annexure F) the Enquiry Officer took notice of the fact that the delinquent-employee died on 24.3.1999. The Enquiry Officer further took notice of the fact that the delinquent-employee had requested the respondents to keep the departmental proceeding in abeyance till the disposal of the case pending before him. However, the Enquiry Officer after the death of delinquent employee called upon the respondents and on the basis of documents produced by them submitted enquiry report and on the basis of that report a formal order of dismissal was passed. In my opinion, therefore, the manner in which respondents proceeded with the departmental proceeding against the delinquent-employee, the enquiry report as well as the order of dismissal is vitiated in law and is null and void. I am, further of the view that the widow of the deceased employee cannot be deprived of her legitimate claim of death-cum-retirement benefits on the ground of dismissal of the employee on the basis of departmental proceeding initiated after 6 (six) years of the order of suspension and that too on the basis of enquiry report submitted by the Enquiry Officer after proceeding ex parte against the deceased-employee who died much before the date when the Enquiry Officer proceeded with the matter and submitted his report”.

It would be further relevant to quote paragraph No. 22 of a judgment reported in **2009 LAB. I.C. 802 (M. Mayakal vs. District Forest Officer, Madurai Division, Madurai)**, rendered by the Hon’ble Madras High Court hereinbelow:-

“ 22. Going by the sequence of events and having regard to the fact that there is an



omission on the part of the respondent in considering the further representation of the deceased Government servant, the possibility of an order being written by the disciplinary authority on coming to know the death of the husband of the petitioner on 31st May, 1995 and retaining the same in the file cannot be ruled out. Therefore, the impugned order of removal cannot be said to have come into force, without due and proper communication to the Government servant. Therefore, the disciplinary proceedings initiated against the petitioner's husband cannot be said to have reached its finality and consequently, it would stand abated consequent to the death of the Government servant".

The aforesaid proposition of law has also been followed by the Hon'ble Jharkhand High Court in a judgment dated 20.01.2016 passed in W.P. (S) No. 2991 of 2014 (Manoj Kumar Vs. Central Coal Field Ltd.), Ranchi, wherein also in a similar situation, the Hon'ble Jharkhand High Court has held that after the death of the father of the petitioner, the departmental proceeding initiated against him would automatically stand terminated and / or abated, hence, in such circumstance, any subsequent action of inquiry officer or disciplinary officer in the said proceeding is illegal and non est in the eyes of law.

The Hon'ble Jharkhand High Court has further held that the said deceased employee would be deemed to have died in harness



and consequently, his dependent would get all the benefits available under the Rule.

In view of the well settled law, as discussed hereinabove in the preceding paragraphs, as also in view of the admitted position, as accepted by the respondents in their counter affidavit that the departmental proceeding stood abated on account of the death of the husband of the petitioner, the Respondents have faltered in passing the order of dismissal of the husband of the petitioner from his service, hence, the order dated 22.04.2017 by which the husband of the petitioner has been dismissed from service as also the consequential order dated 29.07.2017, to the effect that the husband of the petitioner would get nothing else than what has been paid to him during his service period, are perverse and vitiated in the eyes of law, hence, null and void.

For the reasons mentioned hereinabove, the order dated 22.04.2017 contained in Memo No. 1191, passed by the Superintendent of Police, Kaimur (Bhabhua) is set aside and consequential order dated 29.07.2017 whereby it has been directed that the husband of the petitioner shall get nothing else than what has been paid to him during his service period is also quashed.

In view of the setting aside of the aforesaid orders dated 22.04.2017 and 29.07.2017, it is directed that the husband of the



petitioner would be treated to have died in harness on 4/5.03.2012 and consequently, the petitioner would be entitled to all the consequential benefits as permissible under the law along with the death cum retiral benefits.

The present writ petition is allowed.

(Mohit Kumar Shah, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	07.05.2018
Uploading Date	25.05.2018
Transmission Date	

