

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3349 of 2018

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Kaushalya Devi W/o Late Kedar Nath Singh, Resident of Village- Umdha,
PO- Fakuli, PS- Saran, District- Saran.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Rural Development Department, Government of Bihar, Patna
2. The Director, Panchayati Raj, Govt. of Bihar, Patna.
3. The District Board, Saran through its Chairman.
4. The Chairman, District Board, Saran.
5. The District Engineer, District Board, Saran.
6. The Chief Executive Officer, District Board, Saran.
7. The Executive Officer, District Board, Saran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ashhar Mustafa
For the Respondent/s : Mr.Harish Kumar -Gp8

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
C.A.V. JUDGMENT

Date : 12-09-2019

1. The present writ petition has been filed for setting aside the order dated 03.11.2017 passed by the Chief Executive Officer, District Board, Saran i.e. the respondent no. 6 herein, by which the admitted retiral dues of the husband of the petitioner has been illegally and arbitrarily adjusted against the alleged outstanding misappropriated sum of money which has never been proved/ established in any proceeding. The petitioner has further prayed to pay the admitted retiral dues of her husband and disburse the arrears of salary which has remained unpaid.



2. The brief facts of the case are that the deceased husband of the petitioner Late Kedar Nath Singh served in the office of District Board, Saran and on completion of 58 years of age, he superannuated from the post of Work Sarkar on 31.08.2006. During the course of his service, the husband of the petitioner had been directed to supervise the work under different schemes and money was also advanced to him. On 30.08.2006, a day before the retirement of the husband of the petitioner, a criminal case bearing Chapra Town PS case no. 189 of 2006 was instituted against him under Section 409 of Indian Penal Code for alleged misappropriation of government funds and subsequently, the deceased husband of the petitioner was granted anticipatory bail by a co-ordinate Bench of this Court vide order dated 31.08.2007. It is submitted on behalf of the petitioner that the deceased husband of the petitioner was directed to rejoin his services vide order dated 01.12.2006, in view of the judgment rendered by this Court on 15.09.2006, whereby and whereunder the retirement age of the employees was extended to 60 years from 58 years. The petitioner had rejoined his services on 06.12.2006 and had then stood superannuated on 30.08.2008 upon attaining the age of 60 years. Though the deceased husband of the petitioner had applied for



retiral dues but the same were not paid and ultimately, he died on 29.04.2014. The petitioner had then approached this Court by filing a writ petition bearing ***C.W.J.C. no. 7758 of 2017*** for grant of retiral dues, however this Court by an order dated 28.07.2017, had remanded the matter back to the Chief Executive Officer, District Board, Saran for addressing the grievances of the petitioner. The petitioner had then filed a fresh representation, in pursuance whereof, the petitioner received a communication dated 03.11.2017 indicating that the Deputy Development Commissioner-cum-Chief Executive Officer, Zila Parishad, Saran at Chapra had taken a decision dated 03.11.2017, wherein it has been held that the amount recoverable from the deceased husband of the petitioner comes to a sum of Rs. 58,26,163/- whereas the amount of retiral benefits outstanding for payment comes to a meager sum of Rs. 9,56,970.96/-, hence nothing is payable to the petitioner herein but still the amount of G.P.F. amounting to a sum of Rs.1,90,639/- is being released in favour of the petitioner herein. In the said order dated 03.11.2017, it was further directed that Certificate case be filed for the purposes of recovery of the balance amount. It is the said order dated 03.11.2017, which is under challenge in the present proceedings.



3. The learned counsel for the petitioner has submitted that no recovery can be made from the pensionary dues of an employee unless and until such a person is found guilty of misconduct or having caused pecuniary loss to the Government by his misconduct or negligence, in a departmental or a judicial proceeding, however in the present case, the guilt of the husband of the petitioner has not been established. It is submitted that from the impugned order dated 03.11.2017, it is apparent that though a departmental proceeding was initiated and charges were framed vide *Prapatra 'K'* vide memo dated 31.07.2007 and an Inquiry officer as also a Presenting officer were appointed, however the same remained inconclusive. The learned counsel for the petitioner has relied on a judgment ***dated 23.10.2003*** passed in ***C.W.J.C. no. 1646 of 2000 (Ravi Kumar Verma vs. The Bihar State Electricity Board and ors.)***, paragraphs no. 21 and 22, whereof are reproduced hereinbelow :-

“21. Thus, I find that even if Rule 43(b) of the Bihar Pension Rules is applicable to the Board's employees, the Board, in the facts and circumstances, is legally not justified in withholding of payments aforementioned. It is well settled that a departmental proceeding initiated prior to retirement automatically lapses on superannuation unless there is specific rule under which such proceeding is



deemed to continue even after retirement. However, the Full Bench held that a departmental proceeding pending at the time a Government servant retires may continue after retirement and no specific or express order of the Government to this effect is necessary. But in the Full Bench decision also, it is not held that compliance of proviso to Rule 43(b) shall not be required with respect to such proceedings. Moreover, the Full Bench has not taken into consideration the decision of the Apex Court in the case of D.V. Kapoor v. Union of India (supra) wherein considering the specific provision contained in Rule 9(2)(a) of the Central Civil Services Pension Rules, which provides that “the departmental proceedings referred to in Sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.” The Apex court held that the disciplinary proceedings initiated under the Conduct Rules must be deemed to be proceedings under the Pension Rules and shall be continued and concluded by the authorities by which the proceedings have been commenced in the same manner as if the Government servant had continued in service and not that Rule 9(1) itself, which is in pari materia to Rule 43(b) of the Bihar Pension Rules, which provides for automatic continuance of such pending proceedings.

22. However, Bihar Rule does not provide for any similar provisions as provided for in Rule 9(2)(a) of the CCS (Pension)



Rules, 1972 and thus in the absence of such provision in the Bihar Rules, there cannot be any question of automatic continuance of the proceeding on cessation of the relationship of master and servant of a Government servant on his retirement in view of the settled principle that the proceeding initiated while in service would lapse as has been held in the case of Kirti Bhushan Singh v. State of Bihar and Ors., reported in Manu/SC/0466/1986 : AIR 1986 SC 2116 : 1986 PLJR (SC) 43; Bhagirathi Jena v. Board of Directors, CSFC reported in Manu/SC/0260/1999 : (1999) 3 SCC 666; AIR 1999 SC 1841, and the State of U.P. v. Sri Krishna Pandey (supra). It is also well settled that after a person is allowed to retire, the relationship of master and servant ceases and no order to the detriment of the employee concerned can be passed unless the rule specifically provides for it or vests power in the authority. In the case of High Court of Punjab & Haryana v. Amrik Singh, reported in 1995 (Supp) (1) SCC 321, the Apex court held that after retirement the respondent-petitioner was no longer in service and consequently, the proceeding initiated prior to his retirement met its natural death after he ceased to be in service. The Supreme Court in the case of Bhagirathi Jena v. Board of Directors, CSFC (supra), while distinguishing its earlier decision in the case of Takhatray Shivatattray Mankad v. State of Gujarat, reported in 1989 Supp (e) SCC 110, held that in the absence of similar provision enabling the continuance of the departmental enquiry even after superannuation for the purpose of finding out whether any misconduct was established which could be taken into account for the purpose of 241-A, the



decision in Mankad's case cannot help the respondent. According to the Apex Court, the effect of retirement is that the enquiry lapsed after his retirement in the absence of specific provision relating to it after retirement."

The learned counsel for the petitioner has also relied on a judgment rendered by a learned Division Bench of this Court ***dated 07.03.2018*** passed in ***L.P.A. no. 1582 of 2015 (The Director, Department of Agriculture and Ors. vs. Kumkum Devi)***, paragraphs no. 8 to 13, whereof are reproduced hereinbelow :-

" 8. The facts accompanying the contest is not in dispute and it is not disputed that since after quashing of the dismissal order dated 28.01.2002 and the appellate order dated 29.08.2006 and despite remand of the matter to the Director, Agriculture to pass a fresh order in accordance with law after consideration of the second show cause reply filed by the deceased government employee who was the writ petitioner before this Court, no order was passed in the disciplinary proceeding which stood revived by virtue of such quashment and the petitioner superannuated and also deceased in such state of harness on 23.03.2015. In other words, the disciplinary proceedings remained inconclusive until the death of the writ petitioner.

9. The issue is what is the legal consequences of a quashment of an order of penalty of dismissal followed by a remand of the matter to the disciplinary authority for fresh disposal in accordance with law but before the



proceedings attain finality, the delinquent deceases in harness.

10. The legal position, in this regard, is well-settled and where a disciplinary proceeding remains inconclusive until the death of the delinquent it shall be held abated because obviously it cannot proceed in his absence. Same is the situation where a final order passed in the disciplinary proceeding is quashed by a competent forum and the matter is remitted back to the disciplinary authority for proceeding afresh in the matter in accordance with law, but the liberty so granted is not exercised by the disciplinary authority until the death of the delinquent in harness.

11. The proposition so formulated is no more res integra and reference, in this regard, is made to the opinion expressed by the Supreme Court in similar circumstances arising in an appointment matter in a judgment reported in MANU/SC/0614/1998(1998) 8 SCC 194 ([Basudeo Tiwary vs. Sido Kanhu University & Ors.](#)), more particularly to the opinion expressed in paragraphs 13 and 14 of the judgment which runs as under:-

"13. Admittedly in this case, notice has not been given to the appellant before holding that his appointment is irregular or unauthorized and ordering termination of his service. Hence the impugned order terminating the services of the appellant cannot be sustained.

14. The appellant has since demised during the pendency of these proceedings, no further direction either as to further inquiry or reinstatement can be given. We declare that the termination of the appellant by the



respondent as per the notification referred to by us is invalid. Consequently, it would be deemed that the appellant had died in harness. Needless to say that he appellant would become entitled to the payment of arrears of salary from the date of termination of his services up to the date of his death on the basis of the last pay drawn by him. Let the respondent take action within a period of three months from today to work out the arrears due to the appellant from the date of his termination till his death and pay the same to his legal representatives."

12. In fact, in a somewhat similar situation as questioned before us in this appeal, fell for consideration before a Bench of this Court in the case of Ashok Kumar Singh vs. Bihar Industrial and Technical Consultancy Organization Limited and others, reported in 2000(4) PLJR 471. In almost identical circumstance where the disciplinary proceeding suffered serious procedural deficiency warranting a remand for holding the proceeding afresh, the Court noticed that the delinquent had deceased in the meanwhile and thus no order could be passed for remand but at the same time, the legal representative had become entitled for the consequential benefits on the death of the employee who was treated to have died in harness. It is taking note of these special circumstance that order was issued to the respondents to make payment of the admissible dues to the legal representative. We are persuaded



to reproduce paragraphs 5 to 8 of the judgment, in the case of Ashok Kumar Singh (supra), which runs as under:-

"5. It is submitted by the learned Counsel for the petitioner that the impugned order of dismissal is vitiated on account of fact that the petitioner was denied of subsistence allowance during the inquiry and that the order of dismissal was passed by the authority who was himself the appellate-authority under the Regulation of the Company. In this regard, he referred to the judgment of this Court against the same Company filed by one Apurba Kumar Chanda being C.W.J.C.No. 3468 of 1995 disposed of on 17.9.1999. It has been submitted that in view of the law settled by the apex Court in the case of [State of Maharashtra v. Chandrabhan](#) and analogous cases, reported in AIR 1983 SC 803, and in the case of [Fakirbhai Fulabhai Solanki v. Presiding officer and Anr.](#), reported in AIR 1986 SC 1168, denial of subsistence allowance during the inquiry has been held to be amounting to violation of the principles of natural justice and consequently vitiates the whole proceedings. He also submitted that this Court in the case of [Rama Kant Sharma v. The Patliputra Central Cooperative Bank and Ors.](#) relying upon the decision of the apex Court in the case of [Surjit Ghosh v. Chairman and Managing Director United Commercial Bank Patna High](#) Court LPA No.1582 of 2015 dt.07-03-2018 and Ors., reported in (1995) 2 SCC 474, held that where there is provision of appeal against the order of disciplinary authority and the appellate or higher authority against whose order there is no appeal, exercise



the power, such order shall vitiate. In view of the settled law, learned Counsel for the Respondents has not been able to defend the order of punishment.

Writ petition is, thus, allowed. The impugned order contained in Annexure-33 is quashed.

6. However, a question arose as to for what relief the petitioner is entitled in the peculiar facts and circumstances of the case. It was submitted by the learned Counsel for the Respondent-Company that since the order of punishment has been quashed on technical ground in view of the settled principle such matter are normally remitted back for fresh consideration, but in the present case since the delinquent employee is dead the question of remitting the matter back to the competent authority may not be possible, but at the same time the order having been quashed on technical ground, substituted petitioner cannot be granted any relief. This Court is unable to accept the said submission of the learned Counsel for the Company.

7. In this regard, learned Counsel for the petitioner has relied on the decision of this Court in the case of [Sumitra Devi v. Union of India](#), reported in 1987 PLJR 714, wherein under more or less similar circumstances, this Court quashed the order removing the original petitioner from service as being devoid and inoperative in law and further



directed the Railway to pay to the legal representatives all salaries due to the employee concerned as if he continued in service till the date of his death and directed to pay them also oilier benefits admissible to the employee concerned including pension, etc. It has been submitted by the learned Counsel for the petitioner that after the order of punishment goes and in the peculiar facts and circumstances, the matter cannot be remitted back to the disciplinary authority, the position as it stood before the order of punishment was passed stood restored and consequently, the heirs and legal representative of the deceased employee will be entitled for all the benefits.

8. This Court finds substance in the said submission of the learned Counsel for the petitioner. Having regard to the fact that the order of punishment against the deceased employee does not exist and after his death no fresh inquiry can be held and order can be passed the position will stand revived as it stood before the order of punishment was passed. As such, this Court does not find any justification to deny the consequential benefit which view also stands supported by the aforementioned decision of this Court in the case of [Sumitra Devi v. Union of India.](#)"

13. Such a situation also arose in a matter which fell for consideration before a Division Bench of this Court in



case of Union of India vs. Shri Gupteshwar Mishra, reported in 2015 (3) BBCJ V-156. The Division Bench, taking note of the procedural flaw in the proceeding and noticing the perversity in the final order passed, was satisfied that the matter required a remand but such order could not be passed since the delinquent was dead. The Division Bench taking note of the circumstances/situation, held the proceeding abated which obviously could not proceed in absence of the delinquent. The opinion expressed in paragraphs 5 and 6 of the judgment would be a guidance to the issue in contest herein and is reproduced hereunder:-

"5. Having considered the matter, in our view, the order of the Tribunal holding that there was serious flaw in the proceedings by non-examination of the Accountant General and the Deputy Accountant General cannot be said to be bad or perverse in any manner. However, even if we set aside the order of the Tribunal that would have necessitated remanding the matter to the Tribunal for fresh consideration or fresh enquiry which obviously cannot be done as the employee is dead. In our view, this writ petition would abate as has been held by the Apex Court in the case of Patna High Court LPA No.1582 of 2015 dt.07-03-2018 Basudeo Tiwary Vs. Sidho Kanhu University and others since reported in (1998) 8 Supreme Court Cases 194. As held in that case, it would be deemed that the employee died in harness. We also supported by a



decision of this Court in the case of Ashok Kumar Singh vs. Bihar Industrial and Technical Consultancy Organization Limited and others since reported in 2000(4) PLJR 471. there is yet another decision of this Court in the case of Mohal Lall Vs. the State of Bihar being C.W.J.C. No. 9636 of 2008 disposed of on 08.08.2013 wherein again it was held that the employee would be deemed to have died in harness in such a situation.

6. Accordingly, we hold that this writ petition abates and the consequence being that the order of the Tribunal being for reinstatement of the employee, he would be deemed to have died in harness and necessary consequence would automatically flow with regard to death-cum-retiral dues and payment of salary etc."

The learned counsel for the petitioner has also relied on a judgment dated 17.09.1998 rendered by the Hon'ble Apex Court in **Civil Appeal no. 4858 of 1998 (Basudeo Tiwary vs. Sido Kanhu University and Ors.)**, paragraph no. 14 whereof, is reproduced hereinbelow :-

"14. The appellant has since demised during the pendency of these proceedings, no further direction either as to further inquiry or reinstatement can be given. We declare that the termination of the appellant by the respondent as per the notification referred to by us is invalid. Consequently, it would be deemed that the appellant had died in harness.



Needless to say that the appellant would become entitled to the payment of arrears of salary from the date of termination of his services upto the date of his death on the basis of last pay drawn by him.”

Thus, it is submitted by the learned counsel for the petitioner that in case, a disciplinary proceeding remains inconclusive until the death of the delinquent, the same shall stand abated, as obviously the case cannot proceed in his absence, hence in the present case, since the proceeding initiated vide memo dated 31.07.2007 had remained inconclusive till the death of the husband of the petitioner on 29.04.2014, the said departmental proceeding had stood abated and consequently, the petitioner has become entitled to payment of not only the retiral dues of her deceased husband but also arrears of salary.

4. *Per contra*, the learned counsel appearing for the respondents has submitted that the deceased husband of the petitioner namely Late Kedar Nath Singh had received advance money for execution of work under different schemes of the District Board, Saran at Chapra and he has misappropriated the money advanced to him for execution of the works in 29 schemes of the District Board, Saran at Chapra amounting to a sum of Rs. 58,26,163/- whereafter, a criminal case was also filed against the deceased husband of the petitioner bearing Chapra



Town PS case no. 189 of 2006, however the said case stood abated on account of the death of the deceased husband of the petitioner herein.

The learned counsel for the respondent Zila Parishad has relied upon a judgment ***dated 10.05.2013*** rendered by the learned Single Judge of the Hon'ble Jharkhand High Court in ***W.P. (s) no. 3810 of 2002***, paragraphs 18, 20 and 25, whereof are reproduced hereinbelow :-

“18.Now, advertng to the contentions of the learned senior counsel appearing for the petitioner that the order of recovery passed against a dead person is null and void, I am of the opinion that it is not true in every circumstance. There are various provisions in law, even in the Code of Criminal Procedure which entitles even the near relatives of a convict to contest the matter on behalf of the deceased convict. Section 394 of the Cr.P.C. permits any of the near relative of a convict who had preferred appeal, to apply for leave to continue the appeal and if leave is granted, the appeal would not abated. Section 394 of the Cr.P.C. is extracted below: “394. Abatement of appeals – (1) Every appeal under Section 377 or Section 378 shall finally abate on the death of the accused.(2) Every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant: Provided that where the appeal is against a conviction and sentence of death or of imprisonment, and the appellant dies during the



pendency of the appeal, any of his near relatives may, within thirtydays of the death of the appellant, apply to the Appellate Court for leave to continue the appeal; and if leave is granted, the appeal shall not abate.”

20. In “Hindustan Times Ltd. Vs. Workmen” reported in(1964) 1 SCR 234, the Hon'ble Supreme Court has held that wherean employee is dismissed for misconduct which has resulted in financial loss to the employer, the amount lost can be deducted from the amount of gratuity due.

25.In a given case offence /misconduct committed by an employee may automatically be dissolved on account of his death however, in certain offences/misconduct alleged to have been committed by the employee during his service would not dissolve him of the liability due to his death. In a case where an employee is alleged to have misappropriated funds and before the conclusion of the inquiry he dies, the legal representatives of the employee are entitled to defend the case and if it is found that any amount is duefrom the employee, the employer can recover the same from the estate left by the deceased employee. Similarly if the misconduct is not proved, the legal representatives of the deceased employee would be entitled for the retiral benefits of the deceased employee. The effect of the proceeding initiated after the retirement or dismissal of an employee is different from the proceeding that can be initiated for misconduct during the lifetime of the employee before his retirement. In cases of inquiry initiated during the lifetime of the employee before his retirement, the employer



would be at liberty to complete the inquiry even after the death of the employee in presence of the legal representatives of the deceased employee and recover the loss from the retiral dues of the deceased employee.”

5. It is submitted by the learned counsel for the respondent *Zila Parishad* that even after the death of delinquent who is said to have misappropriated a huge sum of money, the ongoing departmental proceedings would not abate and the legal representatives of the deceased employee would be entitled to defend the case, whereupon the disciplinary authority shall be well within its jurisdiction to pass appropriate orders.

6. I have heard the learned counsel for the parties and perused the materials on record as also considered the case laws cited by the respective parties.

7. At this juncture, I would refer to a judgment rendered by this Court *dated 18.05.2018* passed in *C.W.J.C. no. 8484 of 2017 (Rima Devi v. The State of Bihar & ors.)*, relevant paragraphs whereof are reproduced hereinbelow :-

“ 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.



8. Considering the aforesaid well-reasoned & eloquent judgment rendered by this Court ***dated 18.05.2018*** in the case of ***Rima Devi (supra)*** as also the judgment rendered by the Hon'ble Division Bench in the case of ***Kumkum Devi (supra)*** and the judgment of the Hon'ble Apex Court rendered in the case of ***Basudeo Tiwary vs. Sido Kanhu University and ors.***, reported in ***(1998) 8SCC 194***, this Court is of the considered view that the departmental proceeding initiated by the respondents by issuing 'Prapatra ka' and appointing the Inquiry Officer and Presenting Officer, vide memo dated 31.07.2007, had stood abated with the death of the husband of the petitioner on 29.04.2014, inasmuch as the same had remained inconclusive. Therefore, the petitioner herein would be entitled to the death-cum-retiral benefits as also the arrears of salary since the impugned order dated 03.11.2017 passed by the Deputy Development Commissioner-cum-Chief Executive Officer, Zila Parishad, Saran at Chapra is illegal and contrary to law, inasmuch as the amount of recovery to be made, has been assessed without the guilt of the deceased husband of the petitioner having been proved or he having been found to have caused pecuniary loss to the Government by his misconduct or negligence, pursuant to a full fledged departmental proceeding



having taken place and the Inquiry Officer/ disciplinary authority having found the deceased husband of the petitioner to be guilty upon the charges having been conclusively proved.

9. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, the order dated 03.11.2017 passed by the Deputy Development Commissioner-cum-Chief Executive Officer, *Zila Parishad*, Saran at Chapra is set aside and the respondents no. 6 and 7 are directed to forthwith make payment of the death-cum-retiral dues of the petitioner herein as also the arrears of salary outstanding for payment pertaining to the deceased husband of the petitioner herein.

10. The writ petition stands allowed.

(Mohit Kumar Shah, J)

rinkee/-

AFR/NAFR	AFR
CAV DATE	26.08.2019
Uploading Date	12.09.2019
Transmission Date	NA

