

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.8052 of 2020**

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Bibha Devi Wife of Late Kumaresh Prasad Yadav, Resident of Harda, Police,  
Station-Maranga, District-Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, General Administration Department, Government of Bihar, Old Secretariat, Patna.
2. Additional Chief Secretary, General Administration Department, Government of Bihar, Old Secretariat, Patna.
3. The Under Secretary to the Government, General Administration Department, Government of Bihar, Old Secretariat, Patna.
4. The Principal Secretary, Department of Panchayati Raj Vikas Bhawan, New Secretariat, Bailey Road, Patna,
5. The Divisional Commissioner, Purnea Division, Purnea.
6. The Collector-Cum District Magistrate, Purnea.
7. The Senior Deputy Collector, Revenue Branch, Purnea.
8. The Sub-Divisional Officer, Sadar, Purnea.
9. The Block Development Officer, Banmankhi, District-Purnea
10. The Block Development Officer, Kasba, District-Purnea.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Sanjeet Kumar  
For the Respondent/s : Mr.Manish Kumar, G.P.-4  
with Mr. Ravi Verma, AC to GP-4

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH**

**CAV JUDGMENT**

**Date : 01-12-2020**

The petitioner is widow of one late Kumaresh Prasad Yadav, against whom a disciplinary proceeding was initiated under Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules') for his alleged misconduct when he was posted as Panchayat



Secretary, Kasba Prakhand with additional charge of Gram Panchayat Raj, Mohini in the district of Purnea.

2. It was alleged against the petitioner's deceased husband in the departmental proceeding that he was caught red-handed by the Vigilance-sleuths while accepting bribe money of Rs. 6,000/-. The said departmental proceeding culminated into imposition of punishment of dismissal from service passed on 05.02.2014 by the Collector-cum-District Magistrate, Purnea. The petitioner's deceased husband thereafter preferred statutory appeal under Rule 24(1) of the said Rules before the Divisional Commissioner, Purnea Division, Purnea, giving rise to Appeal No.01 of 2015. The appeal remained pending since the date of its filing on 29.12.2014. The petitioner's husband died on 04.11.2017.

3. So as to pursue the appeal pending before the Divisional Commissioner, Purnea, the petitioner filed an application, seeking substitution, in place of her deceased husband.

4. Taking note of the fact that the appellant before the Divisional Commissioner in the service appeal had deceased and there was no provision for substitution under the Rules, the Divisional Commissioner, Purnea has dismissed the appeal itself



on the sole ground of the death of the appellant by an order dated 25.09.2019, which has been brought on record by way of Annexure P/1 to the writ application and is under challenge in the present application under Article 226 of the Constitution of India.

5. I have heard Mr. Sanjeet Kumar, learned counsel, appearing on behalf of the petitioner and Mr. Manish Kumar, learned Government Pleader No.4 with Mr. Ravi Verma, learned AC to GP-4 on behalf of the State of Bihar, *online*, through video conferencing.

6. Mr. Sanjeet Kumar, learned counsel appearing on behalf of the petitioner has submitted that the impugned order suffers from gross illegality inasmuch as the right of the petitioner to pursue the service appeal survived after the death of the deceased since the petitioner as legal heir had pecuniary interest and would have been entitled for all consequential benefits depending upon the outcome of the appeal. It is his case that had the appeal been allowed the petitioner and the legal heirs of the deceased would have been benefited in terms of inheriting the arrears of salary, other emoluments and death-cum-retiral benefits. He has contended that in any view of the matter, the appellate authority delayed disposal of appeal which



remained pending for three years for no latches on the part of the deceased employee. The appellate authority, according to him in the facts and circumstances, ought to have allowed the petitioner to pursue the service appeal.

7. Learned counsel representing the State of Bihar, on the other hand, has submitted that there is no infirmity in the impugned order, which has been passed on the sole reasoning that there is no provision for substitution in a departmental proceeding under the Rules, and, therefore, the appeal deserved to be dismissed.

8. The facts, which have been noted above, are not at all in dispute. The only question which this Court is required to consider and decide is as to whether that an appeal against the order of dismissal shall abate in the event of death of the appellant on the ground of absence of any provision for substitution.

9. This question had fallen for consideration before a Division Bench of this Court in **LPA No. 247 of 2015 (State of Bihar Vs. Shanti Kumari and ors)**. In that case the Government servant was dismissed from service against which he had preferred statutory appeal which, too, was dismissed. Challenging the order of dismissal in the departmental



proceeding as well as the order of the appellate authority, the Government servant approached this Court by filing writ petition. During the pendency of the writ petition, the Government employee died. The writ petition was, however, pursued by the heirs and legal representatives of the Government servant. A learned Single Judge of this Court found apparent illegality in the order of the appellate authority inasmuch as the same person who had passed final order in the disciplinary proceeding was found to have passed the appellate order since he was promoted in the meantime and was holding a higher post and thus, had become appellate authority when the appeal of the Government servant was being considered. The order of the appellate authority was found not sustainable by the learned Single Judge on the sole ground that the same person who had passed the order in the disciplinary proceeding could not have acted as an appellate authority. When the question came for remanding the matter back to the appellate authority after having held the appellate order to be illegal on the said limited ground, learned Single Judge held that the disciplinary proceeding itself abated because of the death of the Government servant during the pendency of the appeal. The learned Single Judge consequently held in that case that the Government



servant would be deemed to have died in harness in the said facts and circumstances. The said order of the learned Single Judge came to be challenged before this Court by filing an appeal under Letters Patent of this Court, giving rise to **LPA No. 247 of 2015** (supra), which came to be disposed of by judgment and order of this Court dated 23.02.2018. It can be noticed from the decision of this Court in case of **Shanti Kumari** (supra) that it was argued on behalf of the appellant State of Bihar that abatement of the disciplinary proceeding on the death of the delinquent at the appellate stage was not in-tune with the legal position because it was the correctness of the order of penalty passed by the disciplinary authority which was to be tested by the appellant authority on merits of the order as well as the procedure followed. The submission made on behalf of the State of Bihar to the effect that “it is the choice of the substituted heirs of the deceased employee whether or not to pursue the appeal preferred by the deceased Government servant and test the order of penalty,” has been noted by the Division Bench in **Shanti Kumari** (supra).

10. The Division Bench in case of **Shanti Devi** (supra) taking note of rival submissions advanced on behalf of the parties clearly held as under:-



“Before we would proceed to consider the issues raised by the deceased Government employee in his appeal, we would definitely examine the opinion of the learned Single Judge which is the foundation for the present appeal and even though there is no infirmity on the principles followed by the learned Single Judge to hold the appellate order unsustainable having been passed by the Disciplinary Authority himself while discharging appellate functions, his opinion as to the abatement of the disciplinary proceeding by virtue of death of the delinquent is strictly not in tune with the legal position nor is supported by the judgment rendered in the case of Ashok Kumar Singh(supra), on which he has chosen to rely.

A death of the delinquent at the stage of disciplinary proceeding and at the stage of appellate proceeding is vastly different. In fact if the death of a delinquent occurs in the midst of the disciplinary proceeding there can be no confusion that the proceeding would abate instantly. But the situation would be vastly different if the death takes place after the proceeding has concluded and the matter is resting with the Disciplinary Authority for final orders or after orders are passed or where the death takes place at the appellate stage.

In our opinion while there would be no contest with the legal position in case where the death of a delinquent takes place in the midst of



the disciplinary proceeding which would abate the disciplinary proceeding, but if the death takes place after the enquiry is concluded in the disciplinary proceeding and the matter is posted for orders or at the appellate stage, then the situation is different and there cannot be an abatement of disciplinary proceedings which has already attained finality. In such cases the right to sue survives and the legal heirs who wish to contest the finding of guilt in the punishment order passed by the Disciplinary Authority can pursue the appeal if already filed by the deceased delinquent or file appeal, in case he has deceased after passing of the order of penalty. In case while pursuing the appellate remedy the legal heirs are able to show that the matter would require reconsideration at the original stage of the disciplinary authority by remand, then the proceedings can be held abated, otherwise not.

The provisions of Order 22 rule 1 of the Code of Civil Procedure read with rule 11 thereof as well as section 394 of the Code of Criminal Procedure, are self eloquent of the right to sue, subsisting in the legal heirs who are fully entitled to pursue the cause at the appellate stage for testing the legality and validity of the order passed by the original authority i.e. the Disciplinary Authority, in the present context.”

11. The Division Bench further noted that when the



appellate authority is of the opinion that the matter requires a remand to the disciplinary authority for fresh disposal, question of abatement of entire disciplinary proceeding would arise in case of death of Government Servant.

12. It is true that there is no specific provision for substitution consequent upon the death of the appellant whose appeal is pending before the appellate authority. At the same time, there cannot be any dispute that in case the appeal is fit to succeed on merits, the heirs and legal representatives of the deceased appellant would be entitled for consequential benefits being successor-in-interest. To deny such person(s) a right to pursue service appeal on the ground of death of the appellant, in my opinion, is wholly unreasonable and illegal. Additionally imposition of severest of punishments of dismissal from service on a Government servant on the charge of corruption attaches serious stigma to the near relatives of accused. So remove such stigma, the legal heir should be allowed to pursue the statutory appeal.

13. Further no justification is coming forth as to why the appeal was allowed to remain pending for nearly long three years, till the death of the petitioner's late husband. I do not add anything further more than what has been held by the



Division Bench in case of **Shanti Kumari** (supra) as noted above and aforementioned discussions. The Division Bench has distinguished two situations, viz, (i) when death of a delinquent employee takes place in the midst of the departmental proceeding, in which case the disciplinary proceeding shall abate and (ii) if the death takes place after the enquiry is concluded in the disciplinary proceeding and the matter is posted for orders or, at the appellate stage. The second circumstances, the Division Bench has held that the disciplinary proceeding or the appeal shall not abate. The right to sue survives and the legal heirs who wish to contest the finding of guilt in the punishment order passed by the disciplinary authority can pursue the appeal if already filed by the deceased delinquent or file appeal, in case he has deceased after passing of the order of penalty. It has also been held that in case, while pursuing appellate remedy, the legal heirs are able to show that the matter requires reconsideration at the original stage by the disciplinary authority, then the proceeding can be held to have abated and not otherwise.

14. The Division Bench has referred to the provisions under Order 22 Rule 1 of the Code of Civil Procedure read with Rule 11 thereof as well as Section 394 of



the Code of Criminal Procedure, which deal with right to sue, subsisting in the legal heirs, who are fully entitled to pursue the cause at the appellate stage for testing The legality and validity of the order passed by the original authority.

15. In view of the legal position discussed by the Division Bench in case of **Shanti Kumari** (supra) as noted above, it is held as under:-

(i) When death of a delinquent employee takes place in the midst of the disciplinary proceeding (departmental enquiry), that will result into abatement of the disciplinary proceeding, altogether.

(ii) If the death takes place after the departmental enquiry is concluded and other stages have crossed in a disciplinary proceeding and the matter is posted for final orders before the disciplinary authority, the disciplinary proceeding shall not abate and the disciplinary authority may pass final orders in accordance with law, if the proceeding has completed all other stages.

(iii) In case the death takes place after passing of the final order in the disciplinary proceeding, the heirs and legal representatives of the deceased government servant may file appeal against the order of the disciplinary authority.



(iv) If appeal has been preferred by a Government servant against the order of the disciplinary authority and during the pendency of the appeal the Government servant dies, the legal heirs, who wish to contest finding of guilt in the punishment order passed by the disciplinary authority shall be allowed to pursue the appeal.

16. These observations have been made to clarify the legal position for the disciplinary authorities and the appellate authority under the Rules to follow scrupulously so that unnecessary litigations are not generated.

17. Situated thus, in view of the above noted discussion and circumstances, the impugned order requires interference.

18. Accordingly, the order dated 25.09.2019 passed by the Divisional Commissioner, Purnea (Annexure-P/1) is quashed. The matter is remitted back to the appellate authority with a direction to allow the petitioner to pursue the appeal before him. He is directed to consider the appeal on merits and pass appropriate orders.

19. Let this order be communicated to the Chief Secretary of Bihar to ensure that relevant part of the present order is circulated to such officials under the State Government,



who exercise power of disciplinary authority or appellate authority under the Rules for future guidance.

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**(Chakradhari Sharan Singh, J)**

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| AFR/NAFR          | NAFR       |
| CAV DATE          | 30.09.2020 |
| Uploading Date    | 01.12.2020 |
| Transmission Date |            |

