

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.474 of 2021
In
Civil Writ Jurisdiction Case No.547 of 2016

-
-
1. Phul Kumari Devi Wife of Late Shatrughan Manjhi Resident of Village-Daniyawar, P.S. Daniyawar, District-Patna.
 2. Satya Prakash Kumar Son of Late Shatrughan Manjhi Resident of Village-Daniyawar, P.S. Daniyawar, District-Patna.
 3. Prem Prakash Kumar Son of Late Shatrughan Manjhi Resident of Village-Daniyawar, P.S. Daniyawar, District-Patna.

... .. Appellant/s

Versus

1. The State of Bihar Bihar
2. The Director, General of Police, Bihar, Patna.
3. The Inspector General of Police, Vigilance, Patna.
4. The Deputy Inspector General of Police, (Vigilance), Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Sanjay Kumar, Advocate
For the State	:	Mr.Saroj Kumar Sharma, AC to AAG3
For the Vigilance	:	Mr.Anil Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 08-07-2024

Re:I.A. No. 1 of 2021

Heard I.A. No. 1 of 2021, there is a delay of 183 days in
filing the present LPA, in Para 2 it is stated as under:-

*“That it is humbly stated that the
writ petitioner Shatrughan Manjhi had earlier*



filed LPA No. 238/2019 against the order dated 02-01-19 passed in CWJC No. 547/16 but during the pendency of the LPA he died on 05-5-21 due to this reason the LPA No. 238/19 was disposed of on 05-05-21 with liberty to legal heirs and representatives of deceased appellant to challenge the order dated 02-01-19 passed in CWJC No. 547/16.”

2. Taking note of the reasons for condonation of delay of 183 days, we are satisfied. Accordingly, I.A. No. 1 of 2021 stands allowed while condoning the delay of about 183 days in filing LPA No. 474 of 2021.

3. With the consent of the learned counsels for the respective parties, the main matter is taken up for final disposal. Appellant's husband - *Late Shatrughan Manjhi* was working as Head Constable. He remained absent for about 72 days. Resultantly, he was placed under suspension on 28.10.2010, for remaining unauthorised absent he was subjected to disciplinary proceedings and it was concluded in imposition of penalty of dismissal on 29.08.2012, and it was subject matter of appeal before the Appellate Authority and Appellate Authority confirmed the order of dismissal on 19.05.2015. Thus, deceased - *Late Shatrughan Manjhi* preferred CWJC No. 547 of 2016. Learned Single Judge has proceeded to dismiss the aforementioned CWJC on 02.01.2019 Hence, the present LPA.



4. Initially, the LPA was preferred by the deceased and it was numbered as LPA No. 238 of 2019. During pendency of LPA No. 238 of 2019 deceased - *Shatrughan Manjhi* died on 05.05.2021. Resultantly, at the request of learned counsel for the appellants LPA No. 238 of 2019 was disposed of, reserving liberty to the legal heirs and representatives of the deceased to challenge the order dated 02.01.2019 passed in CWJC No. 547 of 2016 was ordered. Hence, the present LPA.

5. Learned counsel for the appellants submitted that respondents have wrongly taken the unauthorized absence for a period about 906 days and it is factually incorrect, for the reasons that he remained absent for about 72 days before he was placed under suspension on 28.01.2010. On the other hand, Disciplinary Authority proceeded to take the factual aspect as if deceased remained unauthorized absent for about 906 days ignoring the fact that deceased was placed under suspension and he was continued to pay subsistence allowance as is evident from their own pleadings in the supplementary affidavit filed on 20.06.2024 *vide* Para 2. In other words, respondents have admitted that actually deceased employee remained unauthorised absent for about 72 days and not 906 days. If the quantum of mis-conduct of absence is taken into consideration, in that event, highest penalty of



dismissal from service is not warranted. Having regard to the fact that deceased employee initially appointed as Constable and he has earned promotion to the post of Head Constable and served number of years of service. On this issue in identical matter Hon'ble Supreme Court in the case of **Yashodhar Kamat vs. Director General BSF & Ors.** reported in **(2021) 13 SCC 333** noticed and laid down principle for remaining unauthorised absent for few days and imposition of penalty of dismissal or major penalty would be arbitrary.

6. Taking note of the aforementioned principle as well as the fact that deceased employee remained unauthorised absent for a period of about 72 days read with the fact that Disciplinary Authority proceeded as if deceased employee remained absent for about 906 days and proceeded to impose major penalty of dismissal from service is arbitrary and illegal.

7. The appellants have made out a case so as to interfere with the order of the Disciplinary Authority/Appellate Authority dated 29.08.2012/19.05.2015. Accordingly, they are set aside.

8. Learned Single Judge has not appreciated the factual aspects of the matter to the extent that what is the exact absence of period. If he had taken note of factual aspects of the matter to the extent that deceased was remained absent for about 72 days and he



was placed under suspension on 28.01.2010, during the intervening period from the date of suspension till passing of final order in a departmental inquiry cannot be construed as remaining absence. If an employee is placed under suspension, the very object was that he should remain out of the office. During the suspension period one cannot draw inference that employee remained unauthorised absent.

9. Taking note of these facts and circumstances, the order of learned Single Judge dated 02.01.2019 passed in CWJC No. 547 of 2016 stands set aside. Accordingly, CWJC No. 547 of 2016 stands allowed.

10. The concerned respondents are hereby directed to regulate the suspension period, from the date of termination till deceased employee died and regulate the period after granting increment, pay fixation, calculation of arrears and its disbursement. Thereafter, if the deceased employee is entitled to pension, the same shall be determined and calculated and difference of pension, if any, the same shall be calculated and disbursed in favour of the legal heirs. The above exercise shall be under taken within a period of six months from the date of receipt of this order.



11. Accordingly, the present LPA No. 474 of 2021 stands allowed. Pending I.A(s), if any, stands disposed of.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

abhishekk/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.07.2024
Transmission Date	NA

