

Savitri Devi Vs. State of Bihar and ors.

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Court : Patna

Decided On : Jul-11-2005

Judge : Navin Sinha, J.

Acts : Indian Penal Code (IPC) - Sections 149 and 302; Indian Railway Establishment Code - Article 1802

Appeal No. : C.W.J.C. No. 6443 of 2004

Appellant : Savitri Devi

Respondent : State of Bihar and ors.

Disposition : Petition allowed

Prior history : Navin Sinha, J. 1. Heard learned counsel for the petitioner and the learned counsel for the State. 2. The petitioner is the wife of one Ramji Singh who at the relevant point of time was employed as Demonstrator in the Physics Department of the P.N. College, Parsa. The writ application questions the order as contained in Annexure 4 by which the deceased husband of the petitioner has been dismissed from service with restropective affect while simultaneously recalling the order dated 3.4.1999 a

Judgement :

Navin Sinha, J.

1. Heard learned counsel for the petitioner and the learned counsel for the State.
2. The petitioner is the wife of one Ramji Singh who at the relevant point of time was employed as Demonstrator in the Physics Department of the P.N. College, Parsa. The writ application questions the order as contained in Annexure 4 by which the deceased husband of the petitioner has been dismissed from service with restropective affect while simultaneously recalling the order dated 3.4.1999 according permission to the request of the deceased employee for voluntary retirement.
3. The petitioner's husband while he was in service was convicted for offence under Sections 302 read with Section 149 of the Penal Code which came to be upheld by this Court in appeal in March, 1998. Subsequently in August, 2001 the appeal preferred before the Supreme Court was also upheld with slight modification.
4. This Court would find that the deceased husband of the petitioner submitted an application on 16.1.1999 for voluntary retirement with effect from 6.7.1998. By Annexure 2 dated 3.4.1999 the same was accepted and the deceased husband of the petitioner was deemed to retire with effect from 6.7.1998. The relationship of master and servant thus clearly stood severed as on the said date. The deceased husband of the petitioner then on 3.6.1999 requested for the release of his ratiral benefits.
5. It would be the case of the respondents that all this while they were not aware of the fact of conviction of the deceased and the same having been upheld by the Apex Court. In the circumstances a show cause notice was issued to the deceased on 3.7.1999, replied to by him, whereafter by the impugned order at Annexure 4 dated 17.12.1999, as noticed above, the order granting voluntary retirement was recalled and the deceased was dismissed with retrospective effect. Learned counsel for the respondents also sought to urge that the petitioner in fact obtained order of voluntary retirement by suppression of those facts and thus the impugned order at Annexure 4 required no interference.

6. In the case of Union of India and Ors. v. Sayed Muzzafar Mir, : (1995)ILLJ157SC , the respondent sought voluntary retirement from the Railways by a letter dated 22.7.1985 giving three months notice to the Railways in terms of Article 1802(b) of Indian Railway Establishment Code. The Supreme Court on interpretation of the Article held that communication of acceptance was not a sine qua non and that the respondent stood voluntarily retired on expiry of the three months period on 21.10.1985, resulting in severance of status. The conclusion recorded at para 6 would then be as follows :-

'The period of notice in the present case having expired on 21.10.1985 and the first order of removal having been passed on 4.11.1985, we hold that the Tribunal had rightly come to the conclusion that the order of removal was non est in the eye of law.'

7. In : (1997)ILLJ 1070 SC , (Dr. Baljit Singh v. State of Haryana, the petitioner submitted his request/notice for voluntary retirement three months in advance and handed over charge without acceptance of the voluntary retirement. The authority declined to accept his retirement which he then challenged. It was, contended that on expiry of the period of three months the Government had no option but to accept his voluntary retirement. The respondents contended that there would be charge of serious offences against the petitioner in a criminal Court pending trial and therefore, it was open to the Government to decide whether the delinquent should be permitted to retire or disciplinary action be taken under the law. The Supreme Court then held that mere expiry of three months period of notice would not automatically end the jural relationship of employee and employer which would cease only on acceptance of the request for voluntary retirement. Thus only until the acceptance or rejection of the request for voluntary retirement is communicated the petitioner would be deemed to be in service and amenable to disciplinary and other control.

8. Be that as it may, it is a fact not in dispute between the parties that the husband of the petitioner expired on 25.10.1999 while the impugned order would be dated 17.12.1999. The order was clearly passed against a dead person. Law in this regard stands well settled and needs no reiteration.

9. In the circumstances considering the matter from any angle this Court is satisfied that Annexure 4 cannot be sustained. This Court would hold that once the request for voluntary retirement was accepted as noticed above the relationship of master and servant stood severed on that date. Thus there was no occasion for the respondents to issue him show cause with regard to the same on 3.7.1999.

10. In the result. Annexure 4 dated 17.12.1999 is hereby quashed. The writ petition stands allowed. The petitioner would be entitled to all consequential benefits in pursuance of the acceptance of the request of voluntary retirement of her deceased husband. Let the respondents do so within a period of eight weeks from the date of receipt and/or production of a copy of this order.

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