

**Jayanti Devi Vs. State of Bihar and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/516482](http://sooperkanoon.com/516482)

**Court :** Jharkhand

**Decided On :** May-01-2001

**Reported in :** 2001(49)BLJR2179

**Judge :** M.Y. Eqbal, J.

**Acts :** Service Law; Bombay Civil Services Rules - Rule 152-B

**Appeal No. :** CWJC No. 741 of 2000 (R)

**Appellant :** Jayanti Devi

**Respondent :** State of Bihar and ors.

**Advocate for Def. :** R.N. Sahay, Adv.

**Advocate for Pet/Ap. :** S. Bakshi, Adv.

**Disposition :** Application allowed

**Judgement :**

ORDER

**M.Y. Eqbal, J.**

1. In this writ application the petitioner, who is the widow of late Shambhu Nath Pandey, has prayed for issuance of an appropriate direction upon the respondents to pay to the petitioner the post-retirement benefits such as family pension,

provident fund amount, gratuity, unpaid salary, group insurance and suspension allowances etc. on account of death of her husband who died at the age of 55 years while in service of the respondents.

2. Petitioner's case is that her husband was working as Assistant in the Social Forestry Division. Koderma under respondent No. 3, Divisional Forest Officer, Social Forestry Division. Koderma. On 14.7.1995 a disciplinary proceeding was initiated against the petitioner's husband for the alleged defalcation of Rs. 1,76,229/- forgery falsification of records and misuse of office, it is stated that belatedly on 27.7.1998 an Enquiry Officer was appointed to enquire into the aforementioned charges against the petitioner's husband but the Enquiry Officer did not actually carry out the proceeding until the petitioner's husband's death on 24.3.1999. It is alleged that after the death of the petitioner's husband enquiry proceeding was started and concluded ex parte and on the basis of that enquiry report, the disciplinary authority passed order of dismissal of the petitioner's husband from service, vide order dated 13.9.1999.

3. A counter-affidavit has been filed on behalf of respondent No. 3 stating, inter alia, that the petitioner's husband was suspended on the charge of defalcation of money vide order dated 8.12.1993 and during the period of suspension the headquarter of the petitioner's husband was fixed at Giridih Forestry Division. A criminal case was also instituted simultaneously against the petitioner's husband. Thereafter, a departmental proceeding was initiated vide order dated 14.7.1995 and an Enquiry Officer was appointed on 27.7.1998. The Enquiry Officer fixed 14.1.1999 for enquiry and the same was intimated to the petitioner's husband vide letter dated 8.1:1995. It is stated that despite notice the employee did not choose to appear before the Enquiry Officer on 14.1.1999 and also did not appear on the next date, i.e. on 25.1.1999. Consequently the Enquiry Officer proceeded ex parte and submitted his report to the Conservator of Forest, Hazaribagh. On the basis of the enquiry report the Conservator of Forest, Hazaribagh, vide order dated 13.8.1999 passed order of dismissal against the petitioner's husband. It is, therefore, contended that the petitioner is not entitled to any relief for pay-merit of death-cum-retirement benefits. It is further stated that a dismissed employee is neither entitled to post-retirement benefits nor appointment of his heirs on

compassionate ground.

4. A separate counter-affidavit has been filed by respondent No. 4, the Provident Fund Officer, Hazaribagh wherein it is stated that from the Provident Fund Accounts received from the Accountant General, Bihar it transpired that an amount of Rs. 2.132/- was shown as deficit as the deceased husband of the petitioner had taken excess towards loan and he was to deposit the same in his provident fund account for adjustment. The said respondent received letter dated 21.7.2000 from the Divisional Forest Officer, Social Forestry Division, Koderma along with final withdrawal application of the general provident fund and also the deduction statements and on receipt of the said application, the same was submitted for payment to the Treasury Officer. It is stated that respondent No. 4 subsequently came to know about the death of the petitioner's husband on 24.3.1999.

5. From perusal of the affidavits filed by the parties, the following admitted facts emerge for consideration :

The petitioner's husband was put under suspension vide order dated 8.12.1993 on the allegation of defalcation of public money and a criminal case was also instituted. After about two years, i.e. on 14.7.1995 the respondents decided to initiate a departmental proceeding against the deceased-employee. The respondents took about three years in appointing the Enquiry Officer which was done sometimes in 1998. It is admitted in para 16 of the counter-affidavit of respondent Nos. 2 and 3 that the Enquiry Officer so appointed fixed the date of enquiry on 5.10.1998 but the Enquiry Officer could not proceed with the enquiry due to lock up of the Koderma Social Forestry Department from 24th September, 1998 to 30th October, 1998. However, the next date of enquiry was fixed on 14.1.1999 but the employee did not choose to appear before the Enquiry Officer. In para 20 of the counter-affidavit it is stated that for the strict compliance of the principles of natural Justice, opportunity was given to the employee to present himself before the Enquiry Officer and submit his explanation on 25.1.1999. Such information was sent vide letter dated 16.1.1999. A copy of the notice dated 16.1.1999 has been annexed as Annexure-E to the counter-affidavit. It is stated that when the employee did not appear before the Enquiry Officer the

departmental proceeding was concluded ex parte and enquiry report was submitted on 30.8.1999, on the basis whereof the disciplinary authority passed the final order of dismissal on 13.9.1999. On the other hand, the criminal case initiated against the petitioner's husband was closed or dropped on account of death of the deceased.

6. From the aforesaid facts it is therefore clear that although petitioner was put under suspension in 1993 but the departmental proceeding was infact initiated in 1998 by appointing Enquiry Officer to proceed with the matter. The Enquiry Officer for the first time fixed 14.1.1999 as the date of enquiry. It is stated that the Enquiry Officer sent letter dated 16.1.1999 to the deceased-employee fixing 25.1.1999 for his appearance and for submission of explanation. It does not appear whether that notice fixing 25.1.1999 for his appearance was served on the employee or not. From perusal of letter dated 16.1.1999 issued by the Enquiry Officer, it appears that the employee was called upon by the Enquiry Officer to submit his explanation so that the date of enquiry could be fixed. The relevant portion of the notice reads as under :

^vr% esjs }kjk fn;s x;s mijksfuns'kkuqlkj vfcyEc viuk Li'Vhdj.k lefiZr dj nsa ftlls vxys tkp dh frfFkfuf'pr dh tk ldsa A vkidks vkjksiksa dh Nk;k izfr Hkh miyC/k djk;h tk jgh gS A\*\*

7. In the counter-affidavit it is stated that when the employee did not appear on 25.1.1999 pursuant to notice dated 16.1.1999, the Enquiry Officer proceeded ex parte and submitted his report and on the basis of that report the Conservator of Forests passed the impugned order of dismissal on 13.9.1999. Nothing has been stated in the counter-affidavit that after 25.1.1999 the Enquiry Officer ever fixed any date for recording the evidence of the parties nor it has been stated in the counter-affidavit that after submission of report even the copy of the enquiry report was sent to the employee or he was called upon to file his show-cause to the Enquiry Officer. On the contrary it is admitted by the respondents that the deceased employee died on 24.3.1999 and after his death the Enquiry Officer proceeded with the enquiry ex parte and submitted his report on 30.8.1999. On the basis of that report an order of dismissal was passed on 13.9.1999. Learned

counsel appearing for the respondent-State could not point out provision which entitled the authority to continue a departmental proceeding against a dead person and pass an order of dismissal with retrospective effect. By the impugned order of dismissal the deceased-employee has been dismissed from the service with effect from the date of his death.

8. It is well settled that a departmental proceeding can be initiated against the government servant for the purpose of imposing penalty if misconduct is established. The imposition of penalty like dismissal or removal has nexus to the contract of service. The proceeding therefore automatically lapse or terminated by reason of death of delinquent employee unless otherwise it is continued in accordance with rules. Similar-question arose before the Bombay High Court in the case of *Hirabai Deshmukh and Anr. v. State of Maharashtra*, 1986 Lab IC 248. A Division Bench while deciding the question observed :

'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 proceeding 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.'

9. 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 years of the order of suspension and that to 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. .

10. For the reasons aforesaid, this writ application is allowed and the respondents are directed to release all the death-cum-retirement dues in favour of the petitioner, who is widow of the deceased employee as expeditiously as possible and preferably within a period of 30 days from the date of receipt/production of copy of this order.

11. Application allowed.