

Jayatri Devi Vs. State of Jharkhand and ors.

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Court : Jharkhand

Decided On : Oct-15-2008

Reported in : [2008(119)FLR854]

Judge : R.R. Prasad, J.

Appellant : Jayatri Devi

Respondent : State of Jharkhand and ors.

Judgement :

R.R. Prasad, J.

1. Learned Counsel appearing for the petitioner and learned Counsel appearing for the State.

2. This writ petition has been filed by the petitioner challenging the order, as contained in Memo No. 2176 dated 30.9.2003 (Annexure-2), whereby respondent No. 4 the Superintendent of Police, Chatra, has terminated the services of the husband of the petitioner. Further prayer is to direct the respondent to pay death cum retiral benefits to the petitioner, who has succeeded the estate of her husband on his death.

3. Learned Counsel appearing for the petitioner submits that the husband of the petitioner was working as driver constable in police department and while he was

in service, he lost his mental balance and the other day, under the same state of mind; the husband of the petitioner took a vehicle, which unfortunately, met with an accident and their upon, a departmental proceeding was initiated but as, the husband of the petitioner was not mentally fit, he was quite oblivious of the implications of the departmental proceeding and hence, he did not appear but the department should have waited for some time in order to provide adequate time to the husband of the petitioner to recover from mental illness and then the department should have proceeded with the departmental proceeding but instead of adopting that measure, the enquiry officer without giving ample opportunities to the husband of the petitioner, proceeded with the proceeding ex-parte and submitted a report upon which, disciplinary authority passed an order of termination of the service of the husband of the petitioner and, therefore, under this situation order of termination can certainly be said to be illegal and unjustified.

4. However, learned Counsel appearing for the State by putting emphasis on the statement made in the counter affidavit particularly at Para-6 stated that husband of the petitioner, while was posted at Chatra, took a vehicle without there being any authority and met with an accident, as a result of which the vehicle got damaged and, therefore, the departmental proceeding was initiated, whereby the enquiry officer gave seven to eight opportunities to the husband of the petitioner for defending himself but he did not chose to appear but ultimately, the petitioner did appear before the enquiry officer on 30.9.2002 and asked for supply of the copies of certain documents which were supplied but even then, no reply was given and, therefore, there was no option for the enquiry officer but to proceed with the proceeding and ultimately, the enquiry officer found the husband of the petitioner guilty of the charges and submitted enquiry report to the disciplinary authority, who passed the impugned order and as such it can never be said that the proceeding was held as ex-parte and the husband of the petitioner was not given ample opportunities to defend himself, rather the circumstances as stated in the counter affidavit go to show that in spite of ample opportunities being given, when the husband of the petitioner did not file reply, order of termination was passed, on the enquiry report, under which, service of the husband of the petitioner was terminated. It was also pointed out that earlier to the said proceeding, the husband of the petitioner had been found guilty of the charges, on

the other occasions also.

5. Having heard Counsel for the parties and regard being had to the facts and circumstances of the case. It can never be said that the husband of the petitioner was not given ample opportunities, rather the husband of the petitioner seems to have been given ample opportunities and that when the husband of the petitioner was found guilty for the charge levelled against him, an order of termination was passed, which in the facts and circumstances, needs not to be interfered by this Court. So far submission regarding inability of the husband of the petitioner to meet with the charges on account of the fact of losing mental balance is concerned, defence; seems to have taken for the first time before this Court as this plea never seems to have been taken before the enquiry officer at the time of proceeding or even before when the husband of the petitioner was in service and, therefore, at this stage, the plea taken by the petitioner of her husband losing mental balance can not be accepted.

6. In the result, I do not find any merit in this writ petition. Hence, it is dismissed.

7. Since the order of termination has been found to be justified, the husband of the petitioner is not entitled for other relief such as death-cum-retiral benefit.

8. It goes without saying that if the husband of the petitioner was entitled to any other benefits, the same be put forth by the petitioner by filing representation before the concerned authority within a period of one month and the concerned authority would be deciding the same within three months from the date of filing of the representation.