

Pramila Devi and Ors Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Aug-17-2016

Appellant : Pramila Devi and Ors

Respondent : State of Jharkhand and Ors

Advocate for Pet/Ap. : Mr. Rohit

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 1694 of 2014
----- 1.Pramila Devi, widow of Late Geeta Prasad, resident of Village- Budhauri Bazar (Sekhpura), P.O & P.S.: Sekhpura, District- Sekhpura, State: Bihar. 2.Asha Kumari, daughter of Late Geeta Prasad, resident of Village- Budhauri Bazar (Sekhpura), P.O & P.S.: Sekhpura, District- Sekhpura, State: Bihar. 3.Renu Devi, Wife o Sunil Kumar, resident of village-Charuawan, P.O & P.S.: Charuawan, District: Sekhpura, State: Bihar. ... Petitioners Vs. 1.The State of Jharkhand 2.Deputy Commissioner, Giridih, P.O, P.S. & District: Giridih 3.Block Development Officer, Pirtand, P.O, P.S. & District: Giridih 4.Accountant General, AG Office, Doranda, P.O & P.S.: Doranda, District: Ranchi. Respondents ----- CORAM: HONBLE MR. JUSTICE PRAMATH PATNAIK ----- For the Petitioner : Mr. Rohit, Advocate. For the Respondents-State : Mr. Chanchal Jain, J.C to AAG For the Accountant General : Ms. Richa Sanchita, Advocate Mr. Anup Kr. Agarwal, Adv.
----- 04/ Dated:

17. h August, 2016 Per Pramath Patnaik, J.: In the instant writ application, the petitioner has inter alia, prayed for quashing office order dated 17.08.2007 (Annexure 4), pertaining to dismissal of the husband of petitioner no. 1 and for direction upon the respondents to release the death-cum-retiral benefits with interest.

2. The facts, as disclosed in the writ application, in a nutshell, is that initially the husband of petitioner no. 1 was appointed on the post Revenue Karmachari under respondent no. 3 on 10.12.1976 and continued to discharge his duties to the utmost satisfaction of his higher authorities till March, 1998. Thereafter, the husband of petitioner no. 1 went on medical leave, as he was suffering from various disease including CAD with hypertension, manic depression psychosis and was under treatment from 09.09.1998 to 28.08.2013. Unfortunately, the husband of petitioner no. 1 died on 1.09.2013. After the death of her husband, the petitioner no. 1 approached the respondents-authorities for payment of death-cum-retiral benefits, where she came to know that about the order of dismissal.

3. The petitioners, left with no efficacious and alternative remedy, have approached this Court invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for redressal of their grievances.

4. Mr. Rohit, learned counsel for the petitioners submitted that the order of dismissal has never been communicated to the husband of the petitioner and when the petitioner no. 1 approached the respondents-authorities for payment of death-cum- retiral dues, she came to know about the impugned order of dismissal and immediately thereafter the petitioners approached this Court. There is no deliberate laches or inordinate delay on the part of the petitioner to approach this Court.

5. In support of his submission, learned counsel for the petitioners referred to a judgment rendered in the case of Raj Nath Rai Vs. State of Bihar, as reported in 2004(2) PLJR209 6. Per contra, counter affidavit has been filed on behalf of respondents controverting the averments made in the writ application. Mr. Chanchal Jain, J.C to learned A.A.G submitted that the husband of petitioner no. 1 remained absent from his duty for a continuous period of about 09 years, without

any authority. 3 On information through various agencies, registered post as well as by way of publication in daily newspaper, when the husband of petitioner no. 1 did not turn up to join his services, he has been dismissed from services on 16.08.2007 in terms of Rule 76 of the Jharkhand Service Code vide Gyapank 1318/Rev. Dated 17.08.2007. It has further been submitted that the husband of petitioner no. 1 never produced any chit of document in support of his illness till the impugned order of dismissal from services has been passed.

7. In support of his submission, learned counsel for respondents-State referred to a judgment rendered in the case of Life Insurance Corporation of India & Ors vs. Jyotish Chandra Biswas as reported in (2000) 6 SCC562 wherein the Hon'ble Apex Court has been pleased to inter alia hold that due to delay and latches, the writ petition ought not be admitted.

8. After bestowing my thoughtful consideration to the rivalized submissions and on perusal of the relevant records, I am of the considered view that the petitioner has been able to make out a case for interference in the impugned order of dismissal, due to the following facts, reasons and judicial pronouncements: (i).Before coming to factual aspect of the mater, it would be apposite to quote Rule 76 of the Jharkhand Service Code, as under:

76. Unless the State Government, in view of the special circumstances of the case, shall otherwise determine, a Government servant, after five years' continuous absence from duty, elsewhere than on foreign service in India, whether with or without leave ceases to be in Government employ. 4 (a)No Government servant shall be granted leave of any kind for a continuous period exceeding five years. (b)Where a Government servant does not resume duty after remaining on leave for a continuous period of 5 years, or where a Government servant after the expiry of his leave remains absent from duty, otherwise than on foreign service or on account of suspension, for any period which together with the period of the leave granted to him, exceeds a continuous period of 5 years, he shall unless the State Government otherwise determine be removed from service after following the procedure laid down in the Civil Service (Classification, Control appeal) Rules, 1930 and the Bihar and Orissa Subordinate Services (Discipline and Appeal)

Rules, 1935. On perusal of the Rule 76 of the Jharkhand Service Code, there is no room for ambiguity, doubt or debate that initiation of proceeding should proceed prior to the order of dismissal from services in case of continuous unauthorised absence from duty. In the instant case, there is no proceeding prior to dismissal from services of the petitioner. On that score, the impugned order of punishment is not sustainable and is liable to be quashed and set aside. (ii).View of this Court gets fortified by the decision referred to Raj Nath Rai (Supra), wherein the Hon'ble Apex Court has held that dismissal from service in a summary way without initiating any proceeding under the rules held to be contrary to the provision of law. (iii).So far as the delay on the part of the petitioners is concerned, there is absolutely no quarrel over the proposition referred by learned counsel for the respondents-State. But, in the instant case, it appears that the impugned order of dismissal from 5 services has been passed in the year 2007, when the husband of petitioner no.1 was under medical treatment for manic depression psychosis and only after the death of the husband of petitioner no.1 in the year 2013, when the petitioners approached respondents-authorities, they came to know about impugned order of dismissal from services. Therefore, in the peculiar facts and circumstances, writ petition has been filed after 7 years from the impugned order of dismissal was passed against the husband of petitioner no.1. Hence, the impugned order is non-est in the eye of law. If the impugned order is void from the very inception, being infraction of statutory rule,the question of delay is relegated to the background.

9. In view of the reasons stated in the forgoing paragraphs, the impugned order of punishment of dismissal from services at Annexure 4 is quashed and set aside and the respondents- authorities are directed to pass appropriate order on the quantum of punishment, considering the services rendered by the petitioner since 1976 and taking into account the views taken by this Court in the preceding paragraphs, in accordance with law within a period of four months from the date of receipt/production of copy of this order.

10. To this extent, the writ petition stands allowed. (Pramath Patnaik, J.) Alankar/-