

Anandi Devi Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Dec-02-2008

Reported in : RLW2008(4)Raj2954(1)

Judge : Mohammad Rafiq, J.

Appellant : Anandi Devi

Respondent : State of Rajasthan and ors.

Judgement :

Mohammad Rafiq, J.

1. This writ petition has been directed against the order of the Rajasthan Civil Services Appellate Tribunal, Jaipur dated 31.10.2000 whereby, the appeal of the petitioner filed by her for giving her pensionary benefits, was dismissed.

2. The present writ petition has been filed with the prayer to quash and set-aside the order of the learned Tribunal dated 31.10.2000 and also direct the respondents to declare her husband as presumed to be dead under Sections 107 and 108 of the Indian Evidence Act, 1872 and she may be allowed family pension w.e.f. 23.6.1967 i.e. the date of disappearance of her husband till date under the Rajasthan Service Rules, 1951 - Chapter 23-A together with interest @ 12% p.a. from the date of its accrual with the further prayer to direct the respondents to allow gratuity to her along with interest @ 12% p.a. From the date of accrual to

pendent lite calculating the same for the period 25.3.1956 to 23.6.1967 for a period of 11 years.

3. Facts in brief as unfolded in the writ petition are that the petitioner's husband Shri Madan Lal Sharma was initially appointed on the post of Vaidya in Ayurved Department, Government of Rajasthan, Ajmer. He joined his duties on the above post on 25.3.1956 at Ayurved Hospital, Isroda, District Alwar. Shri Madan Lal Sharma disappeared during service on 23.6.1967 from his place of posting. When for a long time, whereabouts of Shri Madan Lal Sharma could not be known to the petitioner, petitioner applied to the Sarpanch, Gram Panchayat, Savarda, Panchayat Samiti, Dudu, Pursuant therefore, Sarpanch and Assistant Collector and Executive Magistrate, Jaipur issued certificates dated 26.6.1979 and 3.3.1981, respectively, presuming that Shri Madan Lal Sharma has died.

4. Thereafter, through the letter of the Additional Director, Office of the Director Ayurved Department Rajasthan, Ajmer, petitioner came to know that services of her husband were terminated long ago vide order dated 27.8.1971 without following the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 and without giving opportunity of hearing thereby communicating the family of Shri Madan Lal Sharma (the delinquent). Petitioner approached the competent authorities for giving her family pension and gratuity but her request was not entertained by the competent authorities on the ground that husband of the petitioner Shri Madan Lal Sharma could not qualify the minimum qualifying period of 20 years for the purposes of grant of pension. Petitioner approached to the Rajasthan Civil Services Appellate Tribunal, Jaipur for redressal of her grievances, but the learned Tribunal vide order dated 31.10.2000 dismissed the appeal preferred by the petitioner. Hence, this petition.

5. I have heard learned Deputy Government Counsel for the State and perused the material available on record.

6. The contention of the petitioner in the writ petition is that neither the respondents have sanctioned the family pension to the petitioner nor considered the case of gratuity. Refusal by the respondents for family pension as well as gratuity was contrary to proviso of Rule 268B of the Rajasthan Service Rules,

1951.

7. Petitioner has placed reliance on judgments of this Court in State of Rajasthan and Ors. v. Phooli Devi and Ors. reported in 2003(1) WLC (Raj.) 479 and further in the case of Smt. Shakuntala Kanwar v. Union of India and Ors. reported in 2002(4) WLC (Raj.) 315 and Single Bench judgments of this Court in Kaushlendra Singh Naruka v. The State of Rajasthan and Anr. reported in 2000(1) WLC (Raj.) 723 and Indira Devi (Smt.) v. State of Rajasthan and Anr. : (2007(1)RLW 92).

8. Petitioner has further submitted in the writ petition that the petitioner had been regularly representing to the respondents for redressal of her grievances. But the respondents except writing letters to each others, did nothing in the matter of sanction of family pension to the petitioner as well as gratuity. The disciplinary proceedings against husband of the petitioner were conducted ex-parte and no notice of those proceedings was served either on the petitioner or any of her legal heirs. Such proceedings conducted in utter disregard of the principles of natural justice were void in law and consequently the order of dismissal passed on the basis of such proceedings was also illegal.

9. Shri Aklesh Jain, learned Deputy Government Counsel argued that the present petition suffers from delay and latches. Husband of the petitioner was absenting from duty since 23.6.1967 and his services was terminated vide order dated 27.8.1971 therefore, no step was required to be taken as per notification of the Department of Finance dated 19.11.1993. It was stated in the reply that Shri Madan Lal Sharma, husband of the petitioner served the department only for the period 8.9.66-16.9.66. The column of attendance registered was blank from 26.11.1966 to 29.5.1967. In the column of attendance register dated 29.5.1967, departure of Shri Madan Lal Sharma was shown to Alwar office whereas, he was not found working at Aushdhalaya, Isroda, Alwar. Thereafter, on several occasions, Shri Madan Lal Sharma remained absent from duty. Suddenly, on 23.6.1967, he disappeared from his place of posting and never turned back till date. It was further stated in the reply that death certificate of Shri Madan Lal Sharma and application for family pension were not furnished to the District Ayurvedic Officer, Alwar and as such no case for family pension could be

considered. It was further contended that Shri Madan Lal Sharma rendered 11 years of service to the department whereas, for the purpose of grant pension, minimum qualifying period of service should be 20 years. Therefore, after holding disciplinary proceedings, his services were rightly terminated and family pension has rightly not been granted to the petitioner on the ground of willful absence'. In the circumstances, the writ petition is liable to be dismissed.

10. I have given my anxious consideration to the submissions aforesaid and perused the material on record.

11. The issues raised in this writ petition in so far as the proposition of law on the controversy involved herein is concerned, are no longer res interga. A Division Bench of this Court in Phooli Devi (supra) authoritatively held in somewhat similar circumstances as under:

12. Rather action of the appellant State in initiating inquiry proceedings after seven years of disappearance of the Government servant and further holding such inquiry proceedings without service of pre and/or post initiation of proceedings in order to culminate into order of punishment of removal, both are against the constitutional mandate and principle of natural justice. That being so, the learned Single Judge has rightly condemned the action of the appellant State by holding that termination of a Government servant who has not been traced out or not heard of at all or his whereabouts were not known for more than seven years, is no meaning, inasmuch as no charge sheet could be issued to a dead person who by virtue of Section 108 of the Evidence Act is presumed to have died.

13. Once the decks are clear that admittedly Nanagram Meena was not heard of at all for more than seven years from the date of his disappearance of missing (3.4.1986), in support of which there is an uncontroverted pleading of the writ petitions duly supported by an affidavit to the effect that she has not heard of her husband (Nanagram Meena) since 3.4.86 and for last more than seven years, a presumption would must arise in her favour by virtue of Section 108 of the Evidence Act that her husband has been dead. Thus viewed, the appellate State therefore have to grant relief to the writ petitioners on the presumption that her husband is dead and she is a widow of deceased government servant entitling to

grant of relief as sought for in their writ petitioner. Having scanned the impugned judgment of the learned Single Judge assailed before us, we find no infirmity whatsoever in the said judgment and the learned Single Judge was justified in allowing the writ petition and in granting relief in favour of the writ petitioners as detailed above, which does not warrant any interference by this Court. In the said view of the matter, this appeal is dismissed. No Costs.

12. Another Division Bench judgment of this Court in Smt. Shakunala anwar (supra) also on the same issue held in para 11 and 12 as under:

11. By reading this relevant clause 3 of the memorandum, it is clear that a report should be lodged with the concerned Police Station about missing of the personnel and this fact should also come on record that employee have not been traced despite all efforts having been made by the police. In the present matter, both conditions are satisfied. Report has been lodged in police by Commandant 27th battalion BSF himself about missing of Sayar Singh and this fact is also established that Sayar Singh has not been traced despite all efforts having been made by the police, so we are of the considered view that the case is fully covered by the Government Decision O.M. No. 1/17/86 P & PW dated 29th August, 1986 and the petitioner appellant is entitled for all benefits which are available to the family of Sayar Singh according to above Government Decision. In the writ petition filed by the appellant-petitioner it has been stated that her husband had been wrongly dismissed from service from 9.6.83, she has also mentioned that no such copy of order regarding dismissal of service of petitioners' husband received by the petitioner and entire action of respondents is mere cover up of their mistake. On the other hand, learned Counsel for the respondents have also not placed on record copy of any such order of dismissal. The circumstances of this case and facts established by the petitioner clearly shows that it is not a case of desertion by constable Sayar Singh but it is a case of missing of a personnel and therefore if any such order has been passed about dismissal of Sayar Singh that is absolutely bad in the eye of law. We are also of the view that it is a case of missing of Sayar Singh and therefore case of the petitioner should be treated as her husband Sayar Singh is missing and his whereabouts are not known since 1983 and under these circumstances provisions given in above mentioned memorandum are fully

applicable in present matter. We are also of the view that if any dismissal order has been passed by concerned Commandant of any Official, such order is absolutely illegal and deserves to be set aside which we hereby do. We are also of the view that this appeal should be accepted and judgment of the learned Single Judge should be set aside and the writ petition should also be accepted.

12. Consequently, we allow this special appeal filed by the petitioner-appellant Shakuntala and set aside the judgment dated 10.7.1995 passed by the learned Single Judge. The husband of the appellant Smt. Shakuntala is missing since 1983, he could not be traced despite all efforts having been made by the Police and her case is fully covered by the Government Decision O.M. No. 1/17/86-P & PW, dated the 29th August, 1986, U.P. & P.W. On 25.1.1991 and Memorandum the Government of India, Ministry of Personnel PG & Pension dated 18.2.1993, therefore respondents Nos. 1 to 4 are directed to consider the case of appellant-Smt. Shakuntala in accordance with the Government Decision O.M. No. 1/17/86-P & PW, dated the 29th August, 1986, and grant all the benefits which are available to petitioner according to the above mentioned Government order with all consequential benefits. Costs made easy.

13. A bear look at the contents of the writ petition as well as reply, it would be clear that the service of petitioner's husband were terminated on the charge of being willfully absent from 23.6.1967. The contention of the respondents that since the Tribunal has dismissed the appeal filed by the petitioner for grant of ifamily pension on the ground that Shri Madan Lal Sharma could not render 20 years of years for the purpose of family pension, therefore, petitioner is not entitled for grant of family pension. But that was no reason not to grant family pension to her. Presumption has also been provided about the death of missing person in Section 108 of the Indian Evidence Act, 1872 which can be raised only upon expiry of period of seven years. But proviso to Rule 268B of R.S.R. as quoted below makes it clear that the grant of family pension would not await the expiry of period of seven years. If it is proved that a government servant is missing for more than a period of one years as prescribed under Rule 268-C, payment of family pension shall be sanctioned and be paid to the authorized member of family of missing government servant as defined under Rule 268C on submission of application

alongwith affidavit in prescribed form and also a copy of FIR-lodged in the Police Station. Reference in this regard is made to proviso to Rule 268 B, which is as follows:

Provided further that if a Government servant is unheard of for more than a period of one year the family pension at the rate prescribed under Rule 268 C shall be sanctioned and authorized to the member of his/her family as defined under Rule 268 D on submission of an application alongwith Indemnity Bond and Affidavit in the prescribed form and also a copy of FIR lodged with the Police about the disappearance of the Government servant. If in any case, the Government servant subsequently re-appears the family pension shall immediately cease to be admissible and payable. The amount of family pension already paid to the family, shall be recoverable from the salary of the Government servant.

14. Above rule is analogous to the proviso of Rule 61 of the Rajasthan Civil Service (Pension) Rules, 1996.

15. Division Bench of this Court in Phooli Devi (supra) was dealing with a case wherein also husband of the petitioner Nanagram Meena absented from his duties w.e.f. 3rd April, 1986 and did not report back despite publication of notice in newspaper on 11th October, 1987 and 22nd March, 1988. Finally a charge sheet was issued to him on 28th May, 1993 followed by an order of his removal from service on 23rd April, 2001. The Division Bench held that whatever the pre and/or post inquiry proceedings initiated against Nanagram, were totally against the constitutional mandate so also principles of natural justice. None of the communications issued prior to or after initiation of inquiry upon charge sheet dated 28.5.93 were got served upon him as they all returned back duly unserved as is established from the statements of memo of the charge-sheet itself or published notices obviously because Nanagram has been missing; his whereabouts were neither known nor heard of for seven years from 3.4.86 the date of disappearance of Nanagram. Thus observing, the Division Bench upheld the view taken by the learned Single Judge wherein action of the respondents was condemned as illegal and unconstitutional.

16. In the present case also, the observations made by the Division Bench squarely applies to the facts of the present case. There is however one additional factum that need to be noticed which is that when husband of the petitioner was absent from 23.6.1967 and when husband of the petitioner not having been heard about for more than seven years, is presumed dead, entire disciplinary proceedings conducted against him stood vitiated and were rendered illegal. His dismissal from service having been made contrary to provisions of CCA. Rules and in utter disregard of principles of natural justice was therefore void, non-est and illegal.

17. There was no justification for the respondent not to have made the payment of family pension to the petitioner on expiry of period of one year from the date her husband disappeared with effect from 23.6.1967.

18. In my considered view, petitioner is entitled to family pension.

19. In the result, the writ petition is allowed. Order of the Tribunal dated 31.10.2000 as well as the dismissal order dated 27.8.1971 are declared illegal and are consequently quashed and set-aside. On expiry of period of seven years from 23.6.1967, a presumption should arise with regard to the death of the petitioner's husband with effect from the said date. The petitioners is however declared entitled to receive family pension w.e.f. 23.6.1968 after expiry of period of one year from the date her husband was last heard of i.e. on 23.6.1967, in accordance with proviso to Rule 268B of R.S.R.

20. Consequently, the respondents are directed to grant all terminal benefits to the petitioner treating her to be a widow of deceased government servant though taking 23.6.1968 as the basis for calculating terminal benefits and make payment of all terminal benefits and arrears on family pension together with interest @ 6% per annum within a period of three months from the date of production of copy of this order. There shall however be no order as to costs. A copy of this order be furnished to petitioner for information.