(2013) 10 J&K CK 0008

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 02 of 2012

Aijaz Ahmad Bhat APPELLANT

Vs

State of J.K. and Others RESPONDENT

Date of Decision : 09-10-2013

Acts Referred:

Citation : (2013) 10 J&K CK 0008

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Advocate : Z.A. Qureshi, for the Appellant; Tasaduq H. Khawaja, for the Respondent

Final Decision : Disposed Off

Judgement

Muzaffar Hussain Attar, J.—Brother of petitioner was working as Accountant in the respondent Department. Allegation against him was that

he un-authorisedly remained absent from duty from 08th August, 1997 to 20th December, 2004, the day he died. The petitioner filed the writ

petition bearing SWP NO: 1333/2009, praying therein that respondents be directed to pay the service benefits to the petitioner, being the brother

of the deceased employee. The writ petition was disposed of by the Court vide order dated 31.01.2011, directing the respondents to settle the

service benefits as would be available to the petitioner in accordance with service rules applicable. The respondent-Director General, Accounts

and Treasuries, J&K Government vide Order No. 168-Scctts of 2011 dated 08th December, 2011 ordered for treating the period with effect

from 08th August, 1997 to 20th December, 2004 as Dies-non in terms of Article 163 of J&K Civil Services Regulations Vol-II. It is this order, which is called in question in this writ petition.

2. Learned counsel for the petitioner submitted that a show cause notice was issued to the deceased employee, same was responded and reply

was filed stating therein that the deceased employee was suffering from Heart Ailment. It was further submitted that the deceased employee was

initially granted leave and thereafter, because of ailment, he could not resume duty. Learned counsel submitted that on receipt of the reply of first

show cause notice, respondents in order to settle the issue in accordance with rules, ought to have initiated departmental proceedings. Learned

counsel submitted that in the departmental proceedings deceased employee would have satisfied the employer about the just reason of his absence

from the duty. Learned counsel submitted that the respondent-employer having not dealt with the matter in accordance with rules, the period of

absence could not be treated as Dies-non. Learned counsel submitted that admittedly final notice dated 19th December, 2004 was published in the

newspaper on 25th December, 2004 i.e. one day after the death of deceased employee. Learned counsel submitted that in these circumstances,

the respondents ought to have treated the period of absence from duty on leave and thereafter should have passed orders for giving service

benefits to the petitioner-brother of the deceased employee. Learned counsel also stated that deceased employee has two sisters as well and their

claim can be considered for granting service benefits.

3. Mr. Tasaduq H Khawaja, learned counsel for the respondents submitted that the deceased employee remained un-authorisedly absent from

duty and was not entitled to receive the service benefits. Learned counsel submitted that the concession has been given to the petitioner by treating

the period of absence from duty of the deceased employee as Dies-non. Learned counsel submitted that this writ petition requires to be dismissed.

4. Learned counsel for the parties could not show any rule which would directly cover the situation as has arisen in this case.

5. In the normal course, if it would be the case of the respondents that the deceased employee remained absent un-authorisedly from the duty, then

duty was cast on them to initiate disciplinary proceedings against the deceased employee. In the disciplinary proceedings the deceased employee

could have projected his case and may be that in the facts of the case the disciplinary authority would have exonerated the deceased employee of

the charge of being un-authorisedly absent from duty. The respondents have failed to perform their statutory duties by not initiating disciplinary

proceedings against the deceased employee, even when he responded to the show cause notice. The 2nd show cause notice was published in

newspaper one day after the death of the deceased employee. Admittedly no disciplinary proceedings were initiated against the deceased

employee in accordance with rules. In the facts of this case, no order of punishment was ever passed by the disciplinary authority in a regularly

instituted disciplinary proceedings. Can the period of absence from duty be treated as Dies-non, when in the facts of this case, no findings have

been recorded by the disciplinary authority, because no disciplinary proceedings have been either initiated or conducted. The petitioner and other

legal heirs would be eligible to receive all the benefits of the deceased employee in accordance with rules. There are provisions in the Civil Services

Regulations like 108-C and instruction no. 2 appended to 168-D, which Government instructions which is statutory in character and provides that

the Government servant who is in receipt of provisional pension when dies before the conclusion of departmental/judicial proceedings instituted

against him, should be exonerated of all charges levelled against him, and period of suspension, if any, preceding his retirement shall be treated as

spent on duty, and Death-cum-Retirement Gratuity and the arrears pay/cash in lieu of leave salary or increase in pension shall be granted to him,

had the person retired in normal course. If, in respect of employee who is facing departmental/judicial proceedings on his death, he can be treated

to be in service and all service benefits granted to him. It would be un-just to deny such a treatment to an employee who has allegedly remained

un-authorisedly absent from duty but against whom no enquiry was instituted and who died in harness.

6. For the aforesaid reasons, the deceased employee's period of absence is to be decided by utilising leave whatever kind due to him and legal

heirs would be entitled to receive all the service benefits.

7. For the above stated reasons, this writ petition is disposed of in the following manner:

8. By issuance of writ of certiorari Order No. 168-Acctts of 2011-dated

08.12.2011 is quashed. The respondents are directed to adjust the

period of absence of the deceased employee by utilising leave whatever kind due to him and pass orders for payment of service benefits to the

legal heirs of the deceased employee in accordance with rules.

9. The period of absence from duty recorded in the impugned order shall be counted for payment of retiral benefits including Death-cum-

Retirement Gratuity benefits also.

10. Respondents to consider and take decision within eight weeks from the date copy of this order is served. Disposed of alongwith connected

CMP(s).