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**(2021) 08 GAU CK 0004**

**In the Gauhati High Court**

**Case No : Writ Petition (Civil) No. 4628 Of 2017**

Fatema Khatun

APPELLANT

Vs

State Of Assam And 3 Ors

RESPONDENT

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**Date of Decision : 02-08-2021**

**Acts Referred:**

Constitution Of India, 1950 — Article 226

**Citation : (2021) 08 GAU CK 0004**

**Hon'ble Judges : Kalyan Rai Surana, J**

**Bench : Single Bench**

**Advocate : H A Talukdar**

**Final Decision : Dismissed**

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## **Judgement**

1. Heard Mr. L.R. Mazumder, learned counsel for the petitioner as well as Mr. D. Borah, learned Government Advocate appearing for the respondents.
2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner who is the wife of Late Md. Abdul Joynal Khan has filed this writ petition, seeking quashing of the order dated 16.02.2010 (Annexure-7) passed by the respondent no.3 thereby dismissing husband of the petitioner from service as driver in the establishment of Foreigner's Tribunal, Nagaon.
3. The case of the petitioner is that her husband had joined in the post of driver in the establishment of the Illegal Migrants (Determination) Tribunal, Nagaon on 21.02.1984. Pursuant to the order passed by the Supreme Court of India, the said Tribunal was scrapped. However, the husband of the petitioner was again employed as a driver in the Foreigners Tribunal vide government notification dated 21.12.2006 with his head quarter at Nagaon. It is projected that in the month of May, 2009, the husband of the petitioner had

become ill and undertook medical treatment. The grievance of the petitioner is that her husband had submitted various leave applications which was not considered by the respondent no.3.

4. Owing to his illness, the petitioner's husband had developed severe nerve disease and had visited various clinics and hospitals. It is claimed that her husband was out of station from August 2009 till 13.01.2010 and it is during this time, a show-cause notice dated 07.09.2009 was issued upon the husband of the petitioner. The petitioner claims that during that particular period, she had estranged relationship with her husband and owing to family disputes, though the petitioner received information of the notice, she failed to convey any message to her husband and accordingly, it is claimed that the husband of the petitioner failed to participate in the disciplinary enquiry/ departmental enquiry and did not submit his written statement.

5. It is the projected case of the petitioner that on 11.12.2009, another show-cause notice was issued by the respondents but due to the family disputes the petitioner refused to accept the said notice as sought to be served upon the petitioner's husband by registered post. It is claimed that another show-cause notice of the same date i.e. 11.12.2009 was affixed in the petitioner's house at Nagaon town, but without copy of the charge-sheet, list of documents and list of witnesses.

6. It is claimed that when the husband of the petitioner came back from treatment, he had submitted a representation/ appeal dated 10.03.2017 before the respondent no.1 for setting aside the show-cause notice, statement of allegations dated 03.09.2009, enquiry report dated 10.12.2009, proposed notice for dismissal from service dated 11.12.2009 and the impugned order of dismissal from service dated 16.12.2010. In this writ petition it is claimed that the respondent no.1 did not accept the said representation/ appeal dated 10.03.2017 and on refusal the said representation was sent by speed post.

It is alleged that no action was taken by the respondent authorities.

7. The learned counsel for the petitioner has referred to the statements made in the writ petition and has referred to the various annexures appended to the petition and it is submitted that the illness of the husband of the petitioner had prevented him from participating in the disciplinary/departmental enquiry and as the husband of the petitioner was unaware of any such proceeding against him, this was a fit and proper case to have a de novo

proceeding against the deceased husband of the petitioner. It is submitted that the husband of the petitioner had handed over all the requisite

documents to a lawyer namely, Sri Haren Deka and the said lawyer was also paid his fees, but after the death of the petitioner's husband, the

petitioner could not locate the said counsel and therefore, having no alternative the present writ petition was filed.

8. The learned Government Advocate has opposed the prayer made in this writ petition by submitting that even assuming that the husband of the

petitioner was unaware of the disciplinary enquiry against him, but in this case notice was duly served which is admitted in Annexure-6 to the writ

petition. It is also submitted that the plea that the present petitioner had estranged relationship with the deceased husband at the relevant point of time

is not believable because the address of the petitioner and that of her husband are same.

9. On consideration of the materials available on record, the Court is unable to accept that the notice dated 11.12.2009 proposing that the authorities

were contemplating to remove him from service was served at an address where the petitioner and/ or her husband were not residing. In this writ

petition, the petitioner has admitted that the husband of the petitioner used to reside at her address in Chinapatty, Nagaon. There is also nothing on

record to show that the petitioner had no relation with her husband when she was served with notice of the disciplinary/ departmental proceeding.

10. Moreover, it is seen that it is the admitted case of the petitioner that the husband of the petitioner had submitted representation on 20.02.2010

(Annexure-8). As per the documents annexed to the additional affidavit filed by the petitioner on 18.06.2019, the husband of the petitioner had died on

19.04.2016.

11. Accordingly, it is seen that the husband of the petitioner, when alive, had waived his right to challenge the order of dismissal from service which

was passed on 16.02.2010. Although in a writ petition filed under Article 226 of the Constitution is filed, no period of limitation is prescribed. But in the

present case in hand, the order of dismissal was passed on 16.02.2010 and the husband of the petitioner, while alive, though submitted representation

dated 15.02.2010 (Annexure-6) and 20.02.2010 (Annexure-8) had slept over his right and the petitioner had submitted her representation on

10.03.2017 (Annexure-9) belatedly, after the death of her husband.

12. Moreover, as indicated above, notice was actually served in the house of the petitioner and that even assuming that the notice was not

accompanied with the statement of charges of the list of witness of the proposed punishment, it was incumbent on the part of the petitioner or her

husband to approach the competent authority for obtaining documents which were purportedly lacking in the notice affixed to their house.

13. It is an appropriate time to remember or invoke the legal maxim of *vigilantibus et non dormientibus jura subveniunt* meaning thereby that law

comes to the aid of the vigilant and not the one who sleeps over their rights. In this case, the husband of the petitioner had accepted the punishment

meted out to him during his lifetime and till his death on 19.04.2016.

14. Accordingly, the challenge against the order dated 16.02.2010, by which the husband had been removed from service, fails. Accordingly, this writ

petition is without any merit and is dismissed.

15. There shall be no order as to costs.