
(2007) 02 GAU CK 0046
In the Gauhati High Court
Case No : Writ Appeal No. 25 of 2005

Heisnam (O) Ibechoubi Devi	Vs	APPELLANT
State of Manipur and Others		RESPONDENT

Date of Decision : 07-02-2007

Acts Referred:

Citation : (2009) 3 GLT 74

Hon'ble Judges : Ketulhou Meruno, J;Biplab Kumar Sharma, J

Bench : Division Bench

Advocate : W. Darakeshwar, for the Appellant; N. Ibotombi and S. Suresh, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—We have heard Mr. W. Darakeshwar, learned Counsel for the Appellant. We have also heard Mr. N. Ibotombi, learned Counsel representing the Respondent No. 4 Mr. S. Suresh, learned State counsel represents the other Respondents.

2. This writ appeal is directed against the judgment and order 21.3.2005 passed by the learned Single Judge in writ petition being W.P. (C) No. 416 of 2005. The writ petition was filed by the wife of the deceased employee claiming full pay and allowances for the period during which her husband, who was working as Chief Engineer, PWD, Government of Manipur, was placed under suspension in view of the initiation of three criminal cases against him by the State. The husband of the Petitioner was convicted in the criminal proceedings with the imposition of fine of Rs. 10,000 and imprisonment for the single day till the rising of the court.

3. After conviction of the husband of the Appellant, he had preferred criminal appeals before this Court. The sentence imposed against him remained under suspension during the pendency of the appeals. During the pendency of the appeals, the husband of the present Appellant died and on the basis of the application filed by the present Appellant, she was substituted in the appeal

proceedings and by order dated 19.2.1990, she was allowed to continue with criminal appeals. The criminal appeals attained its finality vide judgment and order dated 15.5.98 by which the conviction and sentence passed by the trial court vide judgment and order dated 27.01.1988 was upheld.

4. In the writ proceeding, it was the contention of the Appellant that since during the pendency of the criminal appeals her husband died, by operation of law (FR 54-B), she is entitled to receive full pay and allowance for the period of suspension treating the same to be period spent on duty by her husband. The learned Single Judge has held that the writ Petitioner/Appellant is not entitled to receive full pay and allowance for the period in which her husband remained under suspension. Such a finding has been arrived at by the learned Single Judge upon a detailed discussion of the facts involved as well as the provisions of law.

5. Mr. W. Darakeshwar, learned Counsel for the Appellant submits that since during the pendency of the criminal proceedings, the husband of the Appellant died, by operation of FR 54-B, the Appellant is entitled to receive full pay and allowance treating the period of suspension as the period spent on duty. On the other hand, the learned Counsel representing the Respondents submit that the appeal proceedings initiated by the husband of the Appellant cannot be said to be the proceeding contemplated under FR 54-B. They further submit that although the sentence was suspended, the conviction remained in operation all throughout and that the judgment of conviction and sentence having been upheld by the appellate court, the same will relate back to the initial stage of conviction and sentence.

6. We have given our anxious consideration to the submissions made by the learned Counsel for the parties. We have also considered the materials on record. There is no dispute that the husband of the Appellant/writ Petitioner was convicted in the criminal proceedings and was sentenced to a fine of Rs. 10,000/- coupled with a single day's imprisonment till rising of the court. Thus, it cannot be said that the order by which the husband of the Appellant/writ Petitioner was placed under suspension was wholly unjustified. Since he was involved in three criminal proceedings, he was placed under suspension in accordance with the rules. It is not the case of honorable acquittal of the husband of the Appellant/Petitioner, rather he was convicted by the trial court upon conclusion of the trial proceedings.

7. Against such conviction, the husband of the Appellant/writ Petitioner preferred criminal appeals and it so happened that during the pendency of the criminal appeals, he expired. Upon such expiry of the husband of the Appellant, she made a prayer before the appellate court to allow her to pursue the appeals and that was allowed by order dated 19.2.1990. Thereafter, the criminal appeals came to an end vide judgment and order dated 15.5.1998 by which the conviction and sentence passed against the husband of the Appellant stood confirmed.

8. For ready reference, the relevant provisions of FR 54-B is quoted below:

FR. 54-B. (1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement (including premature retirement) while under suspension), the authority competent to order reinstatement shall consider and make a specific order,-

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement (including premature retirement), as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Notwithstanding anything constrained in Rule 53, where a Government servant under suspension dies before the disciplinary or the Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

9. It is FR 54-B(2) in reference to which the learned Counsel for the Appellant has made submission that since during the pendency of the appeal proceedings pertaining to the trial proceedings in respect of the criminal cases, the husband of the Appellant died, by operation of the said provisions, the Appellant would be entitled to receive full pay and allowance for the period of suspension treating the same to have been spent on duty by her husband. FR 54-B(2) only provides that where a Government servant under suspension dies, before the disciplinary or the Court proceedings instituted against him are concluded, the said period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period. The proceeding about which a mention has been made in FR 54-B(2) is the proceeding instituted against the government servant. In the instant case, such proceeding was instituted against the husband of the Appellant/writ Petitioner and the same stood concluded with the judgment of sentence and conviction passed by the trial court. Further, proceedings by way of criminal appeals were instituted by the husband of the Appellant and not by the State. It was during the pendency of such proceedings initiated by the husband of the Appellant, he died. Even otherwise also, the appellate court having confirmed the judgment of sentence and conviction passed by the trial court, same will necessarily relate back to the stage at which the trial court concluded its proceedings.

10. From the above, we are of the considered opinion that the kind of situation in which the provision of FR 54-B(2) relating to full pay and allowance during the period of suspension of a Government employee has been contemplated is not available in the instant case. Since the husband of the Appellant was placed under suspension in view of the initiation of criminal proceedings against him and eventually, he was convicted in the said proceeding, it cannot be said that the

suspension was wholly unjustified. If he remained under suspension during the pendency of the criminal proceedings and eventually was imposed with the sentence and conviction in the said proceedings, it cannot be said that by operation of FR 54-B(2), he and for that matter, his family members would be entitled to receive full pay and allowance for the said period treating the same to have been spent on duty.

11. It is only in respect of the disciplinary or court proceedings instituted against a government servant, the kind of situation as has been indicated in FR-B(2) is available to the government servant in case of his expiry during the pendency of such proceedings. In the instant case, proceedings instituted against the husband of the Appellant by the State stood concluded with the judgment of conviction and sentence passed by the trial court. Further proceeding about which much emphasis has been given by the learned Counsel for the Appellant was instituted by the husband of the Appellant and further pursued by his wife after his death. It is in this connection that the learned Counsel for the Appellant has contended that the appeal proceedings being in continuation of the trial proceedings, the Appellant is entitled to benefit as envisaged in FR 54-B(2).

12. In view of our above findings, we are unable to persuade ourselves to take a view as has been urged by the learned Counsel for the Appellant. All said and done, the judgment of conviction and sentence passed against the husband of the Appellant remained in operation after conclusion of the appeal proceedings initiated by the husband and later on, pursued by his wife. In such a situation, it cannot be said that the suspension of the husband of the Appellant was wholly unjustified and if that be so, withholding of pay and allowance for the period of suspension also cannot be said to be unjustified.

13. For the foregoing reasons, conclusion and findings, we are of the considered opinion that no interference is called for to the impugned judgment and order dated 21.3.2005 passed by the learned Single Judge in Writ Petition (C) No. 416 of 2003. Consequently, the writ appeal is dismissed. However, considering the facts and circumstances involved in the case, we pass no order as to costs.