
(2009) 05 RAJ CK 0012
In the Rajasthan High Court

Kamla Devi

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 13-05-2009

Acts Referred:

Citation : (2009) 2 WLN 232

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Tatia, J.—The petitioner is wife of deceased employee Jagdish Singh Panwar who was in service of Rajasthan Police Subordinate Services. The petitioner was retired on 30.09.1999 after attaining the age of superannuation. He died on 19.04.2000. The deceased employee was getting regular pension under the provision of Rajasthan Civil Service Rules 1996, and after his death his family was getting the family pension for which PPO No. 550473965 was issued.

2. The petitioner, wife of the deceased employee Jagdish Singh Panwar, received the copy of order dt. 25.04.2007 by which she has been conveyed that since deceased employee un-authorizedly occupied the Government Accommodation and, therefore, she is liable to pay Rs. 34,992/- which is required to be deducted from the pensionary benefits granted to the deceased employee's wife petitioner. The copy of this order dt. 25.04.2007 as Annexure. 1. The petitioner being aggrieved by the said order dt. 25.4.2007 as Annexure. 1, has preferred this writ petition.

3. Learned Counsel for the petitioner submits that petitioner's husband had fallen sick in the year 1993 and, therefore, he could not join duty at the place of transfer in pursuance of order dt. 19.10.1993 at Jaipur and in pursuance of order dt. 15.04.1997 at Udaipur. The petitioner's husband, therefore, continued to occupy the accommodation at Jodhpur till he retired. The petitioner's husband's transfers which were made in the year 1993 and 1997 were cancelled by the

department vide order dt. 27.11.2002 because of fact that petitioner's husband was suffering from cancer at that time and therefore, he could not have joined at transferred paces. It may be noticed again that the transfer orders were of the years 1993 and 1997 and petitioner's husband retired on 30.09.1999 and died on 19.04.2000. It is submitted that said transfer orders were cancelled only by taking the human approach and during serious ailment the petitioner's husband could not have joined duties away from Jodhpur. Allegation that the petitioner's husband un-authorisedly occupied the Government Accommodation was only because that he was transferred away from Jodhpur and, therefore, he could not have occupied the Government Accommodation but in view of the subsequent order dt. 27.11.2002, the petitioner was living at the Jodhpur where he was posted, and continuation of occupation of the Government Accommodation by petitioner's husband cannot be said to be un-authorised occupation of the Government Accommodation.

4. Learned Counsel for the petitioner further submitted that whether the petitioner's husband un-authorisedly occupied the Government Accommodation for any period, was never enquired during the long time service of the petitioner's husband and he was never found guilty for un-authorised occupation, therefore, no order for recovery of amount on account of alleged un-authorised accommodation of Government Building by the petitioner's husband could have been passed by the authority without holding enquiry, or after retirement of petitioner's husband or after his death.

5. Learned Counsel for the respondents submits that the total amount due on account of un-authorised occupation of Government Building by the petitioner's husband was Rs. 1,06,272/- but the Government itself has waived penal rent and charged the normal rent for accommodation and reduced the amount to Rs. 34,992/-.

6. I considered the submissions and perused the facts of the case. It is not in dispute that petitioner's husband was in service, he was getting regular salary till he retired on attaining the age of superannuation on 30.09.1999. The petitioner's husband could not join the service due to his serious ailment of disease like cancer for a long period. No departmental action was taken against the petitioner's husband for long six years from 1993 to 1999, till the petitioner's husband was in service for his alleged un-authorisedly occupying the Government Accommodation. He was retired and was given regular pension. The petitioner's husband died in 2000 precisely on 19.04.2000 then on 25.04.2007 it has been ordered to pension department that recovery of Rs. 34992/- be effected from pensionary benefits given to the employees wife petitioner. The order dt. 25.04.2007 on the face of it is illegal in view of the fact that no departmental enquiry was held for the allegation for petitioner's husband's un-authorisedly occupying the Government accommodation. The order was passed after the death of the employee but without opportunity of hearing to the petitioner. Further more, the State Government itself has cancelled the transfer

orders of the years 1993 and 1997 by which petitioner's husband was transferred out from Jodhpur then there cannot be any reason to hold that petitioner's husband un-authorisedly occupied the Government accommodation.

7. In view of the above reasons, the writ petition is allowed and the order dt. 25.04.1007 is quashed and set aside. No recovery of any amount on the allegation of un-authorised occupation of the Government Building by petitioner's husband be effected in future from the petitioner.