
(2007) 09 JH CK 0051
In the Jharkhand High Court

Mala Devi	Vs	APPELLANT
State of Jharkhand and Others		RESPONDENT

Date of Decision : 05-09-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 311

Citation : (2008) 2 JCR 224

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.N. Tiwari, J.—The petitioner applied for compassionate appointment after the death of her husband late Dilip Kumar Yadav in harness on 4.10.2002, leaving behind the petitioner (widow) and two minor children, while he was posted as typist under Deoghar Collectorate in the office of Block Development Officer. Sarwan.

2. The District Compassionate Appointment Committee, after due verification and enquiry, approved the petitioner's appointment on Class-1V post along with others in the light of the decision taken in the meeting held on 24.6.2003. The petitioner was given appointment on Class-IV post by letter being Memo No. 328 dated 16.8.2003. The petitioner, pursuant, to the said appointment letter, joined the post on 19.8.2003 under the Deoghar Collectorate. After sometime, she was transferred to the office of Block Development Officer, Deoghar by order dated 8.12.2003. While working there, she was served with a letter dated 30.11.2005, whereby she was stopped from attending her work and rendering the duties and her salary was also stopped.

3. Aggrieved by the said order, the petitioner preferred a writ petition being W.P. (S) No. 261 of 2006. The said writ petition was disposed of by order dated 16.5.2006, directing the respondents to pay the current salary and also to release the arrears of salary. However, liberty was given to the respondents to

hold an enquiry, if so required. The respondents, in purported compliance of the order of this Court, issued a memo dated 4.8.2006 directing the petitioner to appear on 7.8.2006 and present her case and to give reason as to why she be not terminated from the service.

4. The petitioner appeared on the date fixed. It has been alleged by the petitioner that no enquiry was held on that date; rather she was asked to put signature for the purpose of payment of current and arrears of salary on a plain paper. Subsequently, the petitioner was surprised to receive notice on 11.9.2006. whereby she was asked to show cause as to why she be not removed from service on the basis of her written admission on 7.8.2006 that her husband was not a regular employee.

5. The petitioner submitted her reply to the show cause on 18.9.2006 denying the allegation and also denying that she had admitted the fact, alleged in the said notice to the show cause. After submission of the said reply, denying the allegation, neither any charge was framed nor any departmental proceeding was Initiated against the petitioner. Suddenly, she received a second show case notice dated 27.9.2006 containing the same allegation and contradictory statements. The petitioner submitted her reply by letter dated 5.10.2006. The petitioner was, thereafter, served with the impugned order No. 161/2006 dated 14.12.2006, whereby she has been dismissed from service.

6. A counter-affidavit has been filed on behalf of the respondents. In the counter-affidavit, it has been stated that the petitioner's husband late Dilip Kumar Yadav was working on the basis of "equal pay for equal work" and was not a permanent employee of the Collectorate, Deoghar. After the death of her husband, late Dilip Kumar Yadav, the then Block Development Officer, Sarwan furnished wrong information and on that basis, the District Compassionate Appointment Committee approved the appointment of the petitioner on Class-IV post. Subsequently, after verification, it was found that the appointment of the petitioner was not in accordance with law and the recommendation for her appointment was based on wrong information, furnished by the Block Development Officer, Sarwan. The matter was considered at the higher level and decision was taken to remove the petitioner from service. It has been further stated that the notice was issued to the petitioner before taking decision of her removal and the petitioner was given sufficient opportunity to file her show cause reply by Memo No. 741 dated 11.8.2006. She had also submitted her reply on 16.9.2006. The petitioner was further given a second show cause notice by Memo No. 815 dated 27.9.2006 and she had also submitted her reply on 5.10.2006. After considering the said reply to the show cause, a decision was taken to dismiss the petitioner. The order of dismissal was passed after observing the prescribed legal procedure and after complying with the rules of natural justice.

7. Learned Counsel appearing on be-half of the petitioner submitted that the impugned order of the petitioner's dismissal is wholly arbitrary, illegal and

without jurisdiction. The petitioner is a civil servant and without complying with the mandatory provision of Article 311(2) of the Constitution of India, he cannot be dismissed. Before awarding the said punishment, no charge was framed and served on her and no enquiry was held. Learned Counsel submitted that the impugned order has been passed without following the mandatory provisions of the Constitution and without giving the petitioner an opportunity of hearing. He further submitted that in her reply to the purported first show cause, she had denied the allegation that she had voluntarily given any statement admitting that her husband was not a permanent employee; rather she had, in clear words, alleged that her signature was obtained on a plain paper on the plea that the same was required for releasing her current and arrears of salary. Once the same was denied, it was incumbent on the respondents either to accept the same or to hold an enquiry by framing charges, as required under law. The same having not been done, there was no occasion for the respondents to take a decision without giving the petitioner sufficient opportunity of hearing. By the impugned order, the petitioner has been deprived of her livelihood without following the due procedure and, as such, the impugned order is violative of Articles 14 and 16 of the Constitution of India.

8. Mr. S. Akhtar, learned SC II submitted that the petitioner herself had put her signature on the reply filed by her, wherein, she had admitted that her husband was not a permanent, employee and was an employee on equal pay for equal work. That being the admitted position, there was no need for further enquiry. The petitioner was given adequate opportunity to represent her case and that there is no illegal or infirmity in the impugned order.

9. Considering the said submission made by the learned Counsel for the parties as well as materials appearing on record, I find that the impugned order of dismissal has been passed on the ground that the petitioner's husband was not a permanent employee and after his death, the petitioner was not entitled for compassionate appointment and that the appointment was made illegally and on misrepresentation. The order of dismissal is, thus, on the basis of allegation and contains stigma. Article 311(2) of the Constitution of India clearly provides that punishment of dismissal being major punishment can only be awarded after framing of charge and on holding an enquiry and giving the delinquent proper opportunity to defend.

10. In the instant case, though the order of dismissal is based on the charges, the said charges were not served to the petitioner and no enquiry was held to enquire into the charges. There is nothing on record to show that Enquiry Officer was appointed or any evidence either oral or documentary was adduced in support of the said charges or the petitioner was given any opportunity to adduce her evidence. The: Impugned order does not conform to the Requirement of Article 311(2) of the Constitution of India and the same is wholly unsustainable. The order being arbitrary is also violative of Article 14 of the Constitution.

11. For the reasons aforesaid the impugned order dated 14.12.2006, contained in Annexure-15 is hereby, quashed. This writ petition is allowed. The petitioner shall be reinstated forthwith with all consequential benefits. The arrears of salary must be paid to the petitioner within a period of six weeks from the date of receipt/production of a copy of this order. In the circumstances of the case, there shall be no order as to costs.