
(2013) 01 RAJ CK 0225

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 2531 of 2011 and 5064 of 2010

Nirmala Devi (Smt.)

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 16-01-2013

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2013) 2 WLN 157

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Advocate : G.R. Goyal, for the Appellant; Hemant Choudhary, Govt. Counsel, for the Respondent

Final Decision : Allowed

Judgement

Gopal Krishan Vyas, J.—In above S.B. Civil Writ Petition No. 2531/2011, the petitioner has prayed for the following relief:

(i) by an appropriate writ, order or direction the impugned order dt. 23.02.2011 (Annexure-1) passed by the respondent No. 5 The District Education Officer and Additional Chief Executive Officer, Elementary Education, Sri Ganganagar may kindly be quashed and set aside;

(ii) Any other appropriate order or direction which this Hon'ble Court may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the petitioner.

(iii) Cost of the petition may kindly be awarded in favour of the petitioner.

In S.B. Civil Writ Petition No. 5064/2010, the petitioner has prayed for the following relief:

(i) by a writ order or direction in the mandamus forum may kindly be issued against the respondents for giving the family pension and other retrial benefits like gratuity, S.I. And G.P.F. To the petitioner with interest at the rate of 12% per

annum;

(ii) further appropriate writ, order or direction may kindly be issued to the respondents for making the payment of subsistence allowance for the period of 03.08.2006 to 03.04.2009 with interest at the rate of 12% per annum;

(iii) Any other appropriate order or direction which this Hon'ble Court may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the petitioner.

2. Upon the above prayer, notices were issued on 24.05.2010 in S.B. Civil Writ Petition No. 5064/2010 and, after issuance of notice, the respondents passed an order to terminate the services of late Mahendra Kumar after his death who was facing departmental inquiry and criminal case and was under suspension from the post of Teacher Grade-III. The petitioner, again, preferred S.B. Civil Writ Petition No. 2531/2011 to challenge the termination order. Both the writ petitions are hereby decided by this common order.

3. The main contention of the petitioner is that she is widow of late Mahendra Kumar and who was appointed as Teacher Grade-III by the Permanent Establishment Committee, Zila Parishad Sri Ganganagar vide order dt. 21.11.1990 and allotted to Panchayat Samiti, Srikanpur. The petitioner's husband late Mahendra Kumar was substantively appointed on the post of Teacher Grade-III. Upon some complaint, the degrees of B.Ed. of late Mahendra Kumar and other 9 Teachers Grade-III were verified by the Chief executive Officer, Zila Parishad, Sri Ganganagar from the concerned University and the University concerned informed the Zila Parishad vide letter dt. 25.03.1992 and 06.07.1992 that the degree granted to late Mahendra Kumar and others are genuine. The Panchayat Samiti, Srikanpur also informed the Chief Executive Officer, Zila Parishad Sri Ganganagar vide letter dt. 07.04.1995 that the verification of the degree of 10 teachers including late Mahendra Kumar has already been made and on the information to the Zila Parishad the services of late Mahendra Kumar were confirmed on 27.01.1997 by the Zila Parishad, Sriganganagar.

4. As per petitioner, abruptly her husband late Mahendra Kumar was placed under suspension by respondent No. 1 under Rule 13 of the RCS (CCA) Rules, 1958 vide order dt. 31.08.2006. The respondents issued a charge-sheet to late Mahendra Kumar for inflicting major penalty under Rule 16 of the CCA Rules, so also, a criminal case was also registered against the petitioner's husband and other 9 teachers; but, unfortunately during the pendency of the departmental inquiry as well as criminal case Mahendra Kumar died on 03.04.2009. Till that date, late Mahendra Kumar completed more than 18 years of service.

5. The first writ petition was preferred by the petitioner being wife of late Mahendra Kumar for granting retiral benefits and family pension on the ground that neither criminal case nor departmental inquiry was finalized. But, after issuance of notice of the writ petition by this Court, the respondents terminated

the services of dead person vide order dt. 23.02.2011 and petitioner being widow of late Mahendra Kumar filed S.B. Civil Writ Petition No. 2531/2011 and challenged the aforesaid order of termination on the ground that no order of removal can be passed against a government employee after his death. In this view of the matter, the precise controversy involved in both these writ petitions is with regard to claim of the petitioner for the death-cum-retiral benefits and family pension being widow of late Mahendra Kumar who was substantively working as Teacher Grade-III and, at the time of his death, he was under suspension. Therefore, learned counsel for the petitioner submits that both these writ petitions may be decided together.

6. Learned counsel for the petitioner submits that although late Mahendra Kumar was facing departmental inquiry under Rule 16 of the CCA Rules but, as per circular No. P-9(2) 155 Karmik K-3/97 dt. 16.03.1998 of the Government, in case of death of delinquent employee, the departmental inquiry pending against him shall be dropped; but, inspite of the Government notification, no order was passed for dropping the departmental inquiry pending against her husband late Mahendra Kumar. On the contrary, when the petitioner filed S.B. Civil Writ Petition No. 5064/2010, after issuance of notice by this Court in the writ petition, the respondent District Education Officer-cum-Addl. Chief Executive Officer (Elementary Education), Sriganaganagar passed an order of removal of late Mahendra Kumar from service vide order dt. 23.02.2011 which is totally illegal and contrary to the basic principle of law.

7. Learned counsel for the petitioner vehemently argued that there is no question of passing any order of removal after death of the employee because the master and servant relationship comes to an end as and when the employee dies. But, while completely ignoring the basic principle of law the respondents passed the order of removing late Mahendra Kumar from service after near about two years of his death, therefore, the impugned order of removal is totally illegal, unconstitutional and against the basic principles of law, therefore, the order impugned deserves to be quashed.

8. Learned counsel for the petitioner further argued that the departmental inquiry which was pending at the time of death of the petitioner's husband was to be dropped in view of the notification issued by the State Government but it was not dropped and unnecessarily so as to deny the death-cum-retiral benefits to the petitioner the District Education Officer-cum-Addl. Chief Executive Officer, Elementary Education, Sriganaganagar passed an order on 23.02.2011 removing late Mahendra Kumar after his death from service, therefore, the impugned order dt. 23.02.2011 may be quashed and respondents may be directed to release all the benefits of late Mahendra Kumar who rendered service on the post of Teacher in the office of the respondents within reasonable time and grant family pension to the petitioner.

9. Per contra, learned counsel for the respondents vehemently opposed the prayer of the petitioner and submitted that late Mahendra Kumar obtained

appointment after filing forged degree of B.Ed., therefore, a departmental inquiry was commenced against him and other 9 delinquent persons, so also, a criminal case was registered against him and, at the time of his death, late Mahendra Kumar was facing trial, therefore, it cannot be said that for any reason the petitioner is entitled for the relief prayed for.

10. It is further submitted the respondents that the case of the petitioner's late husband was pending consideration to pass appropriate order relating to his service and, ultimately, the District Education Officer-cum-Addl. Chief Executive Officer, Elementary Education, Sriganaganagar passed order on 23.02.2011 whereby the services of the petitioner's husband late Mahendra Kumar were terminated. Therefore, the petitioner cannot claim any relief as a matter of right because the services of late Mahendra Kumar, husband of the petitioner was terminated after his death in the departmental inquiry, therefore, this writ petition may be dismissed.

11. After hearing learned counsel for the parties, I have perused the entire record of the case and considered the prayer of the petitioner for quashing the impugned order of removal of late Mahendra Kumar from service dt. 23.02.2011 which is challenged in S.B. Civil Writ Petition No. 2531/2011.

12. It is worthwhile to observe here that for such type of cases following notification has been issued by the State Government to drop the inquiry in the event of the death of the delinquent employee. The said notification reads as under:

13. In the opinion of this Court, when such a decision is already taken by the State Government, then, it was the duty of the District Education Officer-cum-Addl. Chief Executive Officer, Zila Parishad Sriganaganagar to drop the inquiry soon after the death; but, ignoring the said notification the aforesaid authority passed an order of removal of late Mahendra Kumar after his death i.e., against a dead person on 23.02.2011, that, too, when notices were ordered to be issued by this Court in S.B. Civil Writ Petition No. 5064/2010 filed by the petitioner for her claim of family pension and other service benefits of late Mahendra Kumar.

14. In view of above, in the opinion of this Court, it is a case in which the respondent District Education Officer-cum-Addl. Chief Executive Officer, Sriganaganagar illegally ignored the State Government circular issued to drop the inquiry after the death of the delinquent employee and passed the impugned order of removal from service. Therefore, the order of removal of late Mahendra Kumar from service passed on 23.02.2011 after his death is not sustainable in law because it is in flagrant transgression of the decision of the State Government and passed in violation of the principle of natural justice against an employee who died during the pendency of the inquiry and criminal case.

15. The petitioner being widow of late Mahendra Kumar, delinquent employee of the respondent Department is entitled for the service benefits for the reason that prior to his death on 03.04.2009 neither the departmental inquiry nor the

criminal case were finally concluded and, till death of late Mahendra Kumar, the relationship of master and servant in between the respondents and late Mahendra Kumar remained in existence because he was getting subsistence allowance being suspended employee of the respondent department. It is also very pertinent to observe that for inflicting major penalty of removal it is mandatory for the Disciplinary Authority to record entire evidence and, thereafter, provide opportunity of hearing to the delinquent while supplying copy of the inquiry report. Here, in this case, all the rules regarding procedure are completely ignored by the respondents while passing order of removal because during the pendency of the inquiry late Mahendra Kumar died on 03.04.2009 and the final order of removal was passed on 23.02.2011. In between this period, all the proceedings whatever is said to be taken were taken in absence of late Mahendra Kumar. Therefore, the finding given by the Disciplinary Authority for passing order of removal is totally unconstitutional and violative of Article 311 of the Constitution of India. In view of the above, this Court is of the opinion that the order of removal from service passed after the death of late Mahendra Kumar, husband of the petitioner is not sustainable in law. In view of above, both these writ petitions are allowed. Order impugned dt. 23.02.2011 challenged in S.B. Civil Writ Petition No. 2531/2011 is quashed and set aside with all consequential benefits. The departmental inquiry against late Mahendra Kumar, petitioner's deceased husband shall stand dropped in terms of the State Government circular No. P-9(2) 155 Karmik K-3/97 dt. 16.03.1998. Consequently, the prayer of the petitioner in S.B. Civil Writ Petition No. 5064/2010 is hereby allowed. The respondents are directed to release all service benefits of late Mahendra Kumar in favour of the petitioner and grant her family pension in accordance with rules within a period of three months from the date of receiving certified copy of this order. It is however made clear that the petitioner will not be entitled for full salary for the period during which her husband late Mahendra Kumar remained under suspension.