
(2008) 09 RAJ CK 0087
In the Rajasthan High Court

Smt. Haiji Devi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-09-2008

Acts Referred:

Constitution of India, 1950 — Article 311
Penal Code, 1860 (IPC) — Section 357, 380, 457

Citation : (2008) 09 RAJ CK 0087

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gopal Krishan Vyas, J.—In this writ petition, petitioner Smt. Haiji Devi w/o late Shri Girdhari Singh is challenging the impugned order dated 17.02.2006 whereby it was informed to the petitioner by the respondents that her husband late Shri Girdhari Singh was removed from service with effect from 03.02.1976. The petitioner has, therefore, prayed that the so called removal order dated 03.02.1976, though not communicated to her, may be declared arbitrary and illegal and set aside as it were never passed against the petitioner's husband. The petitioner has sought the relief that the respondents may be directed to give all the due benefits to the petitioner such as pension while considering the services of her husband from 1962 to 1979, the year in which he died with gratuity, leave encashment, due salaries, and other consequential benefits.

2. According to the facts of the case, the petitioner's husband was substantively working in the respondent department since 1962 and, in an accident, he died on 15.05.1979. While he was working as Cook under the control of the Divisional Security Commissioner, R.P.F., Jodhpur, on 10.12.1975, as per the letter of the District Controller of Stores, North Western Railway, Jodhpur to the S.H.O., Sardarpura, Jodhpur, it was alleged that from the stores of the Railway 20 bronze scrap ingots were found short and, on the basis of the information furnished by accused Sattar, recovery was made and, thereafter, along with Laxmi Chand,

Ram Chandra s/o Mohan Lal, Ram Chandra s/o Sohan Lal, Mishri Chand, Babu Lal and Sultan Singh, petitioner's husband Girdhari Singh was arrested and charged for the offences under Sections 457 and 380, I.P.C. During the pendency of the trial, however, petitioner's husband late Girdhari Singh died on 15.05.1979 and the trial of the case as against him abated.

3. Vide judgment dated 28.06.1991, the criminal Court held that offences under Sections 457 and 380, I.P.C. are not made out as even the theft is not proved nor it is proved that the recovered goods was the same as shown to have been stolen from the Railway stores. Accordingly, all the accused in the case were acquitted by the trial Court.

4. The petitioner's contention is that like other accused persons in the trial, her husband should also be treated to have been in service when he died in the accident on 15.05.1979 and, therefore, she is entitled to the benefits of her husband's service as would accrue to her upon the death of her husband.

5. When the fact of the above judgment of the criminal Court came to the knowledge of the petitioner, then, the petitioner made a request for pensionary benefit and service benefits like gratuity, leave encashment and outstanding salary etc. of late Shri Girdhari Singh. But, neither the petitioner was given copy of the removal order nor the aforesaid claim of the petitioner, being widow of late Shri Girdhari Singh, was paid to her. The petitioner has placed on record certain documents to show that repeatedly she knocked the doors of the respondent department but the respondents have not paid her the legitimate dues to which she is entitled.

6. On 19.01.2006, the Divisional Security Commissioner, North Western Railway, Jodhpur asked the Senior Finance Manager, North Western Railway, Jodhpur to take action into the matter and, thereafter, vide application dated 30.01.2006, the petitioner again made request to the authorities.

7. Vide communication dated 17.02.2006, the petitioner was informed that the services of late Shri Girdhari Singh were already brought to an end on 03.02.1976, therefore, there is no question of making any payment. Further, it is observed in Annex.-6 dated 17.02.2006 that the services of late Shri Girdhari Singh were brought to end under Rule 47 of the RPF Rules, 1959.

8. Learned Counsel for the petitioner vehemently argues that there was no question of terminating the services of the petitioner under Rule 47 of the RPF Rules because the day on which the services of late Girdhari Singh was terminated he was facing criminal trial and Rule 47 was to be invoked in the event of any conviction on a criminal charge and where the Disciplinary Authority is satisfied that it is not practicable to follow the procedure prescribed before ordering removal; meaning thereby, as per learned Counsel for the petitioner, both the exigencies upon which Rule 47 can be invoked do not exist in the present case because no conduct of late Girdhari Singh led to conviction and, on the contrary, the charges levelled were not found proved and established in the

trial, therefore, all the accused persons who were similarly situated and facing trial were acquitted by the criminal Court but, unfortunately, the proceedings abated due to death of Girdhari Singh as against him.

9. On the second ground for which Rule 47 of the RPF Rules, 1959 may be invoked, the Disciplinary Authority did not record any reasons for taking such drastic action. It is vehemently contended that the order dated 03.02.1976 was never communicated either to late Girdhari Singh or to the petitioner until 27.02.2006 when the representation filed by the petitioner to the respondents, therefore, obviously without affording true and correct opportunity of hearing the order impugned was arbitrarily and illegally passed.

10. It is further argued by learned Counsel for the petitioner that like the petitioner's husband Girdhari Singh, other coaccused Ram Chandra was also charged with the same charge and he was also removed from service by order dated 08.06.1976. This removal from service was made on the same charge of theft of 20 bronze scrap ingots. However, the order of removal was challenged before this Court by way of filing writ petition by said Shri Ram Chandra which was registered as S.B. Civil Writ Petition No. 1757/1976. The said writ petition was allowed vide judgment dated 19.03.1985. The respondents filed special appeal challenging the judgment dated 19.03.1985 which was dismissed and, thereafter, SLP filed by the respondents before the apex Court was also dismissed. Therefore, it is obvious that similarly situated person was removed from service but the learned Single Judge of this Court held in unambiguous and specific terms that no reasons have been recorded nor it has been satisfied that whether the holding of the inquiry is practicable or not. Therefore, so far as the present case is concerned it rests on similar and identical footing as in the case of said Ram Chandra in whose case also the charges were the same and the trial Court acquitted him. It is, therefore, contended that the petitioner has been divested of the protection under Article 311(2) of the Constitution of India. The petitioner was never informed about the order dated 03.02.1976 and, accordingly, it was not possible for the petitioner's husband or the petitioner to challenge order dated 03.02.1976; but, after acquittal, obviously, it was the duty of the respondents to treat late Shri Girdhari Singh in service till his death/retirement but it has not been done and claim of the petitioner has been rejected vide order dated 17.02.2006 on the ground that the services of late Shri Girdhari Singh have been terminated with effect from 03.02.1976, therefore, the respondents have not only violated the principles of natural justice but failed to provide opportunity of being heard before taking action against Girdhari Singh and thus illegally deprived the petitioner from the death-cum-retiral benefits of late Shri Girdhari Singh upon his death.

11. Learned Counsel for the petitioner vehemently argued that there was no occasion to invoke power under Rule 47 before the conclusion of the trial which is totally contrary to the service rules, therefore, the order dated 03.02.1976, said to have been communicated to the petitioner vide communication dated

17.02.1976, deserves to be quashed and set aside and the respondents may be directed to release all the dues in favour of the petitioner.

12. Per contra, learned Counsel for the respondents submitted that first of all this writ petition deserves to be dismissed on the ground that the services of late Shri Girdhari Singh were removed with effect from 03.02.1976 and the said order was communicated to late Shri Girdhari Singh and he has put his signature upon the acknowledgment dated 12.03.1976, therefore, this writ petition deserves to be dismissed on this ground alone that the petitioner has concealed material fact from this Court and made false statement that order of termination was not communicated to the husband of the petitioner. Secondly, it is submitted that the material fact relevant for adjudication of the present controversy in respect of acknowledgment of the order of removal by the husband of the petitioner; but, without making any effort to challenge the same for last about 30 years, the petitioner has tried to invoke the extraordinary jurisdiction of this Court after delay of 30 years from the date of removal, therefore, the writ petition deserves to be dismissed on the ground of delay and laches.

13. Learned Counsel for the respondents vehemently contended that when information with regard to registration of the criminal case for offences under Sections 457 and 380, I.P.C. was received, then, it was found necessary by the respondents to invoke Rule 47 in which no illegality has been committed by the respondents because the Disciplinary Authority, as per the requirement of Rule 47(b) was satisfied that it is not possible to follow the procedure prescribed for removal, therefore, invoking power under Rule 47(b) was perfectly within the four corners of the rules. Now, wife of late Girdhari Singh is challenging the said order after 30 years which is not permissible under the law.

14. As per the respondent, at the time of invoking power under Rule 47(b), the Disciplinary Authority considered all aspects of the matter including confidential rolls of the late employee and found that the integrity of the husband of the petitioner was doubtful since long. So also, the conclusion regarding unexplained absence also fortified the conclusion, therefore, power under Rule 47(b) was not only invoked for the reason that case was registered against the petitioner's husband but for another misconduct also which is long absence from duty and, in that view of the matter, there is no illegality in the order.

15. With regard to the case of Ram Chandra, it is submitted by learned Counsel for the respondents that the case of Ram Chandra has no relevance inasmuch as in the case of petitioner's husband the order was passed keeping in view the long absence without any intimation whereas the case of Ram Chandra cannot be equated with the case of the petitioner's husband late Girdhari Singh. Further, in the service record, late Shri Girdhari Singh was having entries of doubtful integrity for years together since 1965, therefore, the competent authority has rightly invoked power under Rule 47 and waived the enquiry in which there is no illegality.

16. Learned Counsel for the respondents vehemently argued that late Shri Girdhari Singh was removed way back in the year 1976 and after receiving the order of removal duly acknowledged the receipt and gave receipt Annex.-R/1 and R/2. Therefore, there is no question of quashing the order which is passed on 03.02.1976 with regard to removal of services of late Shri Girdhari Singh. It is contended by learned Counsel for the respondents that acquittal of co-accused in the criminal case does not create any right in favour of the petitioner to say that services of late Shri Girdhari Singh was illegally terminated. In fact, after receiving the order of termination after three years, he died but, in three years, he never challenged the said order of termination and, now, after 30 years by way of filing this writ petition, the petitioner is challenging the order of termination which is totally untenable.

17. Learned Counsel for the respondents submitted that although specific reasons are not recorded in the order of removal but the order speaks that it was not found practicable to follow the procedure prescribed under Rule 44, 45 and 46, therefore, this writ petition deserves to be dismissed.

18. In the rejoinder, learned Counsel for the petitioner submits that in communication Annex.-6, the date of removal has been shown as 03.02.1976 whereas order Annex.-R/1 which is said to be termination order is of the date 31.01.1976; meaning thereby, the respondents themselves were not sure as to when the services of the petitioner's husband were terminated because in Annex.-6 the date of removal has been shown as 03.02.1976 whereas Annex.-R/1 which is order of removal is of the date 31.01.1976 and upon perusal of Annex.-R/2 which so called acknowledgment said to be made by late Girdhari Singh there is interpolation in the date, therefore, the reply of the respondents cannot be accepted in view of the fact that without holding any inquiry and without granting any opportunity of hearing the services of the petitioner's husband late Shri Girdhari Singh was terminated. Moreover, the petitioner has been informed that the services of her husband was terminated on 03.02.1976 but Annex.-R/1 is of the date 31.01.1976; meaning thereby, without perusing the record the reply was given to the petitioner. Likewise, Annex.-R/2, so called acknowledgment, has been shown of the date 12.03.1976 but, upon perusal of Annex.-R/2 it is revealed that the date is not clear. Therefore, the order of so called removal from service suffers from illegality because it has been passed without holding any inquiry and without showing reasons for waiving the inquiry.

19. I have considered the rival submissions and perused the entire record of the case.

20. Significantly, certain facts bearing relevance to the resolution of the controversy which are undisputed need be mentioned. The husband of the petitioner, late Girdhari Singh was substantively working in the respondent department since 1962. There is no dispute with regard to the registration of the criminal case against inter alia the petitioner's husband. In that case besides late Girdhari Singh, as many as six other persons were arraigned for trial for offences

under Sections 457 and 380, I.P.C. and, then, it is not in dispute that in the criminal trial, the trial Court ? Judl. Magistrate (First Class) No. 3, Jodhpur, acquitted all the accused persons while holding that the prosecution has failed to prove the theft and the recovered material has not been proved to be the stolen property. Petitioner's husband Girdhari Singh died in the year 1979 while the trial was going on and the trial of the case concluded with acquittal of all the accused in the year 1991. It is also not in dispute that while passing the order of removal no inquiry has been conducted by the respondents. More so, it is the admitted case of the respondents that the order of removal was passed while invoking power under Rule 47 of the RPF Rules. It is a fact without dispute that in the case of Ram Chandra (one of the accused in the aforesaid criminal case) this Court set aside the order of removal and the said judgment was upheld upto the apex Court. The respondents, however, agitated that the petitioner's case is not covered by the judgment delivered in the case of Ram Chandra. It is nowhere disputed by either of the parties that the petitioner's husband late Girdhari Singh died in the year 1979 and in the criminal case no judgment was rendered in respect of late Girdhari Singh; meaning thereby, he cannot be treated to be a convicted person.

21. The aforesaid facts are undisputed. The respondents, however, raised the ground of delay in challenging the termination order. In my opinion, in the present case, the delay is not that fatal to the claim of the petitioner in the present writ petition even if it is admitted that the services of petitioner's husband Girdhari Singh was terminated on 03.02.1976 because had it been Girdhari Singh himself challenging the order of termination this day it would have been open to the respondents to raise the ground of delay and laches; but, the petitioner's claim rests upon the fundamental rights guaranteed to citizen under the Constitution of India and the termination order has been taken by the respondents to deny the claim of the petitioner in this writ petition. Therefore, delay in this case does not defeat the writ petitioner. Moreover, it is an important fact that late Girdhari Singh was facing trial for offences under Sections 357 and 380, I.P.C. and therefore during the pendency of the criminal case he did not choose to challenge the termination order. But, this fact does not debar the petitioner to challenge the same while seeking relief in respect of her own claim because in the year 1991, after conclusion of the trial in the criminal case, all the persons accused therein were acquitted by the trial Court while holding that the prosecution has failed to prove any offence against the accused persons. The trial Court gave a categorical finding of fact that the prosecution has failed to prove the recovery and to establish the allegation of theft against the accused persons. Relevant para 12 of that judgment reads as under:

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22. In this view of the matter, the charge of theft levelled was held to be baseless against all the accused persons including the petitioner's husband late Girdhari Singh. So far as charge of willful absence allegedly levelled while invoking power under Rule 47 against the petitioner's husband is concerned, it is obvious that for proving that charge neither any inquiry was contemplated nor specific charge in that respect was framed so as to call for an occasion for the satisfaction of the Disciplinary Authority on the question whether it is not practicable to follow the procedure prescribed, and therefore, invoke power under Rule 47 of the RPF Rules. The allegation of willful absence from duty can be proved by way of leading evidence after providing opportunity to the delinquent. In that view of the matter, the contention of the respondents cannot be accepted that the case of the petitioner cannot be treated to be at par with the case of Ram Chandra's case whose removal order was set aside by this Court.

23. With regard to delay, in my opinion, after acquittal it was the duty of the respondents to revoke the order of removal because all those persons against whom the criminal case was proceeded with were granted the benefit of continued service and whereas the petitioner's husband died in the year 1979 when he was still facing the criminal trial; but, after acquittal by the criminal Court, in view of the ratio laid down by the apex Court in G.M. Tank Vs. State of Gujarat and Another, even if in the departmental inquiry the services of an employee is terminated and, ultimately, in the criminal case he is acquitted, then, if the termination is based upon the same set of charges, the employee can challenge the order of termination even after acquittal by the criminal Court. Obviously, in this case, the respondents waived the procedure of inquiry; meaning thereby, no inquiry was conducted and, later on, Girdhari Singh died during the pendency of the trial and other co-accused persons faced the trial for offences punishable under Sections 457 and 380, I.P.C. wherein ultimately the prosecution failed to establish its case on facts. Therefore, while following the law enunciated by the apex Court in G.M. Tank's case, I am of the opinion that wife of late Girdhari Singh (petitioner herein) who has been informed by the respondents in the year 2006 that services of her husband stood terminated in

the year 1976 can challenge the order of removal and the delay is not fatal in her case.

24. As a result of the foregoing discussion, this writ petition succeeds and is hereby allowed. Order Annex.-R/1, communicated to the petitioner vide letter dated 17.02.2006 is quashed and set aside in the terms as has been done by this Court in the case of Ram Chandra with the result that the petitioner is held entitled to all the benefits ensuing upon the death of her husband Girdhari Singh on 15.05.1979. The petitioner shall however not be entitled to salary of her husband Girdhari Singh for the period from 31.01.1976 to the date of death because in that period Girdhari Singh did not challenge the order of removal and was facing criminal trial and the petitioner shall be entitled to death-cum-retirement benefits with effect from 15.05.1979 as a sequel to the quashing of the order of removal. The respondents shall comply with this order within a period of three months from the date of production of certified copy of this order.

25. There shall however be no order as to costs.