

(2002) 03 RAJ CK 0041
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5241 of 1992

Smt. Jagdevi and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 15-03-2002

Acts Referred:

Rajasthan Service Rules, 1951 — Rule 260, 261, 262

Citation : (2002) 4 RLW 2229 : (2002) 3 WLC 172 : (2002) 5 WLN 96

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Advocate : Yogesh Gupta, for the Appellant; M.L. Arora, for M.R. Naredi, for the Respondent

Final Decision : Allowed

Judgement

Madan, J.—The petitioner, who is the wife of late Shri Ram Aassre (Head Constable in the State Police Subordinate Services Jaipur City), has by way of this writ petition sought the relief with regard to payment of family pension and gratuity as well as other benefits following the death of her husband, to which he was entitled while serving in the department and on account of denial of such benefits this petition has been filed. The question which is relevant for consideration is as to whether the petitioner and also other legal heirs of the deceased can be held entitled for the payment of family pension, gratuity and other consequential benefits as admissible to him had he continued in service till the age of superannuation but for the impugned order dated 26.2.1992 (Ann. 2) by which penalty of dismissed was imposed upon him.

2. The case of the petitioner in short is that late Ram Aassre, has served as Head Constable in the Police Department Jaipur till his demise on 2.3.1992 and who left behind the petitioner, one daughter and four sons. None of them is earning member of the family as the petitioner and her minor children have been deprived of the family income to which the deceased was contributing but for his premature death.

3. The deceased joined the services as a Constable with effect from 22.11.1966 and was promoted to the rank of Head Constable subsequently and continued as such till his death. He served the department for nearly 26 years with utmost devotion to his duties. Following his demise, the petitioner, being the widow of the deceased made a representation to the respondents for release of pensionary and allied benefits as admissible to her as per the provisions of Rules 260, 261 and 262 of the Rajasthan Service Rules (for short "the Rules") and other benefits as per Rajasthan (Recruitment of dependants of Government Servants Dying while in Service) Rules, 1975 (for short "the Rules of 1975") repealed by Rule 15 of the Rajasthan Compassionate Appointment of Dependants of Deceased Government Servants Rules, 1996 (for short Rules, 1 996).

4. Further the petitioner's case is that she approached the respondent-department (respondents No. 2 & 3) several times for release of aforesaid benefit but all her efforts proved futile. Since she became aware of the fact that the respondents were not preparing the family pension case of the petitioner on the ground that the petitioner's late husband was dismissed from police service by respondent No. 3 (The Superintendent of Police, Jaipur City, Jaipur) vide order dated 26.2.1992 following a departmental enquiry conducted against him under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal), Rules, 1958 for short ("CCA Rules"). The petitioner submitted notice for demand of justice (Ann. 1) through her counsel but the same has yielded no result.

5. Being aggrieved by the denial of family pension as well as other benefits to which the petitioner's late husband was entitled; had he continued in services, she has filed the instant writ petition. In reply to the show cause notice, the respondents have controverted the contentions of the petitioner, which I have perused also with reference to the contentions made in the additional affidavit of Mr. M.K. Govil, ASP, Jaipur City, Jaipur.

6. In the writ petition it has been averred that late Ram Aassre was posted as Head Constable at Police Lines, Jaipur City at the relevant time from where he was deputed to S.M.S. Hospital, Jaipur as Supervisor in-charge (Guards). He was instructed to watch the accused persons, who were admitted in the said hospital as indoor patients. Besides others, at the relevant time, one accused Shivram was admitted as indoor patient on 5.3.91. Constable Kailash Chand, Maharajsingh and Sunil Kumar were also deputed to watch accused Shivram in 1C Ward, where he was admitted as aforesaid. As per the practice prevalent at the relevant time, all the three constables were performing their duties regularly. On 15.3.91 at about 7.00 A.M. Constable Maharajsingh informed Ram Aassre that accused-Shivram was found missing from the Indoor IC Ward. Thereupon Ram Aassre made entry in the Register and sent all the three Constables for hot pursuit and search of the accused. Since Ram Aassre was incharge of other Guards, who were also watching the indoor patients (accused), so he made entry in the Register and sent the Constables for hot pursuit of accused Shivram. When all of them returned back without the accused, he got the case registered at

Police Station Moti Doongri against accused Shivram. Entry was also made in the Rojnamacha. Later on accused was apprehended and challan was filed in the competent court for absconding from police custody as indoor patient in SMS Hospital, Jaipur.

7. Thereafter respondent No. 3 placed Ram Aassre and other three constables under suspension on 21.3.91. Charge sheet with summary of allegations was served upon them vide order dated 13.5.1991 to which Ram Aassre pleaded not guilty. Thereupon the Disciplinary Authority (respondent No. 3) appointed Dy. S.P. (Traffic) as Enquiry Officer, who after conducting the enquiry submitted his report on 30.12.1991. In this regard, it has been contended that neither the copy of the enquiry report was supplied nor any opportunity was given to the delinquent to explain the contents of the enquiry report, order of dismissal came to be passed on 26.2.1992. Thus, extreme penalty of dismissal was imposed on the petitioner's husband, who was even denied the opportunity to plead even on the quantum of punishment by the Disciplinary Authority. Before the said order came to be implemented, Ram Aassre expired on 2.3.1992, when he had not been relieved from his duties from the Police Lines, Jaipur City nor his name was struck off from the rolls of the department. His belt No. was never cancelled nor deposited in the department. Thus the dismissal order could not be implemented and the petitioner's case in this regard is, till the order is actually not implemented, the delinquent remains in service. Hence being in service, he was entitled to all the benefits as aforesaid in accordance with the Rules.

8. Be that as it may, the case of respondents is that because of supervisory negligence, the accused had escaped from the custody of Ram Aassre and other three constables, who were actually looking after the accused while admitted in the hospital, who was apprehended subsequently though he had absconded from police custody.

Having apprehended the accused subsequently and the petitioner's husband having made all sincere efforts to apprehend the accused, which is apparent from the fact that he had lodged the report immediately at Police Station Moti Doongri and also entered the same in the Police Diary (Rojnamcha), assuming that it was case of supervisory negligence, even then extreme penalty of dismissal from service was not warranted. Moreover, the order imposing the penalty had not been implemented as on the date (26.2.92) when the penalty was imposed, Ram Aassre was actually in active duty of the department. All these aspects were not taken into consideration by the Disciplinary Authority, who had proposed and imposed the punishment of dismissal of Ram Aassre from service under whom Ram Aassre was actually serving. The impugned order was also challenged on the ground that it was rather too harsh and laconic inasmuch as it does not contain any reason for dismissal from service and hence not sustainable in the eyes of law. The charges levelled against the husband of the petitioner could not even be proved from the enquiry report as regards charge No. I, which was to the effect "that Ram Aassre was absent from duty" at the relevant point of time.

In this regard, it has been contended by the learned counsel for the petitioner that the Enquiry Officer had specifically mentioned in his report that it was not proved that Ram Aassre was absent from duty.

9. As regards charge No. 1, it has been contended that it pertains to supervisory negligence on the part of Ram Aassre. If Ram Aassre was absent from duty at the relevant time when Shivram had allegedly escaped from the custody from the concerned Ward of the hospital, where he was under treatment, then there would have been no occasion on his part to send immediate report with the concerned department and also to the police station Moti Doongri, where he not only immediately lodged the report but also made all sincere efforts to chase and apprehend the accused. Thus it is cannot be inferred that Ram Aassre was guilty of supervisory negligence on the allegation of charge No. 1.

10. As regards charge No. 2 when soon after the F.I.R. was lodged, efforts for apprehending the accused proved successful, hence it cannot be said that Ram Aassre was guilty of either supervisory negligence or there was any dereliction of duty on his part. As regards the allegation that petitioner's husband was absent from duty at the time of alleged occurrence is also falsified since there is regular entry in the record and also in the F.I.R. which was lodged by Ram Aassre himself. Hence, both the charges having not been proved he could not be held guilty of those charges and deserved exoneration. Moreover, the three constables, who were warranted were immediately sent for hot pursuit of the accused, succeed in apprehending and thereafter taking him back to custody.

11. From the perusal of the impugned order dated 26.2.92 of the Disciplinary Authority as per which penalty of dismissal was imposed on Ram Aassre, the then Head Constable, it is apparent that during the course of enquiry out of two charges which were framed against him as well as other three Constables namely, Maharaj Singh, Sunil Kumar and Kailash Chand, on the basis of the report submitted by the Enquiry Officer, though both the charges were proved against Maharaj Singh only, one charge was established as against Sunil Kumar and Kailash Chand and since the charges were not proved, they were given the benefit of doubt and stood exonerated. In this regard. I am of the view that though all the three Constables had accompanied Ram Aassre at the relevant time and all were assigned the same duty for taking care of the accused while in custody, hence different yardstick could not have been applied for determining their guilt and punishment thereunder notwithstanding all the three being similarly placed at the relevant time and were entrusted in performing the same duty. If the charge of supervisory negligence was proved against him, there was no justifiable ground for giving benefit of doubt to other three Constables out of them Maharaj Singh against whom only one charge was proved while exonerated Sunil Kumar and Kailash Chand, who were all performing the same duty at the relevant time. The law is well settled that if there is a classification to be made as regards the persons performing similar duties on the touch stone of Article 14 of the Constitution of India and if, differentiation is made between them it ought to

have reasonable nexus with the object sought to be achieved therefrom since otherwise the said classification can be struck down, being arbitrary and violative of Articles 14 and 16 of the Constitution of India. This being the settled position, I am of the view that the order of the disciplinary Authority imposing extreme penalty of dismissal from service while applying different standards as regards the other Constables who were similarly placed does not stand to conform the test of reasonable classification. Hence it is liable to be struck down being grossly arbitrary, irrational and unconstitutional. Moreover, as regards the departmental witnesses, who were examined namely. A. Lal (PW-1), Hanuman Singh (PW-2), Bhagwan Sahai (PW-3), Bharat Singh (PW-4), Devi Singh (PW-5) and Ma-haveer Singh (PW-6), have all deposed to the same effect against Ram Aassre and other Constables, who had accompanied him at the relevant time and moreover, from their evidence no different roles have been assigned either to late Ram Aassre or to the other Constables.

12. There is no iota of evidence on the record to prove that as to whether the enquiry officer had recorded the statements of Doctors, Compounded or other patients, who were admitted at the relevant time in the concerned Ward of the Hospital, who could be plausible eye witnesses to depose the truth. The Enquiry Officer's Report as well as the report of the Disciplinary Authority are both conspicuously silent on this aspect, on the basis of this evidence also the imposition of penalty of dismissal, is not sustainable in view of the gross procedural irregularities as well.

13. Thus, instead of applying same yardstick, different punishment has been imposed, which neither can be said to be rational nor justified. The impugned order not only suffers from vice of discrimination but also not sustainable in law since before the imposition of extreme penalty of dismissal on the delinquent, he was not given any opportunity of hearing in this regard and the order is also violative on the principles of natural justice, equity and fair play.

14. Moreover, it goes without saying that as on the date before the impugned order was served on the delinquent, he died while on duty and hence had not been removed from duty at the relevant time and rightly considered to be on active duty of the department. Hence, in my opinion, he would have been entitled to all the benefits as claimed by the petitioners such as family pension, gratuity and other benefits, being the legal heir of the deceased, as per Rajasthan Service Rule 260, 261 and 262, and thus viewed the petitioners are entitled to Family Pension, Gratuity as well as other benefits, which were admissible to late Ram Aassre, which is the only source of her livelihood and her dependent minor children.

15. As regards the second prayer, once the delinquent has been held to be exonerated from the charges imposed, being the legal heirs of the deceased the petitioner is entitled to get all the benefits admissible to her late husband not only as per Rule 260, 261 and 262 of the Rules but also entitled for a suitable employment as per the Rules 1975 repealed by the Rules, 1996, as amended

from time to time, which are applicable to the petitioner's case.

16. As per Rule 5 of the Rules, 1996, if a Government Servant is already employed on regular basis under the Central/State Government or Statutory Board, Organisation/Corporation owned or controlled wholly or partially by the Central/State Government at the time of death of the Government servant, in the event of making an application for the said purpose, be given a suitable employment in Government Service without delay provided applying the above Rule.

17. As a result of the above discussion and directions, this writ petition is allowed with no order as to costs. The impugned order (Ann. 2) dated 26.2.92 dismissing Ram Aassre from service, (which had not been served on the delinquent (Ram Aassre) because of his death) is quashed and set aside and as a consequence thereof Ram Aassre would be deemed and treated to have been in service with all consequential benefits in respect of arrears of pay etc. under the R.S.R. but since Ram Aassre had died, the petitioners who were his legal heirs are, entitled to such arrears of pay besides other consequential benefits of family pension, gratuity so also other benefits admissible either under R.S.R. or for employment on compassionate ground under aforesaid Rules, 1996, as directed in preceding paras. Accordingly the respondents are directed to issue necessary orders in the light & compliance of above directions and judgment of this Court within ninety days from today and call the petitioners for making procedural formalities from time to time.