
(2011) 03 AHC CK 0082
In the Allahabad High Court
Case No : Special Appeal No. 211 of 2011

Smt. Rani Singh	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 28-03-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 307, 354, 452, 504

Citation : (2011) 6 AWC 6476 : (2011) 130 FLR 93

Hon'ble Judges : Vedpal, J;Pradeep Kant, J

Bench : Division Bench

Advocate : R.J. Trivedi, for the Appellant; Mukund Tiwari, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Kant and Vedpal, JJ.—Heard the learned Counsel for the Appellant Sri R.J. Trivedi and Sri Mukund Tiwari for the State.

2. This special appeal challenges the order dated 1.3.2011 passed by the learned Single Judge, dismissing the writ petition preferred by the Appellant, Smt. Rani Singh, who is the widow of Constable Raj Kumar Singh.

3. In short, the facts of the case are that Constable Raj Kumar Singh while posted in P.A.C. was placed under suspension vide order dated 7.5.1997 for the reason of a criminal case being lodged against him being Case Crime No. 280/97 under Sections 452, 354 and 506 Indian Penal Code.

4. On 4.8.1999 while under suspension he went to his hometown Barabanki on sanctioned leave of 15 days but he did not return for duty after the said period and continued to remain absent. In the meantime, he was charged in Crime No. 39/2000 under Sections 302/307/504/506 Indian Penal Code and on 26.2.2000 he was arrested on spot. He was detained under National Security Act also but later on the High Court, in writ petition filed by him being Writ Petition No. 416 (habeas corpus) of 2000, set aside the order of detention passed under National Security Act and directed for his release forthwith, if he was not wanted in any

other case. This order was passed on 16.10.2000.

5. The dismissal order impugned in the writ petition and challenged before us in special appeal was passed on 5.6.2001. The order of dismissal gives history of the criminal cases against the Petitioner and then it says that since he was under detention under National Security Act, therefore, it is not possible to hold any enquiry. The order further says that the suspended Constable Raj Kumar Singh has remained completely involved in criminal offences, therefore, it is not possible for him to come outside the prison and there is No. need to hold any enquiry.

6. After making the aforesaid observations, the appointing authority said that he is not a fit person to be retained as Constable in P.A.C. and, therefore, he being satisfied that No. enquiry was needed, exercising powers u/s 8(2)-B of the U.P. Police Subordinate Officers/Employees (Punishment & Appeal) Rules, 1991, passed the order of dismissal of Raj Kumar Singh from service.

7. It appears that husband of the Petitioner did not challenge the aforesaid order for the reason that he might be waiting for the outcome of the criminal trial but in the meantime, as the luck could have it, he died on 4.4.2005. The present Petitioner, thereafter finding No. relief from any quarter, approached this Court by filing a writ petition seeking the relief of quashing of the order of dismissal of her husband from service and getting the post retrial dues and other dues to which she was entitled, being the widow of the deceased Constable.

8. Raj Kumar Singh, husband of the Petitioner, did not challenge the order of dismissal though he remained alive for more than four years and the present writ petition has been filed after six years of his death, by his widow.

9. Normally each day delay is to be explained, if the petition suffers from latches but in a matter like the present one, if the widow of the deceased employee (Constable), who was accused in a criminal case and against whom trial was pending, after his death has approached this Court finding that the order of dismissal from service was per se illegal and it is her right to get the post retrial dues and other dues being widow of the deceased Government servant, a lenient view has to be taken and the petition need not be dismissed on the ground of latches alone.

10. It is a different matter that in a given case, where a Government servant, may be Constable in a disciplined force, chooses not to challenge the order of dismissal from service and dies, if his dependant, may be widow or son intends to challenge the order of dismissal from service after unreasonable delay, perhaps there would be No. occasion to entertain the same but circumstances of each case differ and the principle of unexplained latches has to be applied looking to the facts and circumstances of each and every case.

11. Here, in the instant case, husband of the Appellant was earlier suspended because of criminal case being registered against him under Sections 452, 354,

506 Indian Penal Code and thereafter he went on leave. During the period of leave he was charged of committing offence under Sections 302/307/504/506 and then he was also detained under National Security Act.

12. Incidentally, the order under National Security Act was set aside by the High Court on 16.10.2000. The dismissal order was passed thereafter on 5.6.2001. The order of dismissal from services apparently was passed on incorrect facts and without taking into consideration the release orders passed by the High Court and without holding any enquiry.

13. The question, whether any enquiry was conducted or was required to be conducted need be, decided by the learned Single Judge as at this stage it would not be appropriate for us to record any finding on this issue.

14. Since the rights of the Appellant are directly in issue, therefore, not making challenge by the husband of the Appellant against the order of dismissal would not divest her of her own right and, therefore, the view that if the husband of the Petitioner did not challenge the order of dismissal, the Appellant also cannot challenge the same, does not appear to be correct in the facts and circumstances of the present case.

15. In the case of Basanti Prasad Vs. The Chairman, Bihar School Examination Board and Others, the Supreme Court considering almost the similar plea, observed, that where there is inordinate and unexplained delay and third party rights are created in the intervening period, the High Court would decline to interfere. However, if the delay is properly explained, and if the third party right is not going to be affected, the High Court may entertain the petition and consider the case of the aggrieved person on merits.

16. In the said case, services of the Appellant's deceased husband were terminated on the ground that he was convicted by a Judicial Magistrate for certain offences under the provisions of Indian Penal Code.

17. The Court observed that the dismissal was in view of the order of conviction passed by the Magistrate and till that order is set aside by a superior forum, the Appellant's husband or the Appellant could not have questioned the same till he was acquitted by the Sessions Court.

18. In view of the peculiar circumstances of the case, the Court held that the High Court was not justified in rejecting the prayer of the Appellant primarily on the ground of delay and laches on the part of the Appellant in questioning the order of termination passed on 4.8.1992 in a petition filed in the year 2005, after acquittal by Sessions Court in appeal.

19. In the instant case, there is one more aspect which requires consideration i.e. status of the employee, namely, the Constable Raj Kumar Singh for the purpose of passing of the order of dismissal from service, when he unfortunately died during the course of trial. If the trial was not completed before his death, the question of abatement would be taken into consideration and also that

whether the dismissal order passed without taking into consideration the aforesaid fact, could be passed or sustained. Simply because at the time of passing of the dismissal order the person was in jail or on bail in pending criminal trial and the dismissal order was not challenged, that would not conclude the fate of disciplinary proceedings.

20. This apart, the dismissal order passed on 5.6.2001 says that Raj Kumar Singh is in detention under National Security Act whereas his order of detention under the said Act was quashed by the High Court much before i.e. 16.10.2000.

21. Since all these questions arise in the writ petition, which could not be considered by the learned Single Judge in the absence of the counter-affidavit filed by the State, we set aside the order passed by the learned Single Judge and remit the matter to the learned Single Judge having jurisdiction to decide the matter afresh in accordance with law.

22. We further direct that all the post retrial dues or any other service dues which were admissible to the deceased employee even after the order of dismissal from service being passed, would be paid to the Appellant on furnishing of the required legal heir certificate.

23. Liberty is also given to the Appellant to amend the writ petition, if she is so advised.

24. The special appeal is allowed.