

(2003) 08 JH CK 0070
In the Jharkhand High Court
Case No : CWJC No. 2264 of 1995 (R)

Smt. Sandhya Mukherjee	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 21-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 4 JCR 503

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : P.K. Sinha, P. Ghosh Pandey and N. Rai, for the Appellant; Anoop Kr. Mehta and Rajive Anand, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—Petitioner has prayed for quashing the order dated 27.12.1994 passed by the respondents whereby petitioner has been dismissed from service after holding a departmental inquiry.

2. The facts of the case lie in narrow compass.

3. Petitioner's husband namely, Sri Snehasis Mukherjee was in the service of the respondents as Assistant Surveyor and was posted in the office of Ena Colliery. All of a sudden he became traceless since 1.3.1982 and his whereabouts was not at all known to the petitioner or any relatives. Petitioner finding her husband missing reported the matter to the police and also got a notice published in the newspaper. Petitioner ultimately approached the respondents and made an application on 22.12.1982 for her appointment, so that she could earn her livelihood. In the meantime, a departmental proceeding was initiated by the respondents against the husband of the petitioner for his unauthorized absence and after holding an inquiry, he was dismissed from service by order dated 5.4.1983.

4. The application of the petitioner for appointment was processed and a letter of

appointment-dated 28.9.1983 was issued appointing the petitioner as "untrained Aya" on payment of Rs. 15/- per day together with usual allowance. Petitioner joined service and seeing good performance of the petitioner, she was regularized in the service on the post of Clerk vide Office Order dated 23.9.1988. In the year 1991, petitioner was served with a charge-sheet dated 25.3.1991 on the allegation that petitioner's husband in fact was not missing rather he withdrew his Gratuity amount and at the time of withdrawal, he was identified and his signature was verified by the petitioner which signifies that petitioner's husband was not missing and petitioner had obtained her appointment fraudulently which amounted to a grave misconduct. Petitioner submitted her reply and the Inquiry Officer proceeded with the inquiry and ultimately impugned order of dismissal of the petitioner from the service has been passed.

5. A counter-affidavit has been filed by the respondent's, wherein it is stated that in the year 1982, petitioner made an application before the Management stating therein that her husband was absconding and in absence of any earning member in the family, she alongwith her children were starving, the petitioner requested the management to provide employment to her on compassionate ground. Considering her application and the pitiable condition, the Management offered employment to her on compassionate ground. It was clearly mentioned that as and when her husband turns up on a later date, petitioner would lose her claim for appointment suo-motu.

6. Respondents further case is that a departmental proceeding was initiated against the husband of the petitioner for his unauthorized absence and in the departmental proceeding order of dismissal from service was passed. It is stated that as matter of fact, husband of the petitioner was not absconding rather he submitted an application for withdrawal of Gratuity amount and personally received payment through account by cheque on 22.2.1988. When it came to the notice of the Management that petitioner had identified her husband at the time of withdrawal of Gratuity amount, a charge-sheet was issued against the petitioner and an Inquiry Officer was appointed. The Inquiry Officer fixed several dates of inquiry and notices were issued but the petitioner did not turn up in domestic inquiry, rather she filed application at Calcutta High Court for an interim order restraining the Management to take further action to the charge- sheet issued to other. The Calcutta High Court did not stay the continuance of departmental inquiry. The Inquiry therefore proceeded but inspite of notice, petitioner did not turn up and ultimately inquiry was concluded ex parte. Respondents' further case is that inspite of direction of the Calcutta High Court, inquiry proceeding was started at a particular stage and notices were given to the petitioner but she did not participate in the inquiry and ultimately impugned order of dismissal was passed.

7. Mr. P.K. Sinha, learned senior counsel, appearing for the petitioner assailed the impugned order as being illegal and wholly without jurisdiction. Learned counsel firstly submitted that admittedly order of dismissal was passed against the

petitioner's husband and the petitioner made an application for her appointment and she was given appointment which was subsequently confirmed. Learned, counsel therefore submitted that merely because husband of the petitioner withdrew his lawful amount of Gratuity that will not amount to misconduct so far petitioner is concerned. Learned counsel submitted that petitioner has not made false statement and even if petitioner's appointment is taken as compassionate appointment, her service having been confirmed order of dismissal could not have been passed merely because her husband withdrew his legitimate claim of Gratuity. However, in course of argument he has not disputed that petitioner made an application for appointment on the ground that her husband is missing and she has to maintain herself and her son.

8. As noticed above, petitioner's husband remained absence from duty with effect from 21.3.1982 and it is not the case of the petitioner or her husband that he was kidnapped or abducted or he was under wrongful confinement. Admittedly, departmental inquiry was initiated against the petitioner's husband and besides personal notice, it was also published in the newspaper but the petitioner's husband did not participate in the inquiry and ultimately order of dismissal was passed. The Inquiry Officer in the subsequent inquiry against the petitioner has recorded a finding and it has not been disputed by the learned counsel for the petitioner that petitioner made an application for her appointment on compassionate ground and the respondents appointed her on the daily wages basis in 1983 and she was regularized on the post of Clerk in 1988. Petitioner's husband thereafter turned up and withdrew his Gratuity amount and at that time he was identified by the petitioner. When this fact came to the notice of the Management, a charge-sheet was issued against the petitioner alleging that her husband was not missing and in order to obtain employment fraudulently she made an application stating that her husband was missing and therefore got employment. Other charge is that petitioner's husband personally received Gratuity amount and the petitioner verified and identified her husband's signature 22.2.1988. In spite of sufficient opportunity given by the Inquiry Officer in the departmental inquiry, petitioner did not participate in the inquiry and ultimately on proof of charges, order of dismissal from service was passed.

9. Taking into consideration the entire facts of the case, I am of the opinion that when petitioner got employment fraudulently by making false statement that her husband was missing then it will amount to grave misconduct which has been proved by admitted facts and evidence. Petitioner has therefore, been rightly dismissed from the service. I do not find any illegality in the order of dismissal. No relief can be granted to the petitioner in this writ application, which is accordingly dismissed.