

(2023) 09 J&K CK 0042

In the Jammu And Kashmir High Court

Case No : Civil Miscellaneous No. 5240, 5241 Of 2023 In Latters Patent Appeal
No. 162 Of 2023, Caveat No. 1241 Of 2023

UT Of JK And Ors

APPELLANT

Vs

Shahzada Yousuf And Ors

RESPONDENT

Date of Decision : 21-09-2023

Acts Referred:

Jammu And Kashmir Civil Service Regulations, Volume I — Article 128, 203(b)
Jammu And Kashmir Government Employees (Conduct) Rules, 1971 — Rule 30, 33, 34
Jammu And Kashmir Civil Seviles (Classification, Control And Appeal) Rules, 1956 —
Rule 226

Citation : (2023) 09 J&K CK 0042

Hon'ble Judges : N. Kotiswar Singh, CJ; Moksha Khajuria Kazmi, J

Bench : Division Bench

Advocate : Mohsin S. Qadri, Maha Majid, Altaf Haqani, Asif Mir

Final Decision : Dismissed

Judgement

Moksha Khajuria Kazmi, J

CM No. 5240/2023

This is an application seeking condonation of delay in filing the Letters Patent Appeal. On the grounds taken in the CM, the application is allowed and the LPA bearing No. 162/2023 is taken on board.

Application disposed of.

LPA No. 162/2023

1. In this intra-court appeal, appellants have challenged judgment dated 24.05.2023 passed by learned Single Judge in writ petition bearing WP(C) No. 1502/2021 titled as Shahzada Yousaf and Ors vs. J&K Institute of Management, Public Administration and Rural Development & Anr.

FACTUAL MATRIX

2. In terms of order No. 178 of 1987 dated 30.03.1987 issued by Appellate department, the deceased Mohammad Yousuf Bhat was initially appointed as Orderly in IMPARD, Srinagar and subsequently in pursuance to SRO 28 dated 15.01.1996, he was promoted/designated as Jamadar-I w.e.f. 25.01.1996. The deceased official remained unauthorised absent from his duties with effect from 01.10.1999 to 30.11.1999. Accordingly, order No. 122 of 2003 dated 08.04.2003 was issued in terms of which the services of the deceased official were terminated with effect from 01.10.1999.

3. Being aggrieved of the termination order, the deceased official approached this court by way of a writ petition bearing SWP No. 698/2004. This court on 07.06.2005 quashed the termination order dated 08.04.2003 of the deceased official, the operative portion whereof is reproduced below:-

"Under these circumstances the impugned order cannot stand as the same have been passed in violation of rules as well as principle of natural justice. Petition is allowed. Order impugned No. IMPA Order No. 122 of 2003 dated 8.4.2003 is hereby quashed."

4. The appellants, thereafter, filed LPA No. 121/2005, against the judgment passed on 07.06.2005. The Division Bench of this Court disposed of the appeal with following directions:-

i. That the appellants are at liberty to serve charge sheet upon the respondent to prove the misconduct of un-authorized absence and hold an enquiry which shall be completed within four months;

ii. That the respondent is directed to associate with the enquiry proceedings. If he fails to associate with the enquiry in that event the respondent may proceed ex-parte;

iii. That pay emoluments from the date of his termination from service till the date he resumes the duty pursuant to this order shall be dependent upon the result of the enquiry, to be conducted by the appellants within four months;

iv. The applicants shall make payment of the charge allowance to the respondent suspendee under rules.

5. It is stated that in terms of the judgment passed by Division Bench of this Court, the appellant department released subsistence allowance as admissible under rules in favour of the deceased vide order No. 348 of 2006 dated 09.01.2006. A fresh enquiry was conducted by Dr. Mushtaq Ahmad Khan, the then Associate Professor, IMPARD vide order No. 448 of 2006 dated 25.03.2006. It is stated that various notices were served upon deceased official for explaining his position on account of his unauthorised absence vide communications dated 30.08.2005, 19.09.2005, 23.01.2006, 15.02.2006 and 13.03.2006.

6. It is stated that the enquiry officer furnished the report before the department and concluded that the administrative action of the Institute terminating the

services of the deceased official is worth to be maintained. It was also concluded that the decision of terminating his services is not only in accordance with the relevant provisions contained in Article 128 of CSR and Rule 30 of JKCCA rules, but also is in consonance with the judgment passed by Supreme Court in case of the dismissal of an employee of North Eastern Karnataka Road Transport Corporation wherein it is held that over staying on leave or un-authorised absenteeism from the work place enables the employer to dismiss the employee as it amounts to serious misconduct.

7. On the basis of the enquiry report, a show cause notice was served upon the deceased official on 05.10.2007, as to why his services shall not be terminated with effect from 01.10.1999, which was duly replied by the deceased on 19.11.2007. It is stated that the health condition of the deceased deteriorated as such respondent No.01, wife of the deceased official submitted an application on 20.01.2008 before the appellants seeking appropriate relief (s) therein, followed by a legal notice dated 11.03.2009. It is stated that deceased died on 07.01.2021 at the age of 52 years due to fatal ailments and after undergoing various surgical operations.

8. It is stated that since the disciplinary proceedings initiated against the deceased were not concluded by the appellants and the deceased continued to remain in service, though under suspension, with the appellants, as such, respondent No. 01 approached appellants for processing the case of the deceased for payment of arrears of pay, as also the settlement of his family pension including release of all terminal benefits admissible under rules. Respondent No. 1 is also stated to have submitted her claim for providing compassionate appointment to one of the legal heirs of the deceased under SRO 42 of 2004. It is stated that as none of the claims put forth by the respondents were considered by the appellants, the respondents were constrained to approach this Court by way of filing a writ petition bearing WP(C) No. 1502/2021 with following reliefs:-

a) A writ, order or direction including one in the nature of Certiorari, quashing the impugned communication dated 11.06.2021.

b) A writ, order or direction including one in the nature of Mandamus, commanding upon the respondents to release the arrears of pay of the deceased petitioner w.e.f. April, 1999 till 07.01.2021 and also the terminal benefits in the nature of leave encashment, GP Fund, Gratuity and Commutation Pension in favour of the petitioners and process the case for release of family pension in their favour as also the compassionate appointment case in favour of petitioner No. 4.

c) Any other writ, order or direction which this Hon'ble court may deem it fit and proper in the facts and circumstances of the case may also be passed in favour of the petitioners and against the respondents.

9. The writ court passed judgment dated 24.05.2023 as follows:-

"25. Assuming the said exercise undertaken by the respondents against the deceased to be legally tenable, yet the perusal of the enquiry report drawn by the said enquiry officer would tend to show that the same has not been conducted in accordance with the settled principles and norms, so much so, the conclusions drawn by the enquiry officer in the enquiry report are not otherwise also legally tenable, in that, the respondent-Institute was permitted by the LPA Bench in its order dated 09.11.2005 (supra) to hold the inquiry into the unauthorized absence of the deceased and not into the validity or otherwise of the order of termination dated 08.04.2003 issued against the deceased and having been quashed by this Court in earlier round of litigation, in SWP No. 698/2004 vide judgment dated 07.06.2005. The respondents, seemingly, have proceeded in the matter casually without application of mind, inasmuch as, in breach and violation of the principles of law governing and regulating the holding of a disciplinary enquiry and in the process, admittedly, violated legal, statutory and fundamental rights qua the service of the deceased and after his death, the present petitioners being his legal heirs while issuing the impugned communication dated 11.06.2021. Thus, the proceedings initiated by the respondents against the deceased having resulted into issuance of the impugned communication dated 11.06.2021 based on the order of appointment of the enquiry officer dated 25.03.2006, the charge-sheet/notice dated 05.04.2006 including the enquiry report dated 17.06.2006 cannot, but said to be illegal.

In view of the aforesaid position, facts and circumstances obtaining in the matter, the respondents have divested and disentitled themselves of any right to proceed in the matter against the deceased or else the petitioners herein after having failed to avail the opportunity granted to them by the LPA Bench in its order dated 07.06.2005, wherein the respondents had been permitted to hold and conclude the enquiry against the deceased for mis-conduct of unauthorized absence and within four months. The petitioners consequently become eligible and entitled to the reliefs prayed in the petition, moreso, in view of the stand taken by the respondents that the case of the petitioners stand forwarded to the General Administration Department being the Administrative Department of the Institute for consideration in the light of orders passed by this Court.

26. Viewed thus, what has been observed, considered and analysed hereinabove, the petition deserves to be allowed. Accordingly, the petition is allowed and by issuance of a writ of certiorari, the impugned Communication dated 11.06.2021 is quashed and by issuance of writ of mandamus, the respondents are commanded to release the arrears of pay of the deceased in favour of the petitioners w.e.f. April, 1999 till 07.01.2021 alongwith all terminal benefits consisting of leave encashment, GP Fund, Gratuity and Commutation Pension and further to process the case for release of family pension in their favour. The respondents are further commanded to accord consideration to the case of the petitioner No. 4 for appointment on compassionate basis in terms of the relevant rules governing and regulating such compassionate appointment.

27. Writ petition is, accordingly, disposed of, alongwith connected application.”

10. Learned senior counsel for the appellants has challenged the judgment supra on the ground that the same has been passed without considering the objections of the appellants in its right perspective. It was categorically stated that in compliance to the court directions, a fresh enquiry was conducted in the matter which concluded that the administrative action of the Appellate Institute terminating the services of the deceased officer vide order No. 122 of 2003 dated 08.04.2003 is worth to be maintained. The decision of terminating his services is not only in accordance with the relevant provisions contained in Article 128 of CSR and Rule 30 of JKCCAR but is also on the basis of the judgment passed by Supreme Court in North Eastern Karnataka Road Transport Corporation vs. Ashappa (2006) 5 SCC 137. It is also stated that writ court did not appreciate the fact that the deceased official has remained unauthorised absent from duties and has committed serious misconduct which enables the Appellate Institute to dismiss the services of the deceased official. It is also stated that the deceased official has not attended his duties and has remained unauthorisedly absent.

11. We have heard learned counsels for the parties and perused the material on record.

12. In terms of the judgment passed by Division Bench of this Court dated 09.11.2005, the Appellants were granted, liberty to serve charge sheet upon the deceased respondent to prove the misconduct of unauthorised absence and to hold an enquiry within a period of four months. The deceased respondent was also directed to associate with the enquiry proceedings and if he fails to associate with the enquiry, in that event, appellants were directed to proceed ex parte. The pay emoluments from the date of termination of the service of the deceased official till the date he resumes the duty pursuant to the order dated 09.11.2005 were kept subject to the outcome of the enquiry. The appellants were directed to make payment of the charge allowance to the respondent suspendee under rules.

13. From the perusal of the record, it reveals that the Institute appointed an enquiry officer subsequent to the passing of the judgment supra initially vide order dated 10.12.2005, followed by the order dated 25.03.2006, whereby Dr. Mushtaq Ahmad Khan, Associate Professor came to be appointed as an enquiry officer in place of Dr. S.N. Alam who had been appointed as an enquiry officer in terms of order dated 10.12.2005. The enquiry officer appointed vide order dated 25.03.2006, issued Notice/Articles of Charge to the deceased on 05.04.2006, the deceased submitted his reply to the said notice (Articles of Charge) on 17.04.2006. No formal charge sheet was served upon the deceased by the disciplinary authority, but the same has been served under the name and style of show cause notice by the enquiry officer.

14. Admittedly, enquiry officer in terms of enquiry report dated 17.6.2006 has stated that the decision of terminating the services of the deceased employee is in accordance with the relevant provisions contained in regulation 128 of CSR

and Rule 30 of JKCCA Rules.

Regulation 128 of the Leave Rules, Jammu and Kashmir Civil Services Rules, 1956 for facility of reference is reproduced as under:-

128. Overstaying leave

Absence without leave or after the end of leave involves loss of appointment, except as provided in Article 203 (b) or when due to ill-health in which case the absentee must produce the certificate of Medical Officer.

Rule 30 and 33(1) of JKCC&A Rules, 1956

30. Punishment.-

The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon members of a service, namely

- (i) Censure;
 - (ii) fine not exceeding one month's pay;
 - (iii) withholding of increments and/or promotion;
 - (iv) reduction to a lower post and/or a lower time-scale and/or to a lower stage in time-scale;]
 - (v) recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders;
 - (vi) "Premature retirement on proportionate pension other than that specified in rule 226 (2) of Jammu and Kashmir Civil Service Regulations.]
 - (vii) removal from the service of the State which does not disqualify from future employment;
 - (viii) dismissal from the service of the State which ordinarily disqualifies from future employment. Explanation 1.- The termination of employment-
- (a) of a person appointed on probation during or at the end of the period of probation in accordance with the terms of the appointment and the rules governing the probationary service; or
 - (b) of a temporary Government servant appointed otherwise than under contract; or
 - (c) of a person engaged under a contract, in accordance with: the terms of his contract; or
 - [(d) of a Government servant who is retired in accordance with Article 226 (2) of the Jammu and Kashmir Civil Service Regulations, 1956 does not amount to removal or dismissal within the meaning of this rule or of rule 33.

Explanation II.-Stopping a Government servant at an efficiency bar in the time

scale of his pay on the ground of his unfitness to cross the bar does not amount to withholding of increment or promotion within the meaning of this rule.

33. Issue of an order of dismissal, removal or reduction in rank (1) Without-prejudice to provisions of the Public Servants Inquiries Act, 1977, no order (other than an order based on facts which had led to his conviction in a criminal court or by a court-martial) of dismissal, removal, or reduction in rank 1 [which includes reduction to a lower post and/or lower timescale, - and/or to a lower stage in time-scale] but excludes the reversion to a lower post of a person who is holding a higher post temporarily shall be passed on a person who is a member of a Civil service, or holds a Civil post under the State unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded and adequate opportunity of defending himself. The ground s on which it is proposed to take action shall be reduced in the form of a definite charge or charges which shall be communicated to the person charged, together with a statement of tile allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required, within a reasonable time, to put in a written statement of his defence and to state whether he desires to be head in person. If he so desires, or if the authority concerned so directs, an oral inquiry shall be held in respect of such of the allegations as are not admitted. At that inquiry such oral evidence will be heard, as the inquiring officer considers necessary. The person charged shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called as he may wish; provided that the officer conducting the inquiry may for sufficient reason to be recorded in writing refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and statement of the findings and the grounds thereof.

15. Rule 30 Civil Services, Classification, Control and Appeal Rules, 1956 provides penalties for good and sufficient reason provided to be imposed upon members of the service. Rule 33 states that the grounds on which the punishment is proposed shall be reduced in the form of a definite charge or charges which shall be communicated to the person charged with the statement of allegations on which it charges based. The reasonable time should be provided to the public servant to put in a written statement of his defence and to state whether he desires to be heard in person. The person charged is entitled to cross examine the witnesses, to give evidence in person and to have such witnesses called as he may wish provided that the officer conducting the enquiry before sufficient reason to be recorded in writing, refused to call witness, the proceedings should contain a sufficient record of evidence and statement of findings and the grounds. The competent authority may enquire into the charges itself or if it considers it necessary so to do, may appoint an enquiry officer for the purpose. Rule 34 provides that After the enquiry against the government servant has been completed and after the authority competent to impose penalty has arrived at provisional conclusions in regard to the penalty to be imposed the government servant charge shall if the penalty imposed is dismissal, removal or

reduction in rank be supplied with the copy of the proceedings prepared under rule 33 excluding the recommendations, if any, in regard to punishment, made by the officer, conducting the enquiry, and asked to show cause by particular date, which reports in reasonable time, why the proposed penalty should not be imposed on him.

16. Hon'ble Supreme Court of India in case titled A. K. Kraipak and Ors vs. Union of India (UOI) and Ors reported as AIR 1970 SC 150, in paragraphs 18 & 19 has held as under:-

18. In State of Orissa v. Dr. (Miss) Binapani Dei and Ors. MANU/SC/0332/1967 (1967) IILLJ 266 SC Shah, J. speaking for the Court, dealing with an enquiry made as regards the correct age of a government servant, observed thus:

"We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even an administrative order which involves civil consequences as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State....

19. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it.-The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely (1) no one shall be a judge in his own case (*Nemo debet esse judex propria causa*) and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon there-after a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in *Suresh Koshy George v. The University of Kerala and Ors.*(1) the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is

held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that was necessary for a just decision on the facts of that case.

17. In the instant case, the Articles of Charges in the shape of show cause notice was served upon the deceased on 05.04.2006, the same was replied by the deceased in detail on 17.04.2006. The enquiry report was submitted by the enquiry officer on 17.06.2006 confirming the decision of termination of the deceased namely Mr. Mohammed Yusuf Bhat, Jamadar-I vide IMPA Order No. 122 of 2003 dated 08.04.2003, which is stated to be passed in accordance with the provisions contained in Article 128 of CSR and Rule 30 of JKCCA rules.. Pursuant to enquiry report, the final notice was issued by the appellants on the deceased on 05.10.2007, same was replied by the deceased on 19.11.2007. It is nowhere being stated by the appellants that subsequent to the reply submitted by the deceased, any final order of termination was passed against the deceased, which clearly reflects that enquiry report had not been culminated into passing of appropriate order of penalty by the disciplinary authority.

18. It has rightly been held by the writ court that the conclusions drawn by the enquiry officer in the enquiry report are not legally tenable as in terms of judgment passed by Division Bench of this court dated 09.11.2005, the appellants were directed to hold an inquiry into the unauthorised absence of the deceased and not into the validity or otherwise of the order of termination dated 08.04.2003 issued against the deceased, having been quashed by this court in SWP No. 698/2004 vide judgment dated 07.06.2005. Therefore, issuance of communication dated 11.6.2021 whereby the respondents have been denied the benefits accrued to them after the death of the deceased is also held to be illegal.

19. The writ court has allowed the writ petition thereby directing the respondents to release the arrears of pay of the deceased in favour of the respondents with effect from April 1999 till 07.01.2021, along with all terminal benefits consisting of leave encashment, GP fund, gratuity and commutation pension and also to process the case for the release of family pension in favour of the respondents.

20. As would appear from the records, the deceased official has remained absent from April 1999 till the date of his death i.e., 07.01.2021, the period in dispute, as regards the entitlement of the legal heirs of the deceased official to be paid the back wages for the said period as directed by the writ court. The appellants' contention is that since the deceased official did not perform any duties for the said period, therefore, the direction granted by the writ court to this extent is bad in law as the mandate of law is that the employee is not to be paid his salary for the period he did not perform any duties. In support of such contention, the learned senior counsel for the appellants has referred to and relied upon the judgment passed by the Supreme Court of India in case titled Airport Authority of India and Ors vs. Shambhu Nath Das reported as MANU/SC/7748/2008.

21. The appellants have further relied upon the judgment passed by the Supreme Court in case titled Union Territory Chandigarh vs. Brijmohan Kaur reported as MANU/SC/8428/2007, wherein the principle of no work no pay has been dealt with. Paragraph 09 of the said judgment is reproduced herein:-

9. The direction of the Tribunal which is affirmed by the High Court, in our view, is against the old canons of law directed by this Court. It is settled law that when an incumbent does not discharge any duty, the principle of "no work no pay" would be applicable. This consistent view has been taken by this Court keeping in view the public interest that any government servant who does not discharge his duty should not be allowed to draw pay and allowances at the cost of public exchequer.

22. On the other hand, the learned senior counsel Mr. Altaf Haqani, appearing for the respondents while defending the impugned judgment of the writ court submits that the principle of "no work no pay" is not attracted in the case as the same applies in a case where the employee by his wilful act chooses not to perform his duties while as in the instant case the respondent has not chosen to remain off the duties of his own but was prevented to do so by the appellants themselves. The absence of the deceased employee, therefore, is not attributable to his conduct but to the order that restrained him from performing his duties. The learned senior counsel submits that once the alleged absence is not attributable to the conduct of the employee but to the order passed by the employer, the employee cannot be said to have committed a lapse and punished for the same. The learned senior counsel in support of his submissions has referred to and relied upon the judgments of the Supreme Court viz; (i) Union of India & Ors v. Anil Kumar Sarkar reported as 2013 4 SCC 161, (ii) UCO Bank & Ors v. Rajendra Shankar Shukla reported as 2018 14 SCC 92, (iii) Ghanshyam Das Shrivastava v. State of Madhya Pradesh reported as AIR 1973 SC 1183, & (iv) Jayantibhai Raojibhai Patel v. Municipal Council, Narkhed & Ors reported as 2019 17 SCC 184, to demonstrate that if the employee is prevented by an order to perform his duties, he cannot be held liable for the same.

23. We have considered the submissions made by learned counsel for the parties and perused the impugned judgment and the material made available.

24. In an ordinary course, the principle governing the public employment is that an employee is paid the remuneration for the services he discharges in his capacity as a public servant. The two are inter-connected viz the remuneration and the performance of duties. There are no two opinions about the fact that an employee is entitled to the salary only when he performs his duties and contributes for the upliftment of the institution he is working in. However, the entitlement of an employee to be paid his remuneration, in the exceptional cases, does involve the period for which he did not work also. Such exceptional cases are created by the facts and circumstances attending with it. A person who has been held by the court of law to have wrongly been discharged of his duties cannot be made to suffer and denied the payment of wages for having not

performed his duties for the period he remained out of service. True it is that he did not perform his duties but one cannot lose sight of the fact that it was not his choice not to perform his duties but the order of dismissal that prevented him to do so. Therefore, the factors attached with the case determine its destiny.

25. This Court in the preceding paragraphs has held that the conclusion arrived at by the writ court viz-a-viz the enquiry having been conducted in disregard of the mandate of the directions of this Court passed in LPA No. 121/2005. The other issue concerning the subject was with respect to the entitlement of the petitioners to back wages for the period the deceased employee remained out of service which, in view of the discussion made hereinbefore and ratio laid down by the Supreme Court in case titled Shobha Ram Raturi v. Haryana Vidyut Prasaran Nigam Limited and Ors reported as MANU/SC/1428/2015 wherein their lordships have held that the principle of "no work no pay" does not apply in a case where the employee is prevented from discharging his duties by an order of the employer is decided in favour of the respondents. It would be profitable to reproduce relevant portion of the judgment supra herein:-

"Having given our thoughtful consideration to the controversy, we are satisfied, that after the impugned order of retirement dated 31.12.2002 was set aside, the appellant was entitled to all consequential benefits. The fault lies with the respondents in not having utilised the services of the appellant for the period from 1.1.2003 to 31.12.2005. Had the appellant been allowed to continue in service, he would have readily discharged his duties. Having restrained him from rendering his services with effect from 1.1.2003 to 31.12.2005, the respondent cannot be allowed to press the self serving plea of denying him wages for the period in question, on the plea of the principle of "no work no pay.

For the reasons recorded hereinabove, we are satisfied, that the impugned order passed by the High Court, to the limited extend of denying wages to the appellant, for the period from 1.1.2003 to 31.12.2005 deserves to be set aside. The same is accordingly hereby set aside."

26. At the cost of repetition, it is recorded that the deceased employee had been terminated from service which he challenged in the court of law and succeeded in getting the order set aside. Thereafter, the appellants preferred an LPA which was disposed of by giving liberty to serve charge sheet upon the respondent to prove the misconduct of un-authorized absence and hold an enquiry which shall be completed within four months and the payment of back wages was kept subject to outcome of the enquiry. In compliance to the directions of this Court, the appellants conducted enquiry in the matter and the enquiry officer recommended that the termination order is justified. However, before such enquiry could be culminated into a Government order, the employee died and his legal heirs are before this Court as the petitioners to seek service benefits of the deceased employee. The writ petition filed by the petitioners succeeded and the learned Single Judge held them entitled to the terminal benefits and the back wages also. Against such judgment, the present appeal is filed.

27. What emerges from the above narration is that the deceased employee was terminated from service which became the subject of litigation till today. The admitted position is that the deceased employee did not work from the period of termination till his death i.e., 07.01.2021. And it is equally true that such non-performance of duties by the deceased employee for the said period was because of the order of termination from the very inception and not the conduct of the deceased employee. It being so, the alleged un-authorized absence of the deceased employee cannot be allowed to be pressed into service for denying the back wages to the legal heirs of the deceased employee.

28. We have also noted that the initial alleged misconduct was the alleged absence from duty w.e.f. 01.10.1999 to 30.11.1999 which did not involve any act of moral turpitude, but mere absence from duty. Furthermore, he was never removed or dismissed from service by following due process of law.

29. For all what has been said hereinbefore, the appeal is held to be without any merit and is dismissed as such. Consequently, the impugned judgment is upheld. The directions passed by the writ court shall be complied with positively within a period of one month from today.

30. Disposed of.