

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 30th OF AUGUST, 2022

WRIT PETITION NO. 17214 OF 2017

Between:-

**SMT. REKHA TOMAR W/O LATE
SHRI SANTOSH SINGH TOMAR,
AGED 52 YEARS, OCCUPATION
HOUSE-WIFE, R/O A-14, IN FRONT
OF ATAL NAGAR, NEAR DABAS
SCHOOL, D.D. NAGAR, GWALIOR
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI D.P. SINGH - ADVOCATE)

AND

- 1. M.P. WAREHOUSING & LOGISTICS
CORPORATION, HEAD OFFICE
COMPLEX, BLOCK 'A', GAUTAM
NAGAR, BHOPAL (MADHYA
PRADESH) THROUGH ITS
MANAGING DIRECTOR-CUM-
DISCIPLINARY AUTHORITY**
- 2. THE REGIONAL MANAGER, M.P.
WAREHOUSING & LOGISTICS
CORPORATION, REGIONAL
OFFICE, GWALIOR (MADHYA
PRADESH)**

.....RESPONDENTS

(BY SHRI PREM SINGH BHADORIYA – ADVOCATE)

This petition on for hearing this day, the Court passed the following:

ORDER

This petition under Article 226 of the Constitution of India has been filed seeking following relief:

i) That, the order impugned dated 30.05.2017 (Annexure P/1) passed by the Respondent no. 1 may kindly be quashed with a further direction to the respondents to pay death claims payable to the petitioner on account of death of her husband along with interest @ 20% per annum and heavy cost may also be awarded, in the interest of justice.

ii) Cost of the petition be awarded or any other order or direction deemed fit in the circumstances of the case be issued in the favour of the petitioner.

2. It is submitted by the counsel for the petitioner that husband of the petitioner namely Santosh Singh Tomar was an employee of M.P. Warehousing and Logistic Corporation and was working on the post of Junior Assistant-cum-Data Entry Operator. He died on 01.08.2015 in a road accident while he was in duty. At the time of death, he was also holding the post of Incharge Branch Manager, Branch Patan. After the death of her husband, the petitioner being the legal heir started claiming death claims as per the entitlement in accordance with the provisions of M.P. Warehousing and Logistic Corporation Staff Regulations, 1962 (in short “Regulations, 1962”). However, instead of making payment of death claims of the husband of the petitioner, respondents served a letter

dated 30.05.2017 issued in exercise of powers under the Regulation 22(1)(e) of the Regulations, 1962 thereby informing that death claims payable to the petitioner have been forfeited in the welfare of the Corporation. Total amount of Rs.16,48,000/- has been forfeited. It is submitted that Regulation 22(1)(e) of the Regulations, 1962 has no application to the facts of the case. The impugned order has been passed without any application of mind.

3. The respondents have filed their return and submitted that after the death of Shri Santosh Singh Tomar, the petitioner has been given compassionate appointment and an amount of Rs.4,73,430/- by way of provident fund has also been paid to the petitioner. After the death of husband of the petitioner, one Shri Shrikant Jain, Junior Assistant was posted as a Branch Manager, Branch Patan. 5 member committee was constituted for handing over the charge of Branch Patan to Shri Shrikant Jain. All 39 godowns were inspected by the said committee which were under the control of the husband of the petitioner. Out of 39 godowns, irregularity and deficiency of food grains was found in 24 godowns and, accordingly, the committee calculated total deficiency of food grains which came to Rs.6,43,88,390/-. After considering the deficiency of food grains in Branch godowns, an amount payable to the petitioner has been forfeited. Since the petitioner has been given an appointment on compassionate ground, therefore, the family of the petitioner would not face any economic hardship.

4. Heard the learned counsel for the parties.

5. Counsel for the respondents was directed to point out the provision under which an amount of Rs.16,48,000/- has been forfeited and was also

directed to point out the procedure which was adopted by the respondents for coming to a conclusion that late husband of the petitioner was responsible for the loss of Rs.6,43,88,390/-.

6. Counsel for the respondents once again relied upon the Regulation 22 of the Regulations, 1962 which reads as under:-

22. Imposition of Penalties

1. Any employee committing a breach of the regulations of the Corporation or being guilty of negligence, inefficiency or indolence in performance of his duties or knowingly doing anything detrimental to the interests of the Corporation or in conflict with its instructions or committing a breach of discipline or being guilty of any other act of Misdemeanour or is convicted of a criminal offence shall be liable to the following penalties-

- (a) Fine
- (b) Censure
- (c) Delay or stoppage of increments or promotion.
- (d) Reduction to a lower post in his permanent class or to a lower stage in his incremental scale.
- (e) Recovery from pay of the whole or part of pecuniary loss caused to the Corporation by the employee.
- (f) Removal
- (g) Dismissal

Provided that the penalty of fine shall be imposed on employees of class IV only.

The power to impose a penalty under sub-regulation (1) shall be exercised:

(i) In the case of class I employees other than Managing Director, in respect of all penalties by the Board of Directors, and in the case of class II employees in respect of penalties except the penalty as specified in Clauses (b) & (c) of Sub-Regulation (1) by Executive Committee subject to ratification by the Board.

(ii) In the case of class III and class IV

employees, in respect of all penalties and in case of Class II employees, penalties as specified in clause (b) and (c) of Sub-Regulation (1) by the Managing Director. *

*[Regional Managers to act as appointing authority, disciplinary authority and terminating authority in their Region for class IV staff. Authority: Board of Directors' meeting Resolution No. 14 dt. 4.7.81]

(iii) In the case of the Managing Director in respect of all penalties except the penalties specified in clause (f) and (g) of Sub-Regulation (1) by the State Government, in consultation with the Central Warehousing Corporation.

(iv) No punishment other than that specified in Sub-Regulation 1(a), 1(b), 1(c) shall be imposed on any employee without formal charges being framed against him and without giving him an opportunity for tendering an explanation in writing cross examining the witness against him, if any, and of producing defence.

(v) Notwithstanding any thing contained in these regulations, punishment to employee on deputation from the State Government or Government Institution or Cooperative Societies shall be imposed in accordance with the rules and procedure laid down in this behalf in their parent service.

7. From the plain reading of the Regulation, it is clear that the recovery of whole or part of pecuniary loss caused to the corporation by the employee is a penalty and Regulation 22(1)(iv) provides that no punishment other than specified Sub-Regulation 1(a), 1(b), 1(c) shall be imposed on any employee without formal charges being framed against him and without giving him an opportunity for tendering an explanation in writing cross examining the witness against him, if any, and of producing defence. Thus, it is clear that the punishment of recovery of loss cannot be imposed without framing formal charges and without

giving an opportunity of tendering an explanation in writing cross-examining the witness and of producing evidence. Now the following question arises for consideration:-

Whether a departmental enquiry can be initiated against a dead employee, if yes, then whether the respondents have followed the said procedure or not ?

8. Counsel for the respondents could not point out any provision of law which empowers the Corporation to initiate a departmental enquiry against a dead employee. Furthermore, after the death of an employee takes place, the relationship of employer and employee also stand broken for the purposes of departmental enquiry. Even if the death takes place during the pendency of departmental enquiry, the departmental proceedings would stand abated. The **Allahabad High Court in the case of Durgawati Dubey vs. State of U.P. and others by order dated 08.10.2018 passed in WRIT-A No.40057 of 2013** has held as under:-

By the perusal of records, this fact is undisputed that departmental proceeding was initiated after the death of husband of petitioner. It appears that only after order of this Court dated 22.02.2013, respondents have initiated the departmental proceeding ignoring this fact that husband of the petitioner died much earlier. It is also very ridiculous that Inquiry Officer has issued notice to petitioner to submit the reply for an allegation against her late husband. In fact this act of Inquiry Officer is absolutely suffers from non application of mind and also ignores settled law of departmental proceeding. How it is possible for the petitioner to submit reply with regard to the alleged allegation of embezzlement by her late husband. Whatever letters are referred in the counter affidavit, either filed by respondent No. 4 or by the State-respondents with regard to the departmental proceeding are undisputedly

after the death of husband of petitioner. Therefore, in such facts, the complete departmental proceeding is ex facie bad as in any case, no inquiry can be initiated against a dead person. Respondents may have initiate the inquiry proceeding during the service period of husband of petitioner or at least before his death, but after death, complete inquiry proceeding as well as impugned order dated 10.06.2013 is bad in law and not sustainable.

Apart from that I have also seen the judgments of this Court as well as other High Courts occupying the field. In the case of Smt. Rajeshwari Devi Vs. State of U.P. and Ors. 2011(2) ADJ 643 decided on 07.01.2011, the Court has held that as soon so as a person dies, he breaks all his connection with the worldly affairs, therefore, no disciplinary proceeding can be initiated against him. Relevant Paragraph Nos. 6 and 7 of the judgment are being quoted below:-

"6. Holding of departmental enquiry and imposition of punishment contemplates a pre-requisite condition that the employee concerned, who is to be proceeded against and is to be punished, is continuing an employee, meaning thereby is alive. As soon as a person dies, he breaks all his connection with the worldly affairs. It cannot be said that the chain of employment would still continue to enable employer to pass an order, punitive in nature, against the dead employee.

.....
7.....

.....It is well settled that a punishment not prescribed under the rules, as a result of disciplinary proceedings, cannot be awarded even to the employee what to say of others. The Court feel pity on the officers of Nagar Nigam, Bareilly in continuing with the departmental enquiry against a person who was already died and this information of death was well communicated to the enquiry officer as well as disciplinary authority. They proceeded with enquiry and passed impugned orders

against a dead person. This is really height of ignorance of principles of service laws and shows total ignorance on the part of the officers of Nagar Nigam in respect to the disciplinary matters. This Court expresses its displeasure with such state of affairs and such a level of unawareness on the part of the respondents who are responsible in establishment matters. They have to be condemned in strong words for their total lack of knowledge of such administrative matters on account whereof legal heirs of poor deceased employee have suffered."

In the matter of Gulam Gausul Azam and others Vs. State of U.P. and others 2014 (5) ADJ 558 decided on 12.05.2014, the Court has held that before disciplinary authority could pass any order on the inquiry report, petitioner died ending the master and servant relationship, therefore, no punishment order can be passed. Relevant paragraph Nos. 10 to 13 of the judgment are being quoted below:-

"10. There is another aspect of the matter. In the present case Abdul Kareem expired on 15.7.2011, i.e. before the disciplinary authority could pass any order on the enquiry report dated 3.7.2011. In the circumstances therefore, the master and servant relationship between Late Abdul Kareem and the respondents also came to an end with his death and therefore, the impugned order dated 21.11.2011 could not have been passed after the death of Abdul Kareem.

11. In my opinion therefore the disciplinary authority could not have passed the order dated 21.11.2011 withholding the retiral dues and other benefits of late Abdul Kareem. When Abdul Kareem died on 15.7.2011 he could not have been said to be a government servant thereafter and therefore the order dated 21.11.2011 on the face of it is a wholly illegal and arbitrary order and has no basis in law and cannot survive.

12. So far as the matter of compassionate appointment of the petitioner no. 1 is concerned, for the

same reasons that since the disciplinary authority has not taken any decision regarding the finding of guilt against late Abdul Kareem prior to his death, it could not be said that the charge had been established against late Abdul Kareem as disciplinary proceedings are concluded only with the passing of the order of disciplinary authority and not when the enquiry officer submits his report.

13. In this view of the matter, the writ petition is allowed and both the impugned orders dated 21.11.2011 and 1.3.2012 are quashed. The respondents are directed to take steps for payment of all retiral benefits to the legal heirs of late Abdul Kareem. So far as the order dated 1.3.2012 regarding rejection of the claim of petitioner no .1 for compassionate appointment is concerned, a direction is issued to the District Magistrate, Deoria-respondent no. 3 to take a decision afresh in this regard having regard to the educational qualification of the petitioner no. 1 and availability of vacancy within a period of two months from the date a certified copy of this order is received in his office."

In the aforesaid case, the dispute was that the father of petitioner Abdul Kareem was died on 15.07.2011 before the disciplinary Authority could pass any order on the inquiry report dated 3.7.2011 and the Court has held that after the death, no such order can be passed against the petitioner and further directed the authority to pay full post retiral benefits.

Learned counsel for the petitioner has also placed reliance upon the judgment of this Court in the case of Onkar Singh Verma Vs. State of U.P. and 2 Ors. 2018 (3) ADJ 272, decided on 09.01.2018 and the relevant paragraph of the judgment is quoted below:-

"Finally, the petitioner has died on 14.03.2017, during the pendency of this writ petition and therefore, even if, there had been any power in the rules vested in respondent no.2 to conduct enquiry against the petitioner after superannuation, now it would not have been possible for him to conduct any enquiry.

Therefore, the impugned order dated 21.09.2016, passed by respondent no.2, Secretary/General Manager, District Co-operative Bank Ltd., Etah, whereby, recovery of certain amounts have been directed against the petitioner from his gratuity, after his retirement from service is hereby quashed. The respondent no.2 is directed to release the amount of gratuity of the petitioner, by applying new pay scale, along with 7% simple interest for inordinate delay in making payment of the same to the petitioner from the date of his superannuation on 30.06.2013.

The writ petition is allowed. No order as to costs."

In the aforesaid matter, the petitioner died on 14.03.2017 during the pendency of writ petition, therefore, the Court has held that even there had been any power in the rules vested to respondent No. 2 to conduct the inquiry after superannuation, now it would not have been possible for him to conduct inquiry and quashed the order impugned and directed to release the amount of gratuity of petitioner as paid by the petitioner in that petition.

Similar matter was also for consideration before the Bombay High Court in the case of Hirabhai Bhikanrao Deshmukh Vs. State of Maharashtra and another (1985) ILLJ 469 Bom decided on 10.10.1984, the Court has clearly held that provision with regard to dismissal, removal and suspension of the civil servant do not permit holding of any further enquiry into the conduct of such a civil servant after his death. Relevant Paragraph No. 6 of the judgment is being quoted below:-

"6. The provisions with regard to dismissal, removal and suspension of the civil servant do not permit holding of any further enquiry into the conduct of such a civil servant after his death. Such proceedings are intended to impose departmental penalty and would abate by reason of the death of civil servant. The purpose of proceedings is to impose penalty, if

misconduct is established against the civil servant. That can only be achieved if the civil servant continues to be in service. Upon broader view the proceedings are quasi-criminal in the sense it can result in fault finding and further imposition of penalty. The character of such proceedings has to be treated as quasi-judicial for this purpose. In the light of the character of the proceedings and the nature of penalty like dismissal or removal, or any other penalties, minor or major, it has nexus to the contract of service. Therefore, if the person who has undertaken that contract is not available, it should follow that no proceedings can continue. Thus when the proceedings are quite personal in relation to such a contract of service, the same should terminate upon death of the delinquent. By reason of death, such proceedings would terminate and abate. We think that such a result is also inferable from the provisions of Rule 152-B of the Bombay Civil Services Rules."

Similar dispute has also come before the Jharkhand High Court in the case of Jayanti Devi Vs. State of Bihar and Ors. 2001 (49) BLJR 2179 decided on 01.05.2001, the Court after following the decision of Bombay High Court had taken the same view and directed the respondents to pay all post retiral benefits to the widow. Relevant Paragraph Nos. 9 and 10 of the judgment are being quoted below:-

"9. In the instant case admittedly the delinquent-employee died on 24.3.1999 and the Enquiry Officer submitted his report on 30.8.1999. In the enquiry report (Annexure F) the Enquiry Officer took notice of the fact that the delinquent-employee died on 24.3.1999. The Enquiry Officer further took notice of the fact that the delinquent-employee had requested the respondents to keep the departmental proceeding in abeyance till the disposal of the case pending before him. However, the Enquiry Officer after the death of delinquent employee called upon the respondents and on the basis of documents produced by them submitted enquiry report and on the basis of that report a formal order of

dismissal was passed. In my opinion therefore the manner in which respondents proceeded with the departmental proceeding against the delinquent-employee, the enquiry report as well as the order of dismissal is vitiated in law and is null and void. I am, further of the view that the widow of the deceased employee cannot be deprived of her legitimate claim of death-cum-retirement benefits on the ground of dismissal of the employee on the basis of departmental proceeding initiated after 6 years of the order of suspension and that to on the basis of enquiry report submitted by the Enquiry Officer after proceeding ex parte against the deceased-employee who died much before the date when the Enquiry Officer proceeded with the matter and submitted his report.

10. For the reasons aforesaid, this writ application is allowed and the respondents are directed to release all the death-cum-retirement dues in favour of the petitioner, who is widow of the deceased employee as expeditiously as possible and preferably within a period of 30 days from the date of receipt/production of copy of this order."

Learned counsel for respondent No. 4 has relied upon a judgment of Jharkhand High Court in the case of Nilam Dubey vs. State of Jharkhand & Ors. decided on 10.05.2013, in which the Court has held that inquiry which was initiated against the husband of petitioner can continue even after the death of husband of petitioner and show cause notice issued to son of petitioner is permissible in law.

I have perused the judgment of Jharkhand High Court, first of all the judgment is not applicable in the case of petitioner for the reason that admittedly the inquiry proceeding was initiated after the death of husband of petitioner and secondly this law is bad as after the death of a person, how a show cause notice can be issued to his son. Further it appears that judgment Jharkhand High Court in the case of Jayanti Devi Vs. State of Bihar and Ors. 2001 (49) BLJR 2179 decided

on 01.05.2001 was not brought into the knowledge of Court in which the Court has taken a view that no departmental proceeding can be continued after the death of employee.

After going through the judgments and facts of the case, this Court is of the view that against a dead person, neither disciplinary proceeding can be initiated nor any punishment order can be passed. In the present case, facts are not disputed that disciplinary proceeding was initiated against husband of petitioner after his death, which suffers from non application of mind as well as contrary to the law laid down by this Court as well as other High Courts, therefore, the impugned order dated 10.06.2013 is not sustainable and is hereby quashed.

9. Even otherwise, it appears that the Corporation has tried to fix the liability of entire embezzlement on the shoulders of the dead employee by forfeiting an amount of Rs.16,48,000/- against a total embezzlement of Rs.6,43,88,390/-. No fact finding enquiry was conducted by the respondents to find out as to whether husband of the petitioner was solely responsible or embezzlement took place in connivance with other officers. No opportunity of hearing was given to the petitioner against any such proposed recovery.

10. Thus, the order dated 30.05.2017 which provides that against a loss of Rs.6,43,88,390/- the matter is closed by forfeiting an amount of Rs.16,48,000/- payable to the petitioner is hereby **quashed**.

11. The corporation is directed to conduct a fact finding enquiry and fix the liabilities of the persons who were guilty of shortage of food grains.

12. Since the counsel for the respondents has failed to point out that a departmental enquiry can also be initiated against a dead employee,

therefore, it is directed that the amount of Rs.16,48,000/- payable to the petitioner by way of death claims of her husband be paid to her within a period of two months from today. The said amount shall carry interest of 6% per annum from the date of death of husband of the petitioner till the said amount is actually paid.

13. Respondents are also directed to conduct a departmental enquiry against the officers who are ultimately found to be *prima facie* guilty for shortage of food-grains to the tune of Rs.6,43,88,390/- and recover the said amount from the guilty officers apart from any other penalty.

14. Let the entire exercise be completed within a period of six months from today.

15. The Corporation is directed to submit its report to the Principal Registrar of this Court on or before **15.03.2023**.

16. With aforesaid observations, the petition is finally **disposed of**.

(G.S. AHLUWALIA)
JUDGE

Abhi