

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS

W.P.C.T 29 of 2023

Union of India & Ors.
Vs.
Sankari Roy & Anr.

Appearance:

For the Petitioners/UOI : **Mr. Amit Chakraborti, Adv.**
Mr. Sarda Sha, Adv.
Mr. Samudra Nil Sarkar, Adv.

Judgment On : **28.04.2023**

PRASENJIT BISWAS, J.:

- 1.** A moot point which has arisen in this Writ Petition is whether the wife and daughter of the deceased Government employee can challenge the order of termination after his death.

- 2.** The essential facts necessary for disposal of the appeal is that Tapan Kumar Roy (since deceased), husband and father of the Respondents joined in the

Indian Railway Service as ex-porter under SM/Sealdah, Eastern Railway on 9th April, 1991. He was removed from service treating him deemed resigned vide termination notice no. E-4/Absence/T.K. Roy (Loose) Sealdah dated- 26th June, 2008 due to his unauthorized absence in excess of six years. He was given opportunity to make representation to the Divisional Operations Manager, Eastern Railway within one month from the date of issuance of termination notice but he did not avail the said opportunity. Subsequently, the deceased employee made the representation before the authority concerned for considering his case again with a prayer for cancelling the said resignation order.

3. The deceased employee knocked the door of the Tribunal by preferring an application therein challenging the termination notice dated 26.06.2008 and the said matter was disposed of by the Tribunal on 23.05.2018. In view of the order passed by the Tribunal the deceased employee made representation seeking voluntary retirement from service on the ground of his physical disability on 11.06.2018. Thereafter, in compliance with the Tribunal order dated 23.05.2018 the Divisional Railway Manager/Eastern Railway, Sealdah decided to take action afresh vide order dated 22.10.2018. The deceased employee again preferred an application before the tribunal challenging the order dated 22.10.2018 with a prayer to accept his representation of voluntary retirement from service or he might be allowed to resume duty as usual as before. During pendency of this application before the Tribunal the said employee died on 10.11.2020 and the present respondents being his wife and daughter entered in the case by way of

application for substitution. After hearing of the parties the Tribunal passed the impugned order stating *inter alia* that-

“since no such prayer to seek death benefits of her husband has been made by the widow i.e. Sankari Roy, liberty is given to the said widow to make a proper representation to the concerned respondent authority within 4 weeks from the date of receipt of a copy of this order. The employee shall be deemed to have continued in service till his death, as any pending proceeding owned abate on his death. Applicant as such would be allowed all admissible settlement dues of the late employee.”

4. Learned counsel appearing for the petitioners was very much vocal on the point that the deceased employee did not complete 20 years of service as qualifying service for acceptance of voluntary retirement and as such the impugned order passed by the Tribunal is not sustainable under the relevant rule and accordingly the same may be set aside/quashed. As per submission of learned counsel that since the deceased employee was deemed to have resigned the service and his service was terminated vide memorandum dated 26.06.2008, so his termination from service has attained its finality.

5. It is submitted on behalf of the respondents that the deceased employee was initially terminated from service and since his termination was not as per procedure the authority directed to initiate a fresh proceeding against him for his unauthorised absence. After that disciplinary proceeding was initiated against the employee but no reinstatement order was issued before initiation of proceedings. The employee expired in the year 2019 before culminating the proceeding into a logical end and as such any proceeding that may have been initiated against the employee would stand abated. The status of the deceased employee would be deemed to have been reinstated as on

22.10.2018. Such being the position the respondents who are the wife and daughter of the deceased employee are entitled to settlement dues and other benefits that would have accrued to the deceased employee on the date of his termination till his death.

6. In our opinion while there would be no contest with the legal position in case where the death of a delinquent takes place in the midst of the disciplinary proceeding which would abate the disciplinary proceeding, but if the death takes place after the enquiry is concluded in the disciplinary proceeding and the matter is posted for orders or at the appellate stage, then the situation is different and there cannot be an abatement of disciplinary proceedings which has already attained finality. In our opinion while there would be no contest with the legal position in case where the death of a delinquent takes place in the midst of the disciplinary proceeding which would abate the disciplinary proceeding, but if the death takes place after the enquiry is concluded in the disciplinary proceeding and the matter is posted for orders or at the appellate stage, then the situation is different and there cannot be an abatement of disciplinary proceedings which has already attained finality. In such cases the right to sue survives and the legal heirs who wish to contest the finding of guilt in the punishment order passed by the Disciplinary Authority can pursue the appeal if already filed by the deceased delinquent or file appeal, in case he has deceased after passing of the order of penalty.

7. We are of the opinion that consequent upon the death of an employee, the disciplinary proceedings stand abated. Once the proceedings get abated, every aspect connected therewith will cease to exist in law. In the absence of

any determination of the employee's liability in the disciplinary proceedings, it is not permissible for the employer to shift the liability on the family of the deceased based on an enquiry report which has not taken its logical end. Thus, when the disciplinary proceedings itself had abated, the heirs will be entitled for the retirement benefits, since the disciplinary proceedings itself is deemed to have come to an end. Since the employee died during the pendency of the proceeding presumption of innocence would stand attached to him. The disciplinary proceeding has already been abated and accordingly there is no impediment in the release of terminal benefits which has to be paid to the family of late Tapan Kumar Roy.

8. This court, having rival submissions advanced by the parties, is of the considered view that the tribunal was justified in passing the impugned order in favour of the respondents herein, since there cannot be any punishment against the dead person. Accordingly, disciplinary proceedings said to have been initiated against the husband-and-father of the respondents was rightly decided by the Tribunal as abated. We do not find any error in the impugned order passed by the Tribunal as the order is natural consequences on account of death of an employee which abates the disciplinary proceeding.

9. In view of above facts and circumstances and discussion made above the respondents are directed to make representation before the authority concerned seeking for the settlement of entire dues that are payable to deceased Tapan Kumar Roy and death benefits and on receipt of the representation appellant authority herein is directed to settle the entire dues to the respondents within a period of eight weeks thereafter.

10. In view thereof, we do not find any error passed by the tribunal which may warrant interference in the present appeal. The instant writ petition is therefore, dismissed.

There shall be no order as to costs.

As a sequel, applications pending, if any, in connection with this writ petition, shall stand close.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)