

Jubeda Mohammad Iqbal

Vs

Union of India and Others

Civil Appeal No. 1538 of 1997

(B. P. Jeevan Reddy, S. C. Sen JJ)

21.02.1997

JUDGMENT

SEN, J.

1. Leave granted.

2. Mohammad Iqbal used to work as a Cleaner under the Railways. He was employed in 1976. On 30-5-1983, disciplinary proceedings were commenced against him and he was removed from service on 28-8-1984 after holding an inquiry. Iqbal challenged the order of termination of service by filing a civil suit in the Court of Civil Judge, Rajkot. The suit was transferred to the Central Administrative Tribunal, Ahmedabad Bench. The Tribunal after hearing the case directed Iqbal to present an appeal before the Appellate Authority within fifteen days. The Appellate Authority was also directed to dispose of the appeal within three months. Iqbal presented the appeal to the Divisional Railway Manager who was the Appellate Authority on 4-8-1988. The appeal was rejected on 16-11-1988. Thereafter, Iqbal filed a mercy petition before the Divisional Railway Manager on 4-12-1988. But before it could be decided, Iqbal died on 16-4-1989. Therefore, the appellant who is the widow of Iqbal made another mercy petition on 24-4-1989 which was rejected by the Divisional Railway Manager. Thereupon, Jubeda Mohammad Iqbal, the widow made an application to the Central Administrative Tribunal seeking a declaration that termination of service of her late husband Mohammad Iqbal was unlawful and should be quashed. She also prayed that the period between 28-8-1984, the date of termination of service of her husband and 16-4-1989, the date of death may be treated as period on duty. Full salary was claimed for that period and a prayer was also made for all consequential reliefs.

3. The case of the respondents on the other hand was that Mohammad Iqbal was charge-sheeted for his misconduct and a proper inquiry was held and full opportunity of being heard was given to him. The charges were found proved and thereafter, his services were terminated by a competent disciplinary authority. There was no infirmity in the order of dismissal. The appeal preferred by Iqbal was duly considered and rejected by the Appellate Authority on 16-11-1988, during the lifetime of Iqbal. Iqbal did not challenge that order before the Central Administrative Tribunal, but decided to make a mercy petition to the Divisional Railway Manager which was also rejected and the order was communicated to the widow of the deceased, who is the appellant herein.

4. The counsel for the appellant did not appear before the Tribunal at all and, therefore, the case was disposed of on the basis of the arguments advanced on behalf of the Railways.

5. One member of the Tribunal (Dr. R. K. Saxena) took the view that Jubeda's petition could not be

entertained because the right to claim relief against wrongful dismissal from service came to an end with the death of Iqbal and this right was personal and did not survive. The widow as the legal representative could not claim any relief after the death of her husband.

6. However, both the members of the Tribunal agreed that on merits of the case, no relief could be given to Jubeda's application. One member, Dr. R. K. Saxena was of the view that :

"Assuming for a moment that the view taken by the Division Bench of the Karnataka High Court in the case cited above is correct, we do not find any ground on which the order of termination may be declared illegal. As such the question of consequential relief does not arise and the applicant is not entitled thereto."

7. The other member Shri K. Ramamoorthy was of the view that -

"On the merits of the case itself, I agree with the conclusion that the application being devoid of merit and is rejected for the following reasons.

As already stated in para I of the judgment, disciplinary action has been taken after following the procedure and the appeal, wherein several procedural objections have been taken along with the other points, was also formally decided by way of speaking order on 16-11-1988, after a personal hearing... given on 28-10-1988. It is obvious from the wording of the representation of 14-12-1988, that it is a mercy petition and reading the contents therein it is obvious that the applicant had accepted the appellate order but only sought for mercy on the ground of poverty and liability to support six family members. Thus, there is no formal order passed in an original capacity or in appellate capacity which is sought to be adjudicated. A mercy petition by its nature is a matter for... administrative decision by the department concerned and therefore, such a decision cannot obviously be interfered with by the Tribunal. In fact, even when the appellate orders are contested, the Tribunal cannot go into the question of quantum of punishment. On the same analogy, the question of challenging the reply given by the respondents on a mercy petition cannot arise. If the application were to be taken as a challenge to the appellate order alone also, the petition will suffer from the vice of delays and laches since that impugned order was passed on 16-11-1988 and the incident of termination took place on 28-8-1984. In view of the above, the application is devoid of merit and is rejected."

8. Therefore, it will not be right to say that the Tribunal dismissed the application filed by Jubeda at the threshold without going into the merits of the case. Although, there was some difference of opinion among the two members as to the right of Jubeda to move the Tribunal, there was unanimity in the view that the order of dismissal could not be disturbed in the facts of this case.

9. Therefore, it is not necessary to examine the right of a legal representative to raise the question of wrongful dismissal after the death of the employee. The application had been dismissed on merits and the order of the Tribunal does not appear to be erroneous on this point.

10. The appeal is, therefore, dismissed with no order as to costs.