

**(2005) 05 JH CK 0007**

**Jharkhand High Court**

**Case No:** L.P.A. No. 744 of 2004

Fulgendra Devi and Others

APPELLANT

Vs

Jugsalai Municipality and Others

RESPONDENT

**Date of Decision:** May 5, 2005

**Citation:** (2005) 2 JCR 463

**Hon'ble Judges:** Altamas Kabir, C.J; R.K. Merathia, J

**Bench:** Division Bench

**Advocate:** A.K. Sahani, for the Appellant; M.K. Habib, for the Respondent

### **Judgement**

@JUDGMENTTAG-ORDER

1. Having considered the submissions made on behalf of the respective parties, we are satisfied that sufficient ground has been made out for condoning the delay in filing the appeal. Accordingly, the delay is condoned and the appeal is taken up for considering today itself.

2. The husband of the appellant No. 1 was appointed as a Store Keeper in the Jugsalai municipality in the year 1969. Thereafter, he was promoted to the post of Assistant Tax Daroga in the year 1971 and finally he was made Tax Daroga in the year 1972.

3. By an office order dated 21st January, 1997 the husband of the appellant No. 1 was placed under suspension. Aggrieved thereby, he moved a writ petition being CWJC No. 437 of 1997(R), which was disposed on 30th June, 1997 with direction on the respondent authorities that in the event they wished to continue with the departmental proceedings, they would have to serve charge-sheet on the petitioner as early as possible, preferably within two weeks from the date of the order and that the departmental proceeding was to be concluded on the basis of day- to-day hearing without unnecessary adjournments being given. On 5th July, 1997, a notice was published in the Udit Bani relating to the compliance of the order dated 30th June, 1997 passed by this Court and the charge-sheet was also sent to the husband

of the appellant No. 1 by registered post on 4th July, 1997. The said letter was received by a minor daughter of the appellant No. 1 on 14th July 1997. On finding the said letter, the husband of the appellant No. 1 submitted his joining report on 21st July, 1997 contending that after a period of two weeks from the date of the order, since the charge-sheet had not been served upon him, the entire proceedings stood quashed. The husband of the appellant No. 1 was, however, not allowed to join his duties and, on the other hand, he also did not choose to attend the disciplinary proceedings on the stand he had taken and finally, he was dismissed from service. Challenging the order of dismissal, the husband of the appellant No. 1 contended that since the proceedings had stood quashed automatically on account of the failure of the respondents to serve the charge-sheet within the stipulated period of two weeks, the order passed in the disciplinary proceedings, and that too *ex parte*, was bad and was liable to be set aside.

4. The learned single Judge who heard the matter, by his judgment and order dated 13th September, 2004, dismissed the writ petition holding that there was no merit therein and that the respondents had acted within the meaning of the order of the Court, since the stipulation was that the charge-sheet shall be served preferably with two weeks from 30th June, 1997 and not within two weeks from 30th June, 1997.

5. Admittedly, during the pendency of the writ application the husband of the appellant No. 1 died and his heirs, the present appellants were substituted in his place. They are now therefore, in appeal before the Court against the judgment and order of the learned single Judge.

6. Appearing in support of the appeal, Mr. Sahani urged that having regard to the stipulation relating to the time within which the charge-sheet was to be served on the writ petitioner, the deceased husband of the appellant No. 1, the learned single Judge erred in interpreting the said order to mean that the charge-sheet could be served even beyond two weeks. Mr. Sahani also urged that the learned single Judge had failed to take into consideration the services rendered by the husband of the appellant No. 1 since 1969 till the dates of his dismissal in the *ex parte* departmental proceedings. Mr. Sahani lastly urged that in any event the appellants, as legal heirs of the deceased writ petitioner, were entitled to all the benefits which could have been paid to the deceased writ petitioner had he been alive even after his dismissal from service.

7. Mr. M.K. Habib, learned counsel, appearing on behalf of the respondents does not dispute the second proposition of Mr. Sahani, learned counsel for the appellants, and agrees that the appellants would be entitled to such dues as may be admissible to the writ petitioner. On the basis of such submission, we dispose of the appeal by directing the respondents to pay all the benefits of the deceased and such other dues in may be admissible in law, including the subsistence allowance, which we are informed, had not been paid to the appellant No. 1 for the period during which the

deceased husband of the appellant was under suspension. Such payments are to be made expeditiously, positively within a period of three months from the date of communication of the order.

8. We also make it clear that the appellants will be at liberty to make further representation, in the event they are of the view that any other dues to which the writ petitioner, the deceased husband of the appellant No. 1 was entitled had been denied to him. If such a representation is made, the same shall be disposed of expeditiously after hearing the appellants or their authorized representative.