

Smt. Chandrawati Das @ Smt. Chandrawati Devi, Kunal, Kumar Amit and Kumar Sumit Vs State of Jharkhand and Others

Court: Jharkhand High Court

Date of Decision: April 21, 2009

Hon'ble Judges: Gyan Sudha Mishra, C.J; Dilip kumar sinha, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. This appeal has been preferred by the substituted heirs of the deceased petitioner which includes the wife of the deceased-petitioner and three

sons who (sic) assailed the order of dismissal in W.P.(S) No. 6090/02 whereby the learned Single Judge by order dated 17.02.2009 was pleased

to dismiss the writ petition refusing to entertain the prayer of the petitioners/appellants herein for quashing the order of dismissal.

2. To explain the controversy it may be relevant to state that the deceased-petitioner had been issued charge-sheet for embezzlement/defalcation of

over Rs. 57.00 lakhs in conspiracy with the other employees and for this purpose charge-sheet was issued to him and an enquiry was conducted

and thereafter an order of suspension was issued to him. The deceased-petitioner duly participated in the enquiry but, neither before the enquiry

officer nor before the disciplinary authority he raised any grievance regarding non-supply of the document which was used against him for

upholding the charge. Consequently an order of dismissal was issued against him which he assailed before the learned Single Judge.

3. As already referred to here-in-before, the writ petition was dismissed against which this appeal has been preferred by the heirs of the deceased-

petitioner.

4. The appellants/the heirs- of the deceased-petitioner have challenged the order of the learned Single Judge essentially on the ground that the

departmental enquiry was conducted ex parte without hearing the deceased-petitioner as he was not provided with the record of the case and

copy of the evidence in spite of the demand raised by him. The submission of the counsel was found to be incorrect by the learned Single Judge and

we also concur with the view as the deceased-petitioner duly participated in the enquiry before the enquiry officer as also before the disciplinary

authority and the deceased-petitioner had duly participated before both the authorities wherein he had not raised any grievance regarding non-

supply of the document. Thus, the fact that he had not been granted opportunity of hearing and the enquiry was ex parte in nature, is not supported

by the materials on record. In so far as non-supply of the document is concerned, the deceased-petitioner had not complained before the authority

at any stage that he required any document. Therefore, the deceased-petitioner cannot be permitted to raise this grievance after the enquiry stood

finally concluded. Besides this, if the deceased-petitioner had any grievance due to non-supply of the document, it was available for him to assail

the enquiry proceeding at least prior to its conclusion but the appellant not only participated in the enquiry, he also failed to take any steps in this

regard. Hence, after having participated in the enquiry and offering his defence if a punishment order was imposed on him he cannot be permitted

to raise the plea at this belated stage after the enquiry proceeding has attained finality.

5. This appeal thus has no substance and hence the same is dismissed.

6. However, in the interest of equity, we observe that if at any point of time, the charges levelled against the deceased-petitioner are found to be

incorrect or is dis-proved by a court of competent jurisdiction, the appellant No. 1 herein/the wife of the deceased-petitioner would be at liberty to

file a fresh petition for grant of family pension in her favour on account of discharge of 27 years of service by her deceased-husband prior to his

dismissal. But, in case, the charge of embezzlement of 57.00 lakhs is held to be proved against the deceased-husband of the appellant No. 1, no

consequential relief can be allowed to be availed by the appellant.