

(2013) 08 AP CK 0020

Andhra Pradesh High Court

Case No: Writ Petition No. 26721 of 2005

Sharfunnissa Begum

APPELLANT

Vs

Andhra Pradesh State Road
Transport Corporation and
Another

RESPONDENT

Date of Decision: Aug. 21, 2013

Citation: (2013) 6 ALT 220

Hon'ble Judges: K.G. Shankar, J

Bench: Single Bench

Advocate: S.M. Subhan, for the Appellant; H. Venugopal, S.C. for APSRTC, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

K.G. Shankar, J.

The petitioner contends that the amount withheld from out of the amounts payable to her as death-cum-retirement benefits on account of demise of her husband, without any enquiry, is violative of the rules and law and cannot be permitted. Consequently, the petitioner seeks for a writ of mandamus to set aside the order dated 21.08.1997 recovering an amount of Rs. 38,327/- from the death benefits of the husband of the petitioner as illegal. The petitioner is the wife of the deceased Sri M.A. Qaliq. The husband of the petitioner was appointed as driver by the respondent in 1971. He was subsequently promoted as Depot Clerk (Tools and Plants) and was posted with the 2nd respondent at Sangareddy. The husband of the petitioner suddenly died on 28.09.1995.

2. While settling the death benefits of the deceased employee, an amount of Rs. 38,327/- was withheld by issuing proceedings dated 21.08.1997. The petitioner contends that the amount should not be withheld as there was no enquiry and there

was no order against her husband and that the amount is liable to be paid to her.

3. The learned Standing Counsel for the respondents submitted that when the husband of the petitioner suddenly died on 28.09.1995, as many as 18 moveable items were found missing from the plant of the respondents at Sangareddy, at the time of verification conducted on 15.11.1995. He further submitted, that the value of the missing property was calculated as in 1994 and the same was sought to be recovered from the death benefits due to the petitioner on account of the death of her husband.

4. Indeed, when the husband of the petitioner suddenly died in September, 1995, the question of his handing over charge to his successor did not arise. However, admittedly, the verification was done on 15.11.1995 only and not immediately on the demise of the husband of the petitioner. Even the verification was not in the presence of the petitioner. Further, the impugned notice for recovery was issued on 21.08.1997, nearly two years after the demise of the husband of the petitioner. As rightly submitted by the learned counsel for the petitioner, the question of ordering enquiry against the employee after the demise of the employee does not arise. However, in the circumstances of the case, where the employee died in harness, the respondents could have taken inventory of the items soon after the demise of the deceased employee, in the presence of the petitioner and should have notified the petitioner about the value of the missing articles. The respondents have not chosen to do so, suddenly the impugned order dated 21.08.1997 was issued to the petitioner claiming that they were recovering an amount of Rs. 38,327/- which is highly impermissible.

5. There is another side of the issue in this case. Only an amount of Rs. 31,727/- was said to be the cost of moveable properties missing from the plant/depot at the time of verification. An amount of Rs. 6,600/- was added to the same towards value of an excess leave of 42 days availed by the deceased. There cannot be any excess leave availment. If the deceased had leave to his credit, he could avail the same. If there was no leave available to the credit of the deceased, question of his availing leave does not arise. Availing leave that is to be accrued subsequently is not permissible. When the authorities granted earned leave to the deceased for 42 days, they cannot turn round and contend that leave was not available to the credit of the deceased and that the authorities therefore were recovering the salary towards the value of the leave availed. Consequently, recovering Rs. 6,600/- towards value of excess leave availed by the deceased also is not sustainable. Viewed in any angle, the impugned order of recovery dated 21.08.1997 is not sustainable and is liable to be set aside.

6. Accordingly, this writ petition is allowed. The impugned order dated 21.08.1997 is set aside. The respondents are directed to pay the recovered amount of Rs. 38,327/- to the petitioner within four weeks from to-day, together with interest at 9% p.a. from the date of recovery till payment. No costs. Consequently, miscellaneous petitions pending, if any, in this writ petition shall stand closed.