

(1984) 10 BOM CK 0027

Bombay High Court

Case No: Writ Petition No. 836 of 1984

Hirabhai Bhikanrao Deshmukh

APPELLANT

Vs

State of Maharashtra and
another

RESPONDENT

Date of Decision: Oct. 10, 1984

Acts Referred:

- Bombay Civil Services Rules, 1959 - Rule 151, 152

Citation: (1985) 1 LLJ 469 : (1985) MhLj 73

Hon'ble Judges: M.S. Deshpande, J; B.A. Masodkar, J

Bench: Division Bench

Judgement

Masodkar, J.

Petitioner No. 1 is the widow of one Bhikanrao Deshmukh, since deceased, while petitioner No. 2 is the son. Bhikanrao Deshmukh was the civil servant having been appointed as a Talathi in the year 1956. Disciplinary proceedings were initiated against him and he was placed under suspension on 10th March, 1969. Proceedings could not be completed and he expired before the age of the retirement while in service and under suspension, on 10th September, 1978.

2. By the impugned order made on 2nd February, 1984, the Sub-Divisional Officer, Khamgaon has held, upon the application presumably made by the petitioners, that since no orders were made in the disciplinary proceedings said deceased Talathi is presumed to have been found guilty and further is presumed to have been dismissed at the time of his death. On that basis, his period of suspension was treated and the prayer of the petitioners duly made by the application for salary of the deceased and all other benefits arising out of termination of service have been rejected. The benefits which were claimed included payment of the salary due for the period of suspension of the civil servant who was dead while under suspension, the claim for gratuity, claim for family pension and also compassionate prayer for employment of petitioner No. 2.

3. As we indicated earlier, the order is made refusing all these entitlements as is apparent from the reasoning of the Sub-Divisional Officer on the ground that by reason of the fact that the deceased employee was subjected to civil imprisonment in custody, he should be presumed to have been found guilty in the departmental Enquiry and further he should have been presumed to have been treated as dismissed from civil service. It appears that for non-return of the record like Kird Book or Khatavani, the said deceased Talathi was dealt with under S. 183 of the Maharashtra Land Revenue Code, 1966 and was subjected to civil detention. That provision provides for orders and detention of a defaulter for a period of 10 days in the office of the Collector or Tahsildar and thereafter under sub-s. (2) permits civil imprisonment under the warrant of the Collector. For all purposes the detention is the civil detention and has nothing to do with the departmental enquiry.

4. The return in the present case shows that Bhikanrao Deshmukh was placed under suspension on 4 charges which are to the following effect :

"(a) That while working as Talathi Rohana, he had recovered large amount of land revenue and taccavi from various cultivators but did not pass any receipt for the same, nor credited the amount in the Treasury.

(b) That he had not handed over the Govt. record i.e., Khataoni, Kird book of 1967-1968 Crop statements 1967-68 and default list of his charge Rohana, consequent on his transfer to Shegaon to the present Talathi, Rohana, at that time.

(c) That he had not handed over the charge of Patwari Dafter Shegaon Part-III, though specifically directed by the Revenue Inspector, Shegaon, at that time during his leave period from 15th October, 1968 to 28th February, 1969.

(d) That he failed to join his duties at Shegaon after completion of leave granted to him up to 28th February, 1969 and thus he had overstayed this leave without permission at that time."

It further asserts that as the revenue papers were not handed over, he was dealt with under S. 17 read with S. 183 of the Maharashtra Land Revenue Code, 1966 and, therefore, had to be subjected to civil detention for one month. It is on this basis, it is further stated, that said Bhikanrao Talathi should be treated as having been found guilty and he should have been dismissed at that time by the then Sub-Divisional Officer. The return, however, admits that no orders of any such kind were made in the departmental enquiry proceedings, pay till the impugned order which was made, after the death of Bhikanrao on 2nd February, 1984.

5. Thus the facts do not admit any doubt that Bhikanrao was subjected to the process of suspension during the pendency of the disciplinary proceedings and that the proceedings did not terminate by any final order. The report of the Tahsildar dated 4th June, 1979 and the note thereon by the then Sub-Divisional Officer on 5th June, 1979 are indicative that there was no substance in the charges against the

delinquent Talathi. However, by the time Bhikanrao died on September 10, 1978, the disciplinary proceedings did not terminate and the suspension continued.

6. The provisions with regard to dismissal, removal and suspension of the civil servant do not permit holding of any further enquiry into the conduct of such a civil servant after his death. Such proceedings are intended to impose departmental penalty and would abate by reason of the death of civil servant. The purpose of proceedings is to impose penalty, if misconduct is established against the civil servant. That can only be achieved if the civil servant continues to be in service. Upon broader view the proceedings are quasi-criminal in the sense it can result in fault finding and further imposition of penalty. The character of such proceedings has to be treated as quasi-judicial for this purpose. In the light of the character of the proceedings and the nature of penalty like dismissal or removal, or any other penalties, minor or major, it has nexus to the contract of service. Therefore, if the person who has undertaken that contract is not available, it should follow that no proceedings can continue. Thus when the proceedings are quite personal in relation to such a contract of service, the same should terminate upon death of the delinquent. By reason of death, such proceedings would terminate and abate. We think that such a result is also inferable from the provisions of Rule 152-B of the Bombay Civil Services Rules.

7. Once the proceedings come to an end by reason of death, the provisions of Rule 152-B, Sub-rule (2) of the Bombay Civil Services Rules state that notwithstanding anything contained in Rule 151 where a Government servant under suspension dies before the disciplinary proceedings are concluded, the period between the date of suspension and the date of death has to be treated as duty for all purposes and the family of such civil servant is required to be paid full pay and allowances for that period subject to adjustment in respect of subsistence allowance already paid.

8. These being the express provisions available in the Bombay Civil Services Rules which were admittedly applicable to the Talathi, the petitioners, who are the members, were entitled as of right to have full pay and allowances which were payable to Bhikanrao subject to deduction of subsistence allowance, if any, already paid.

9. These express provisions available in Rule 152-B(2) have not even been kept in view nor referred to by the Sub-Divisional Officer, Khamgaon while making the impugned order dated 2nd February, 1984. Reading of that order shows that it proceeds on the basis of certain assumptions and we are surprised that in the face of the Rule as well as clear position of law with regard to termination of inconclusive proceedings by reason of death, such an order has been made. We have already explained that the detention of Talathi Bhikanrao under S. 183 of the Maharashtra Land Revenue Code was for the purpose of recovering documents and nothing else. That was neither as a result of any Court proceedings nor the result of any penalty imposed in any disciplinary proceedings. By merely referring to that detention, the

Sub-Divisional Officer was not justified in further holding that it is presumed that the Talathi was found guilty and he should have been dismissed at that time by the then Sub-Divisional Officer, Khamgaon. The order at Annexure-D thus is clearly unsustainable and will have to be set aside.

10. In the view we are taking of the facts and law in the present case, we think that the petitioners were entitled to the full pay and allowances for the period between the date of suspension i.e., 10th March, 1969 till the date of death i.e., 10th September, 1978 minus the allowances, if any, paid to Bhikanrao Deshmukh. The respondent-State will have to work out the same and make the payment thereof to the petitioners. That entitlement be worked out and payment made before the end of January 1985. As far as the consideration for grant of family pension, gratuity and also the employment on compassionate ground to petitioner No. 2 is concerned, we direct the respondent-State to consider the matter afresh and make suitable orders according to law.

11. Rule absolute in these terms. The petitioners to get costs from the respondents.