

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 64 of 2017 (S.B.)

Smt. Kashibai wd/o Ramdas Malve,
Aged about 60 years, Occ. Nil,
R/o V.H.B. Colony House No.20,
Malkapur, Distt. Akola-444 004.

Applicants.

Versus

- 1) The State of Maharashtra,
through its Principal Secretary,
Public Health Department,
Government of Maharashtra,
Mantralaya, Mumbai-32.
- 2) District Health Officer,
Zilla Parishad, Gadchiroli.

Respondents

Shri Shaikh Majid, Advocate for the applicant.

Shri A.M. Ghogre, Id. P.O. for respondent no.1.

Shri W.G. Paunikar, Advocate for respondent no.2.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

JUDGEMENT

(Delivered on this 19th day of December,2017)

Heard Shri Shaikh Majid, learned counsel for the applicant, Shri A.M. Ghogre, learned P.O. for the respondent no.1 and Shri W.G. Paunikar, Id. Counsel for respondent no.2.

2. The applicant Smt. Kashibai wd/o Ramdas Malve is the widow of deceased Ramdas Malve, who retired as Administrative

Officer. The applicant's husband Ramdas Malve died on 16/04/2014 and was getting provisional pension which was stopped all of a sudden. After the death of applicant's husband on 16/04/2014, the applicant immediately applied to respondent no.2, i.e., the District Health Officer, Zilla Parishad, Gadchiroli about his death. Such application was preferred on 23/06/2014. On the communication by respondent no.2, the applicant also submitted Death Certificate of Ramdas T. Malve on 16/07/2014. On 20/09/2014 the respondent no.2 communicated one final order passed in the departmental enquiry to the applicant and the applicant was intimated by such order about imposing of punishment in the department enquiry. The applicant was forced to accept an acknowledgment of punishment order along with the letter dated 20/09/2014, but the applicant received the said communication on 10/10/2014.

3. The applicant thereafter consulted her Advocate and issued legal notices to respondent no.1 on 17/08/2015 and 23/09/2016 and requested to grant full pension and other retiral benefits. The respondents however did not response and therefore the applicant was forced to file this O.A. The applicant is claiming a declaration that the order dated 18/7/2013 communicated in the name of her deceased husband vide letters dated 20/09/2014 and 24/09/2014 by respondent no.1 be declared illegal and unsustainable

in law and as such be quashed and set aside. She is also claiming a direction to respondents to grant arrears of amount of full pension to the applicant w.e.f. 01/09/2009 till March, 2014 and further regular pension from 01/04/2014 towards retiral benefits of her deceased husband.

4. The respondent no.2 admitted in the reply-affidavit that the inquiry was conducted against delinquent Shri Ramdas Malve, but it remained incomplete till his death, i.e., 16/4/2014. It is stated that after the death of Shri Ramdas Malve, the applicant informed about the death of her husband to respondent no.2. It is stated that a joint departmental inquiry was pending against Shri Ramdas Malve and therefore he was given provisional pension.

5. The learned counsel for the applicant submits that it is admitted fact that the departmental inquiry against deceased employee, i.e., applicant's husband was not concluded during his life time. The respondent no.1 also filed separate affidavit and admitted the fact that the departmental inquiry was not concluded prior to the death of deceased employee. It is however submitted that though the final order was not served on deceased employee, i.e., applicant's husband prior to his death, the final order was passed in the departmental inquiry on 18/7/2013 and it was sent to the competent authority for approval. According to the learned P.O., the applicant has

not filed appeal under Rule 17 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 against the order of punishment in departmental inquiry. It is material to note that the applicant is not the employee of the Government and admittedly the order in departmental inquiry was not communicated to the applicant's husband before his death. Though the order in departmental inquiry was passed on 18/7/2013, it was not communicated to the applicant till her husband's death. Admittedly the applicant's husband died on 16/4/2014 and subsequently the order passed in departmental inquiry was forwarded to the applicant which she received after her husband's death. It was also after she wrote a letter dated 23/6/2014 to respondent no.2 claiming grant of family pension. She has also intimated about death of her husband and also submitted his death certificate as asked by the respondent no.2 and thereafter she was served with the order passed in departmental inquiry against her husband. Thus the fact remains that the order passed in departmental inquiry was never communicated to the applicant's husband before his death. As per Rule 11 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 the orders made by the disciplinary authority shall be communicated to the government servant. The rule 11 of the MCS (Discipline & Appeal) Rules, 1979 reads as under :-

“Commutation of orders –

Order made by the disciplinary authority shall be communicated to the Government servant, who shall also be supplied with a copy of its finding on each article of charge, or where the disciplinary authority is not the inquiring authority, a statement of the findings of the disciplinary authority together with brief reasons for its disagreement, if any, with the findings of the inquiring authority and also a copy of the advice, if any, given by Commission, and, where the disciplinary authority, has not accepted the advice of the Commission, a brief statement of the reasons for such non acceptance.”

6. In the present case the order is not communicated to the employee. The learned counsel for the applicant placed reliance on the Judgment reported in **AIR 1966, SC,1313 State of Punjab Amar Singh Harika** wherein the question was when the order of dismissal becomes effective and it was held that publication or communication to Officer concerned is necessary. In para-11 of the said Judgment the Hon'ble Apex Court has observed as under :-

“ The first question which has been raised before us by Sri Bishan Narain is that though the respondent came to know about the order of his dismissal for the first time on 28 May 1951, the said order must be deemed to have taken effect as from 3 June 1949 when it was actually passed. The High Court has rejected this contention; but Sri Bishan Narain contends that the view taken by the High Court is erroneous in law. We are not impressed by Sri Bishan Narain's argument. It is plain that the mere passing of an order of dismissal would not be effective unless it is published and communicated to the officer concerned. If the appointing authority

passed an order of dismissal, but does not communicate it to the officer concerned, theoretically it is possible that unlike in the case of a judicial order pronounced in Court, the authority may change its mind and decide to modify its order. It may be that in some cases, the authority may feel that the ends of justice would be met by demoting the officer concerned rather than dismissing him. An order of dismissal passed by the appropriate authority and kept with itself, cannot be said to take effect unless the officer concerned knows about the said order and it is otherwise communicated to all the parties concerned. If it is held that the mere passing of the order of dismissal has the effect of terminating the services of the officer concerned, various complications may arise. If before receiving the order of dismissal, the officer has exercised his power and jurisdiction to take decisions or do acts within his authority and power, would those acts and decisions be rendered invalid after it is known that an order of dismissal had already been passed against him ? Would the officer concerned be entitled to his salary for the period between the date when the order was passed and the date when it was communicated to him ? These and other complications would inevitably arise if it is held that the order of dismissal takes effect as soon as it is passed though it may be communicated to the officer concerned several days thereafter. It is true that, in the present case, the respondent had been suspended during the material period; but that does not change the position that if the officer concerned is not suspended during the period of enquiry, complications of the kind already indicated would definitely arise. We are, therefore, reluctant to hold that an order of dismissal passed by an appropriate authority and kept on its file without communicating it to the officer concerned or otherwise publishing it will take effect as from the date on which the order is actually written out by the said authority; such an order can only be effective after it is communicated to the officer concerned or is otherwise

published. When a public officer is removed from service, his successor would have to take charge of the said office; and except in cases where the officer concerned has already been suspended, difficulties would arise if it is held that an officer who is actually working and holding charge of his office, can be said to be effectively removed from his office by the mere passing of an order by the appropriate authority. In our opinion, therefore, the High Court was plainly right in holding that the order of dismissal passed against the respondent on 3 June 1949, could not be said to have taken effect until the respondent came to know about it on 28 May 1951.”

7. On a conspectus of discussion in forgoing paras, it will be thus crystal clear that the applicant's husband in this case got retired on superannuation on 31/8/2009. Though the departmental enquiry was pending against him the said could not be concluded before his death. Even for argument sake, it is accepted that the inquiry was completed and final order was passed in the departmental enquiry on 18/7/2013, the same was not communicated to the employee during his life time and therefore it cannot be said that the departmental enquiry was concluded before the death of applicant's husband. In such circumstances it can be said that the departmental proceedings abated since it could not be completed during the life time of employee. There is no question of challenging the order dated 18/7/2013 by the applicant as claimed by the learned P.O., since applicant is the wife of deceased employee and not employee of the department. In the result, it will have to be presumed that whatever

departmental enquiry was pending against the applicant's husband, shall be presumed to have been abated and the result will be that no punishment was inflicted on the deceased employee prior to his death. In other words, the order dated 18/7/2013 directing deduction of 75% pay of the deceased employee is not in existence at all and therefore the respondents ought to have granted family pension to the applicant as if there was no inquiry against her husband. I, therefore, pass the following order :-

ORDER

The O.A. is allowed. It is hereby declared that the impugned order dated 18/7/2013 communicated in the name of deceased person, i.e., the applicant's husband Shri Ramdas Malve vide letters dated 20/9/2014 and 24/9/2014 by respondent no.1 is illegal and unsustainable in law and hence quashed and set aside. The respondents are directed to grant full family pension to the applicant w.e.f. 1/9/2009 till 16th March, 2014 and shall continue to pay regular family pension to the applicant thereafter. No order as to costs.

Dated :- 19/12/2017.

**(J.D. Kulkarni)
Vice-Chairman (J).**