

[2021] 8 S.C.R. 641

THE STATE OF RAJASTHAN & ORS.

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v.

SURJI DEVI

(Civil Appeal No.6205 of 2021)

OCTOBER 07, 2021

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[M.R. SHAH AND A.S. BOPANNA, JJ.]

Constitution of India – Writ petition – Delay and laches – Respondent's husband terminated from service in 1996 – Appeal filed by him, however, during the pendency of the said appeal he passed away in 2009 – Appeal not pursued by respondent – Writ petition filed by her in 2012 challenging the 1996 termination order – Allowed – Held: Writ petition was barred by delay and laches – Single Judge erred in entertaining the same – Further, despite the pending appeal and the respondent's specific prayer in writ petition to direct the authority to decide the same, the Single Judge entered into the merits of the case and quashed the order of termination – Impugned judgments passed by the Division Bench as well as the Single Judge, set aside – Rajasthan Panchayati Raj Act, 1994 – ss.91(3), (4) – Rajasthan Services Rules, 1951 – r.86.

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CIVIL APPELLATE JURISDICTION: Civil Appeal No.6205 of E
2021

From the Judgment and Order dated 01.03.2019 of the High Court of Judicature for Rajasthan Bench at Jodhpur in D.B. Spl. Appeal Writ No.1045 of 2018.

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Dr. Manish Singhvi, Sr. Adv., Milind Kumar, Advs. for the Appellants.

Saurabh Ajay Gupta, Nishant Bishnoi, Ms. Srishti Prabhakar, Advs. for the Respondent.

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The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 01.03.2019 passed by the High Court of Judicature for

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- A Rajasthan at Jodhpur in D.B. Special Appeal Writ No. 1045 of 2018, by which the Division Bench of the High Court has dismissed the said appeal and has confirmed the order dated 17.01.2017 passed by the learned Single Judge by which the learned Single Judge quashed and set aside the order of termination dated 16.12.1996 dismissing the late husband of the respondent from service, the State of Rajasthan and others have preferred the present appeal.

2. The facts leading to the present appeal in nutshell are as under:-

- 2.1 That the late husband of the respondent herein late Shri Rameshwar Lal was serving as Gram Sevak. He was suspended from service vide order dated 08.01.1996 on the ground of willful absence from duty and not completing the audit. The administrative committee of Panchayat Samiti Nokha in its meting dated 26.02.1996 took a decision to remove him from service. That thereafter a public notice was published in the daily news paper on 14.03.1996, whereby Rameshwar Lal was directed to join his duties within a period of 15 days with explanation. Even after completion of 15 days the said Rameshwar Lal did not join his duties. Thereafter the services of the said Rameshwar Lal – late husband of the respondent were terminated vide order dated 16.12.1996 invoking the provisions of Section 91 (3) of the Rajasthan Panchayati Raj Act, 1994 (hereinafter referred to as the Act 1994) and Rule 86 of Rajasthan Services Rules, 1951. It appears that the late husband of the respondent preferred an appeal against the order of termination issued under Section 91 (4) of the Act 1994 before the District Establishment Committee, Zila Parishad, Bikaner. During the pendency of the said appeal the employee – Rameshwar Lal passed away on 18.09.2009. That thereafter the respondent herein preferred a writ petition before the High Court being S.B. Civil Writ Petition No.11405 of 2011 challenging the dismissal/termination order dated 16.12.1996. By judgment and order dated 17.01.2017, the learned Single Judge allowed the said writ petition and quashed and set aside the order of termination dated 16.12.1996 and directed the appellants to give all consequential benefits to the respondent treating her husband to be superannuated on 16.12.1996. The judgment and order passed by the learned Single Judge has been confirmed by the Division Bench, by the impugned judgment and order. Hence the present appeal.

- 3. We have heard the learned counsel appearing on behalf of the respective parties at length.

4. The facts which emerged are that the late husband of the respondent was removed/dismissed from service by order dated 16.12.1996. He preferred an appeal which was pending before the appellate authority. During the pendency of the appeal, the late husband of the respondent – employee died/passed away in the year 2009. If the late husband of the respondent would not have been terminated/dismissed he would have attained the age of superannuation in the year 1999. After the death of the employee – late husband of the respondent she did not pursue the appeal, maybe she might not be aware of filing/pendency of the appeal. That thereafter the respondent – widow of the employee filed a writ petition before the High Court in the year 2012. Thus, by the time the respondent preferred a writ petition before the High Court, 15 years had passed from the date of termination and even approximately 13 years from the date on which the employee would have attained the age of superannuation i.e. from the year 1999. Considering the aforesaid facts and circumstances, as such, the learned Single Judge ought not to have entertained the writ petition in the year 2012, challenging the order of termination passed on 16.12.1996, on the ground of delay and laches alone. At this stage, it is required to be noted that even despite the fact that it was specifically prayed by the respondent in writ petition before the learned Single Judge to direct the authority to decide the appeal preferred by her husband, the learned Single Judge despite the above prayer and the pending appeal, entered into the merits of the case and quashed and set aside the order of termination dated 16.12.1996.

5. The submission on behalf of the respondent is that the termination on 16.12.1996 was absolutely illegal and against the principles of natural justice is concerned, once we hold that the writ petition was barred by delay and laches, thereafter the merits are not required to be considered. As observed hereinabove, the learned Single Judge erred in entertaining the petition in the year 2012 challenging the order of termination passed in the year 1996, on the ground of delay and laches and more particularly when even otherwise if the termination order would not have been passed the deceased employee would have retired on attaining the age of superannuation in the year 1999.

In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order dated 01.03.2019 passed by the Division Bench of the High Court as well as the judgment

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A and order dated 17.01.2017 passed by the learned Single Judge are hereby quashed and set aside. In the facts and circumstances of the case, there shall be no order as to costs.

Divya Pandey

Appeal allowed.