

**Court No. - 4**

**Case :-** WRIT - A No. - 2479 of 2025

**Petitioner :-** Smt. Munni

**Respondent :-** State Of U.P. And 2 Others

**Counsel for Petitioner :-** Pankaj Kumar Rai, Sandeep Maniji Bakhshi

**Counsel for Respondent :-** C.S.C.

**Hon'ble Ajit Kumar, J.**

1. Heard SRI Sandeep Maniji Bakhshi, learned counsel for the petitioner and learned Additional Chief Standing Counsel for the State.

2. By means of this petition filed under Article 226 of the Constitution of India, petitioner has challenged the order dated 08.01.2025 passed by the Commissioner, Varanasi Division, Varanasi dismissing the departmental appeal of husband of the petitioner on the ground that appeal would abate on account of death of the petitioner's husband.

3. The submission advanced by learned counsel for the petitioner is that departmental appeal preferred under Rule 11 of the U.P. Government Servant (Discipline and Appeal) Rules, 1999 which only provides for certain considerations on points that may emerge out in the appeal and hence the appeal would not be dismissed as

to have got abated on account of death of her husband namely appellant in the said appeal.

4. It is argued that no law of abatement is attracted in the matter of service jurisprudence as the incidence of service which may entail monitory consequences are inherited by the heirs accordingly and in that event appeal had stood allowed, then order of termination from service would have stand set aside and all consequential benefits would have been conferred upon to the late husband of the petitioner and in turn to be succeeded by the present petitioner.

5. Learned Standing Counsel has obtained instructions in the matter and the instructions are absolutely silent to justify the order passed by the appellate authority namely Commissioner, Varanasi Division, Varanasi.

6. Having heard learned counsel for the respective parties and having perused the records, I proceed to consider the arguments of learned counsel for the petitioner after appreciating the relevant provisions as contained under Rule 11 and 12 of the 1999 Rules. The provisions are reproduced hereinunder:

**".....11. Appeal. -**

*(1) Except the orders passed under these rules by the Governor, the Government servant shall be entitled to appeal to the next higher authority from an order passed by the disciplinary authority.*

*(2)The appeal shall be addressed and submitted to the appellate authority. A Government servant preferring an appeal shall do so in his own name. The appeal shall contain all material statements and arguments relied upon by the appellant.*

*(3)The appeal shall not contain any intemperate language. Any appeal, which contains such language may be liable to be summarily dismissed.*

*(4)The appeal shall be preferred within 90 days from the date of communication of impugned order. An appeal preferred after the said period shall be dismissed summarily.*

## **12. Consideration of Appeals. -**

*The appellate authority shall pass such order as mentioned in clauses (a) to (d) of Rule 13 of these rules, in the appeal as he thinks proper after considering.*

*(a)Whether the facts on which the order was based have been established;*

*(b)Whether the facts established afford sufficient ground for taking action;  
and*

*(c)Whether the penalty is excessive, adequate or inadequate;"*

7. Upon bare reading of the aforesaid provisions of Rules, It becomes explicit that a government servant is entitled to prefer a statutory appeal against the order passed by the disciplinary authority within a period of 90 days and then upon reading Rule 12, I find that the appellate authority is required to look into and consider key points that were given while testing the order passed

by the disciplinary authority. Thus, there is no procedure prescribed, as such, in the relevant provisions quoted that may require delinquent employee to appear and participate mandatorily so as to get the appeal disposed off on merits. It is true that in service jurisprudence employer and employee relationship ceases to exist the moment contract of employment ceases but where the service conditions are governed by statutory rules, mere recitals contained in the appointment order would not govern service conditions.

8. In service matters where official records are maintained, heirs automatically succeed to get the dues and no law of substitution would be applicable. Contract of appointment ceases with death of the employee and appointment therefore, is not succeeded by rules.

9. Here, in the case in hand, I find that the U.P. Government has framed rules namely 1999 Rules providing for disciplinary actions to be taken against an employee charged for any misconduct in discharge of duties and in the event, the charges are proved, the employee is liable to be visited with such penalties which may have adverse civil consequences.

10. In the circumstances, therefore, an employee if is working in establishment, which may be a pensionable establishment and where the family pension rights are also vested with the

dependents of the family or otherwise also where the dues are inherited by the dependents of the employee by succession, such cause of action would survive till the last available statutory remedy is exhausted. Even an employee's successor is entitled to question an order of the disciplinary authority as it has serious adverse civil consequences resulting in the denial of post terminal dues including right of compassionate appointment. Accordingly, the Court is of this considered view that the appellate authority was not justified in rejecting the appeal following the principles of civil law of abatement where upon the death of a party, the actionable claim comes to an end unless and until heirs in succession pursued the same.

11. In view of the above, the Court finds the order passed by the appellate authority to be unsustainable. Accordingly, the writ petition succeeds and is allowed. The order dated 08.01.2025 passed by the Commissioner, Varanasi Division, Varanasi, is hereby quashed.

12. The departmental appeal of the deceased employee stands restored before the appellate authority with a direction to dispose of the pending appeal on merits within a maximum period of two months from the date of production of certified copy of this order.

**Order Date :- 9.7.2025**  
S.A.