

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 15835 of 2011
Date of decision: 08.10.2015

Anita Rani

....Petitioner(s)

Versus

State of Punjab & others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Ms.Rakhi Sharma, Advocate, for the petitioner.

Mr.Pankaj Mulwani, DAG, Punjab.

G.S.SANDHAWALIA, J. (Oral)

Challenge in the present writ petition is to the order dated 09.11.2010 (Annexure P12) whereby the suspension period of the petitioner's husband was treated as 'leave of kind due' but a sum of Rs.1,05,839/- was ordered to be deducted from his Gratuity/pensionary benefits.

Counsel for the petitioner has relied upon the instructions of the Government dated 23.06.1992 (Annexure P1) to submit that her husband had died on 17.08.2007, prior to the imposition of recovery and therefore, the department should have closed the case of the employee who had died against whom disciplinary proceedings were pending. A specific averment to that effect has also been made in para no.11 of the writ petition.

Reply of the State to the said paragraph reads as under:

“That the contents of this para are admitted as a matter of record as contained in Punjab Govt. policy dated 23-6-1992 issued by Department of personal & administrative reforms state of Punjab.”

The admitted facts leading to the imposition of penalty and to recover it from the retiral benefits was on the basis of chargesheet dated 09.06.1995. It is

apparent that punishment of stoppage of 2 increments, with cumulative effect and recovery of the said amount in instalments was made during the lifetime of the employee on the strength of the charges not having been proved, vide order dated 20.10.1997. However, on account of the legal notice being served upon the department, the said punishment was withdrawn on 28.05.2002 and an Enquiry Officer was appointed. Thus, it is apparent that the said punishment was inflicted without appointing any Enquiry Officer, at that point of time.

Thereafter, the Enquiry Officer submitted his report and the charges were proved against the delinquent employee and show cause notice was served upon him on 13.12.2005. However, the employee did not send any reply and the department also slept over the matter. Unfortunately, the husband of the petitioner expired on 17.08.2007, leading to the passing of the order whereby the said amount of Rs.1,05,839/- was sought to be recovered from his Gratuity/pensionary benefits. As per the instructions of the Government dated 23.06.1992, it has itself been decided to close such cases of departmental proceedings in view of the services rendered by the employees. The relevant portion reads as under:

“4. As per the provisions of Punjab Civil Services (Punishment and Appeal) Rules 1970 and the instructions issued by the Government, an employee is given full opportunity to represent himself before imposing any punishment. An employee who dies during the pendency of disciplinary proceedings/departmental proceedings, cannot get such opportunity, therefore, the government has decided to close such case of departmental disciplinary proceedings/enquiry and keeping in view the services rendered by the employee, the legal heirs shall be given the complete family pension and other benefits under the Rules.”

Thus, it is apparent that the husband of the petitioner having died, in view of the instructions dated 23.06.1992, the proceedings should have been shut down, rather than imposing a penalty of recovery upon the legal heirs who were in no position to answer the show cause notice, in view of the enquiry report which

had come against the ex-employee.

Resultantly, the order dated 09.11.2010, which itself noted that the employee had died, cannot be sustained and is, accordingly, quashed. The above-mentioned amount, which has been retained by the State, shall be paid to the petitioner, since the amount was retained without authority of law. The interest element which the petitioner has claimed will also necessarily have to be granted, in favour of the petitioner. Accordingly, the State is held entitled to pay the said amount to the petitioner along with interest @ 7% per annum, w.e.f. 2 months after the date of death of the employee, i.e., 17.08.2007. The amount shall be paid within a period of 2 months from the receipt of a certified copy of this order, failing which, the interest element will go upto 9% per annum, till its realization.

With the abovesaid observations, the present writ petition stands allowed.

08.10.2015
sailesh

(G.S. SANDHAWALIA)
JUDGE