

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

CWP No.14190 of 2012

Date of Decision: 27.03.2015

Chanderpati

....Petitioner

Versus

State of Haryana and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ?**
- 2. To be referred to reporters or not ?**
- 3. Whether the judgment should be reported in the Digest ?**

Present:- Mr. Rajesh Gupta, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. D.A.G., Haryana
for the respondent-State.

DAYA CHAUDHARY, J.

The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* quashing impugned order dated 05/13.07.2010 (Annexure P-3) passed by respondent No.2 as well as Order dated 07.04.2011 (Annexure P-4) passed by respondent No.1. A further prayer has also been made for issuance of a direction to the respondents to refund the amount of ₹ 53,486/-, which has already been deducted along with interest @ 15% per annum w.e.f 01.01.1999 to the date of deduction.

Briefly, the facts of the case are that the husband of the petitioner, namely, Bhag Chand retired as Deputy Superintendent on attaining the age of superannuation i.e on 29.02.2000. A charge sheet was

issued to him on 09.09.1997 under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987. However, vide Order dated 10/31.08.1999, the said amount was ordered to be recovered from him along with interest. The husband of the petitioner filed **Civil Suit No.89 of 2002**, which was partly decreed vide judgment and decree dated 05.09.2007 and it was held that the report submitted by the Executive Engineer, Vigilance Division, Hisar dated 09.07.1996 shows that the petitioner was absolved of the charge of sub-letting of quarter to one Mr. Rathi. It was also held that there was no documentary evidence brought on record by the respondent-Department and the departmental inquiry was conducted as per rules. The order of recovery was passed without following the principles of natural justice. The respondents were not found to be justified to deduct the amount from pensionary benefits and the petitioner was held entitled to recover the amount along with simple interest @ 12% but the prayer for interest on the delayed payment of retiral benefits was dismissed.

Aggrieved by the said judgment of the trial Court, the respondent-Department filed appeal before the Additional District Judge, Jind, which was partly allowed and the judgment of the trial Court was modified to the effect that the impugned order has been passed without following the due procedure and principles of natural justice. A direction was also issued to the respondents to pass afresh order after giving notice to the petitioner and after following the due procedure of law.

The respondent-Department issued notice to the petitioner for personal hearing and passed order by holding that the amount has already been recovered from husband of the petitioner and the petitioner is not entitled for refund.

Learned counsel for the petitioner submits that the respondent-

Department did not conduct any fresh inquiry and nothing was discussed with regard to any report of the Inquiry Officer. He further submits that no fresh order was passed by the respondent holding that the husband of the petitioner was guilty for the allegations made in the charge sheet and was liable to be punished. Simply, it has been mentioned that the petitioner is not able to make out a case for refund of the amount already been recovered. The appeal filed by the petitioner has also been dismissed without any sufficient reason.

Learned counsel for the respondent-State submits that the house, in dispute, was allotted to husband of the petitioner, namely, Bhag Chand. The said house was allotted to him but it remained in illegal occupation of one H.S. Rathi. He further submits that on transfer of husband of the petitioner, the possession of the house was not handed over but simply, it was informed that the said house has forcibly been occupied by said H.S. Rathi. An inquiry was conducted, wherein, it was found that the said house was given to H.S. Rathi by the husband of the petitioner. Learned State counsel also submits that as per judgment of the Appellate Court, the petitioner was given an opportunity of hearing and a detailed speaking order was passed after hearing the petitioner personally. At the time of personal hearing, it was stated by the petitioner himself that during that period, she was staying in her native village, which shows that the petitioner was not residing in that house. Learned State counsel also submits that as per application moved by husband of the petitioner, as is clear from Annexure R-1, the house, in dispute, was in occupation of H.S. Rathi and a request was made to allot the same to him. Learned State counsel also submits that it was found that the husband of the petitioner allowed H.S Rathi to illegally occupy government quarter even after his transfer from the Division, where he remained posted.

Heard the arguments of learned counsel for the parties and have also perused the documents on the file.

Undisputedly, the house, in dispute, was allotted to husband of the petitioner late Sh. Bhag Chand, who was working as an Account Clerk. The said house was allotted on the basis of application moved by him. It was found that the said house was in illegal occupation of H.S. Rathi, which is clear from the fact that the husband of the petitioner was transferred. The husband of the petitioner made an application dated 25.04.1995 stating therein that he had vacated the house but H.S. Rathi had forcibly occupied the house and hence, the inquiry was conducted by the Department, wherein, it was found that the house, in dispute, was occupied illegally by H.S. Rathi in connivance with Bhag Chand. The petitioner had also concealed the material fact as in the reply, it has been mentioned that even the rent for the period from 08.04.1995 to 13.08.1995 was paid by Bhag Chand, which was recovered from H.S. Rathi. Even the petitioner made a specific statement before the respondent-authority during her personal hearing that the house, in dispute, was given to H.S. Rathi. The impugned order was passed after giving opportunity of personal hearing to the petitioner and after following the principles of natural justice. There is no reason to differ with the fact finding inquiry. Moreover, the amount has already been recovered.

Accordingly, there is no merit in the submissions made by learned counsel for the petitioner and the petition, being devoid of any merit, is hereby dismissed.

27.03.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE