

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

CWP No.14326 of 2013
Date of Decision : 23.1.2015

Krishna Devi

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

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CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

...

Present : Mr. B.K. Bagri, Advocate for the petitioner.
Mr. Ashok Chaudhary, Addl. A.G., Haryana.

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1. To be referred to the Reporter or not ?
2. Whether the judgement should be reported in Digest ?

RAMESHWAR SINGH MALIK, J

Feeling aggrieved against the impugned order dated 30.11.2009 (Annexure P-5) and 19.3.2013 (Annexure P-10) passed by the respondent authorities, petitioner has approached this court by way of instant writ petition, under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari for quashing the impugned orders. Petitioner also prays for a writ in the nature of Mandamus directing the respondent authorities to grant benefit of the policy decisions dated 31.1.2006 (Annexure P-2) as well as dated 1.8.2006 (Annexure P-4).

Notice of motion was issued and pursuant thereto, written statement was filed on behalf of respondents no.1 to 3.

Learned counsel for the petitioner submits that disability of the husband

of the petitioner to the extent of 70% was never in dispute. He places reliance on the disability certificate dated 15.7.2009 issued by the Chairman, Medical Board and Civil Surgeon, Panchkula. He further submits that the policy decisions Annexure R-1 and R-2 were never got noted in writing from the husband of the petitioner, while he was in service. Learned counsel for the petitioner would next contend that it was none of the fault of the petitioner, because the requisite certificate was issued by the competent authority vide Annexure P-1 in spite of issuance of Annexures R-1 and R-2. In support of his contentions, learned counsel for the petitioner places reliance on a Division Bench judgement dated 14.8.2013 passed by this court in CWP No.7408 of 1999 (O.P. Garg Vs. State of Punjab and others). He prays for setting aside the impugned orders, by allowing the present writ petition.

Per contra, learned counsel for the respondents submits that once the State has issued instructions dated 28.3.2006 (Annexure R-1) and dated 21.4.2008 (Annexure R-2), husband of the petitioner was under legal obligation to get his requisite medical certificate issued from the Medical Board of PGIMS, Rohtak. So far as the knowledge of instructions Annexures R-1 and R-2 by the husband of the petitioner is concerned, learned counsel for the State places reliance on concluding para 4 of the instructions Annexure R-2 to say that the said instructions were posted on the State Government website. Learned counsel for the State concluded by submitting that since the late husband of the petitioner did not comply with the pre-requisites as per the instructions Annexures R-1 and R-2, petitioner was not entitled for the relief being claimed. He prays for dismissal of the writ petition.

Having heard learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, instant writ petition deserves to be

allowed, for the following more than one reasons.

So far as the correctness and authenticity of the medical certificate no.678 dated 15.7.2009 issued by the Chairman, Medical Board and Civil Surgeon, Panchkula vide Annexure P-1 is concerned, it had never been in dispute at any point of time. Learned counsel for the State did not dispute the authenticity and correctness of the medical certificate Annexure P-1 even during the course of hearing and rightly so because it was a matter of record. Once 70% disability of the husband of the petitioner was not in dispute, petitioner was clearly entitled for the benefits arising from the policy decision dated 31.1.2006 (Annexure P-2) as well as policy decision dated 1.8.2006 (Annexure P-4). Since the respondent authorities while passing the impugned orders Annexures P-5 and P-10 failed to appreciate the abovesaid factual and material aspects of the matter, the impugned orders are patently illegal and the same cannot be sustained.

Coming to the argument raised by learned counsel for the State that the husband of the petitioner was supposed to have the knowledge of the instructions Annexures R-1 and R-2 and he was under legal obligation to get requisite medical certificate from PGIMS, Rohtak, instead of Chairman, Medical Board and Civil Surgeon, Panchkula, the same has been duly considered by this court, but has not been found worth acceptance. It is so said because what to talk of the husband of the petitioner, even all the members of the Medical Board, including Civil Surgeon, Panchkula, were not aware about the instructions Annexures R-1 and R-2. This was the specific reason that the Chairman, Medical Board and Civil Surgeon, Panchkula, issued the disability certificate in favour of the husband of the petitioner vide Annexure P-1.

Further, on this issue, case of the petitioner was squarely covered by the Division Bench judgement of this court in **O.P. Garg's case (supra)**. The relevant

observations made by the Division Bench of this court in **O.P. Garg's case (supra)**, which can be gainfully followed in the present case, read as under :-

“ Learned counsel for the petitioner relies upon an order passed by the Division Bench of this court in Ram Dia & others Vs. Uttar Haryana Bijli Vitran Nigam Ltd. and another 2005(8) SLR 765, wherein in respect of option to avail pension scheme, it was observed that there is no material that the circular was actually got noted in writing from the petitioners. It was, thus, inferred that the petitioner had no knowledge about the option called by the respondents vide the aforesaid circular. Special Leave Petition (Civil) No.2323 of 2006 titled “Uttar Haryana Bijli Vitran Nigam Ltd. and another Vs. Ram Dia and others” against the said order was dismissed in view of the judgement of the Supreme Court in Dakshin Haryana Bijli Vitran Nigam and others Vs. Bachan Singh 2009 (14) SCC 793, wherein it was held to the following effect :-

“26. In view of the law that has been articulated in a large number of cases, where this court has observed that any discriminatory action on the part of the Government would be liable to be struck down. Hence, in this case, it would be totally unreasonable and irrational to deny the respondent the pensionary benefits under the scheme particularly when the appellants have failed to produce any record showing that the instructions dated 6.8.1993 and 9.8.1994 were actually got noted in writing by the respondent. In the absence of any such material, it can well be inferred that the

respondent had no knowledge about the options called by the appellants.”

In the present case, the amendment in the Rules were carried out on 15.5.1990. It is the circular issued on the said date itself, which is said to have been sent to all the District and Sessions Judges. The petitioner was promoted three years later on 30.7.1993. There was no occasion for him even to consider the exercise of option for re-fixation of salary in the year 1990, when the alleged circular was issued. There is no assertion that there was any communication to the petitioner to exercise option soon after his promotion on 30.7.1993.

In view of the above, we find that in the absence of condition to option not known to the petitioner, he cannot be denied the benefit of pay fixation in terms of the condition of the notification amending Rules. Thus, the present writ petition is allowed. The respondents are directed to fix pay in terms of the option submitted considering the same to be within time and pay the arrears of salary within three months. In the event of non payment of arrears of salary within three months of the receipt of the certified copy of this order, the respondents shall pay interest @ 9% p.a. from the date the arrears are payable till the date of payment. The respondents shall also recalculate and pay arrears of pension within six months from the date of receipt of copy of the order.”

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this court is of the considered opinion that since the impugned orders Annexure P-5 and P-10 have been found to be patently illegal, they are hereby set aside.

Consequently, respondent no.2 is directed to grant all benefits to the petitioner, including financial benefits arising out of the policy decisions dated 31.1.2006 (Annexure P-2) as well as dated 1.8.2006 (Annexure P-4) at an early date and in any case within a period of three months from the date of receipt of a certified copy of this order. Since the financial benefits arising out of the abovesaid policy decisions have been illegally withheld, petitioner shall be entitled to receive all the financial benefits arising out of the abovesaid two policy decisions alongwith interest @ 9% p.a. from the date when the amount became due till the date of actual payment. If needful is not done within the stipulated period, petitioner shall be entitled for interest @ 12% p.a.

With the abovesaid observations made and directions issued, present writ petition stands allowed, however, with no order as to costs.

23.1.2015
GS

(RAMESHWAR SINGH MALIK)
JUDGE