

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP No. 1915 of 2016

Date of decision:-22.04.2016

Brahma Devi

...Petitioner

versus

DHBVNL and others

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Jagbir Malik, Advocate
for the petitioner.

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

RITU BAHRI , J.

Petitioner has approached this Court praying for issuance of writ in the nature of certiorari for quashing order dated 29.04.2002 (P-6) passed by respondent No. 3 vide which the deceased-husband of the petitioner was removed from service.

The deceased-husband of the petitioner was appointed as Line Supdt. Grade-II on 07.11.1967 with the Haryana State Electricity Board now respondent-DHBVNL. Thereafter, one F.I.R No. 197 dated 23.03.1999 was registered against him at P.S. Rewari u/s 7 of the Prevention of Corruption Act, 1988. Subsequently, he was placed under suspension, vide order dated 30.03.1999 (P-1). He was then served with

a charge sheet dated 20.02.2001 (P-2) for imposition of major penalty on the allegation of registration of F.I.R, to which he submitted reply on 11.04.2001. In the meantime, deceased-husband of the petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of six months along with fine of Rs.1000/-, vide judgment dated 21.02.2002 (P-4). The husband of the petitioner then filed an appeal against the above said judgment, which was admitted by this Court on 14.03.2002 and sentence was suspended, vide order dated 14.03.2002.

During the pendency of the appeal, the deceased-husband of the petitioner was removed from service by respondent No. 3, vide impugned order dated 29.04.2002. Thereafter, husband of the petitioner expired on 20.01.2005 during the pendency of appeal. However, the appeal was pursued by the petitioner and the appeal was finally dismissed on 17.07.2013 (P-8). The petitioner challenged the judgments before Hon'ble the Supreme Court, which was also dismissed on 15.09.2015 and hence the present writ petition.

Learned counsel for the petitioner has vehemently argued that the husband of the petitioner had served the department for 34 years, 05 months and 22 days and has unblemished record and merely on the basis of one F.I.R under the Prevention Act, the husband of the petitioner cannot be directly dismissed from service and the department by taking a lenient view by taking into consideration the

fact that the husband of the petitioner had completed the qualifying service for pensionary benefits, could order for voluntarily retirement of the husband of the petitioner, so that his family could get his earned dues like gratuity, commutation of pension and leave encashment etc.

Learned counsel for the petitioner by relying upon cases '***Hari Ram v. DHBVNL and others, 2006 (2) SCT 112 and Man Singh vs. State of Haryana and others, 2010 (1) SCT 604***' contends that the dismissal is not automatic in case of conviction and before passing such order authority has to consider all other material including the length of service of the employee.

Unfortunately, the aforesaid judgments will not be applicable to the facts of the present case as in ***Hari Ram case (supra)***, F.I.R was registered under Sections 302, 307 and 148 IPC, which are not related to his official duties and in ***Man Singh's case (supra)*** as well, F.I.R was registered under Sections 148/149/325/307/323/149 IPC.

In the present case, the conviction of the husband of the petitioner was upheld upto Hon'ble Supreme Court and just because he had completed 34 years, 05 months and 22 days does not entitle him to be retained in service, after he was found guilty of accepting bribe from the complainant. As per Regulation 7 of Prevention of HSEB Employees (Punishment & Appeal) Regulations 1990, no inquiry/show cause notice

was required to be given to the petitioner, as he has been convicted by a Court of law on criminal charges. This activity of the petitioner results in the loss of credibility of the utility in the eyes of the public.

Moreover, the husband of the petitioner expired on 20.01.2005 and impugned order was passed on 29.04.2002 and he has not challenged the impugned order for a period of almost two and half years and kept silent and thus the said order has attained finality.

Learned counsel for the petitioner further relied upon a judgment of Hon'ble the Supreme Court in a case of ***Basanti Prasad vs. The Chairman, Bihar School Examination Board and others, 2010(1) SLR 503.***

This judgment will not come to the rescue of the petitioner as in this case the employee died during the pendency of the appeal and his wife was granted permission to prosecute criminal appeal and finally order of acquittal was passed in 2002 and the wife was denied the back wages and retiral benefits of her husband. Hon'ble the Supreme Court allowed the writ petition and held since employee or his widow could not have questioned termination order till employee was acquitted by Appellate court, no negligence or laches or acquiescence on part of widow, which may disentitle her or grant of a writ. The writ petition was allowed.

In the present case, the husband of the petitioner also died

during the pendency of the appeal but his wife went up to the Hon'ble Supreme Court but the conviction of his husband was upheld till Hon'ble Supreme Court .

For the discussion made above, no ground is made out to quash impugned order dated 29.04.2002 (P-6), as the husband of the petitioner was facing criminal charge relating directly to his official duties.

The writ petition is accordingly dismissed.

(RITU BAHRI)
JUDGE

22.04.2016

G Arora