

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 23677 of 2016 (O/M)
Date of decision : 9.12.2016

Sukhwinder Kaur

..... Petitioner (s)

Versus

State of Punjab and others

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Gangeshwar Walia, Advocate, for the petitioner.

Mr. Balwinder Singh Dhaliwal, erstwhile District Collector,
Tarn Taran, now posted as District Collector, Ferozepur in
person with Mr. Avinit Avasthi, Assistant A.G. Punjab.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J. (ORAL)

In pursuance to the directions issued by this Court on 2.12.2016, Shri Balwinder Singh Dhaliwal, Ex. District Collector, Tarn Taran, now posted as District Collector, Ferozepur, has put in appearance. While appearing, he states that the order was inadvertently passed by misinterpreting the legal opinion wherein the opinion was only given to the effect that the official was required to be dismissed after his conviction. He has tendered apology and stated that in future, he will be careful.

Heard.

In this case one Avtar Singh, husband of the petitioner, who was working as a Revenue Patwari was convicted and sentenced by the learned Special Judge, Amritsar, on 31.7.2004 under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988, and was awarded rigorous

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imprisonment for two years in addition to fine. Aggrieved by the said judgment of conviction and order of sentence, Shri Avtar Singh filed a criminal appeal (CRA-1707-SB-2004) before this Court. In the appeal, the sentence of Shri Avtar Singh was suspended. It comes out that even after his conviction in the year 2004, Shri Avtar Singh continued to work as a Revenue Patwari and later on died in harness on 9.5.2007. After his death, ex-gratia, leave encashment, GPF of late Avtar Singh were released to the petitioner. However, when the case of family pension of the petitioner was being processed, the objections were raised. In the meanwhile, the appeal filed by Shri Avtar Singh against his conviction was dismissed by this Court on 4.2.2010 i.e. after his death. Thereafter, about more than seven years of his death, the District Collector (respondent) Shri Balwinder Singh Dhaliwal, who was then the District Collector, Tarn Taran, dismissed said Avtar Singh from service, vide impugned order 9.6.2014, conveyed to the petitioner on 27.7.2015 under the Right to Information Act, 2005, (Annexure-P-7).

On the last date of hearing, the State was directed to show cause as to how a dead man can be dismissed from service. The learned State counsel, on instructions, had stated that he has no objection if the impugned order is quashed with liberty to pass the order afresh in accordance with law. Otherwise also, an employee who is already dead could not be dismissed from service. Therefore, the impugned order dated 9.6.2014, conveyed to the petitioner on 27.7.2015 (Annexure-P-7) under the Right to Information Act, 2005, is hereby quashed. It is further observed that since Shri Avtar Singh died in harness and could not be dismissed from service, therefore, no action can be taken against his the family members

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by stopping their family pension. For all intents and purposes, the husband of the petitioner is deemed to be dead in harness and his family is entitled to all the benefits as if a serving employee die in harness after ignoring his conviction, which was subsequently affirmed by this Court. Since the petitioner died about seven years back, the State is directed to take steps to release family pension and gratuity to the petitioner within two months from the date of receipt of certified copy of this order and consider the case of the petitioner's son for appointment on compassionate ground in accordance with the existing rules and instructions and pass necessary orders without being influenced by the fact that the petitioner had approached this Court.

The present writ petition is accordingly allowed.

(KULDIP SINGH)
JUDGE

9.12.2016
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes