

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 2934 of 2016**

Bhagwati Bai Yadav Wd/o Late Chhahuwa Ram Yadav, Aged About 58 Years R/o Block Colony, Raigarh Road Dharamjaigarh, District Raigarh (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary Department Of Agriculture, Mantralaya Mahanadi Bhawan, New Raipur, District Raipur (Chhattisgarh)
2. Director (Agriculture) Directorate Raipur, District Raipur (Chhattisgarh)
3. Joint Director (Agriculture), Bilaspur, District Bilaspur (Chhattisgarh)
4. Sub Divisional Officer (Agriculture) Dharamjaigarh, District Raigarh (Chhattisgarh)

---- Respondents

Shri Shivendra Bharadwaj, counsel for the petitioner/s.
Shri Manish Nigam, Panel Lawyer for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava**CAV Order****13/10/2017**

By this petition, under Article 226 of the Constitution of India, the petitioner, widow of the deceased employee, has prayed for direction for disbursement of the retiral dues of her deceased husband and also fixation of pension and family pension.

2. The factual backdrop of petition as stated in the petition is that the husband of the petitioner – Chhahuwa Ram Yadav, while working as Assistant Grade – III in the office of Sub-Divisional Officer, Agriculture, Dharamjaigarh was placed under suspension on 04/03/2010 on the allegation of fraudulently withdrawing an amount of Rs.14,72,000/- from the GPF account of the colleague employees. This led to institution of departmental enquiry and registration of criminal case against him.

However, during the pendency of the departmental enquiry and criminal case, Chhahuwa Ram Yadav died on 29/07/2013. It is the case of the petitioner that upon death of her husband, departmental enquiry as well as criminal case, both attained natural demise.

3. The petitioner's grievance is that the allegations and insinuation against her husband has remained as it is and not proved in any legal proceedings either in the criminal case or in the departmental enquiry but even then, on the basis of the allegations only, the petitioner is only being paid provisional pension and family pension has not been provided to the petitioner.

Learned counsel for the petitioner argued that after the death of the petitioner's husband, the departmental enquiry and criminal case, without having culminated in a clear finding of guilt, by itself, without anything more, could not be made a basis to forfeit dues which were payable to the petitioner as the nominee of her husband after his death. According to learned counsel for the petitioner and as averred in the petition, the amount allegedly fraudulently withdrawn from the GPF account of the employees have already been returned way back in the year 2010, evident from receipt (Annexure P/4).

4. In denial of petitioner's claim, learned State counsel submitted that there were serious allegations of fraudulent withdrawal of Rs.14,72,000/- from GPF Account of colleague employees against the deceased husband of the petitioner, which led to his suspension on 04/03/2010 and initiation of criminal case as also departmental enquiry which could not be concluded on account of his death on 29/07/2013. It is further submitted that the petitioner's husband retired from service on 31/05/2013 and died only thereafter, on 19/07/2013. As he retired during his suspension upon attaining the age of superannuation, in the background of allegations of embezzlement, the amount of retiral dues which were otherwise payable to the deceased have been adjusted

against alleged embezzlement.

5. After hearing learned counsel for the parties, this Court is of the view that only on the basis of allegations, retiral dues, which were payable to Late Chhahuwa Ram Yadav and family pension, to which the petitioner being widow of the deceased is entitled to, cannot be withheld.

6. It is an admitted position that there were certain allegations against the deceased employee that he had embezzled certain amount from the GPF account of the colleague employees for which, he was suspended also, proceeded against departmentally and criminal proceedings were also initiated but allegations have not culminated in any finding, either in departmental or criminal proceedings. The respondents have not disputed the factual position that due to death of Chhahuwa Ram Yadav, criminal case and departmental enquiry both attained their natural demise without the same having been brought to any logical conclusion. The reason for withholding of retiral dues of the deceased employee which was otherwise payable to the petitioner and non-fixation of family pension is that the other employee against whom allegations are leveled, have approached this Court by filing WPS No.3568/2015 which is still pending. It is also stated that the criminal case No.368/2008 is pending and therefore, the petitioner is being paid anticipatory pension and other dues would be payable only upon conclusion of those proceedings.

The petitioner has placed on record, a copy of order dated 09/12/2015 passed by the State Government which clearly shows that the departmental enquiry against the deceased employee has been closed on account of his death. The said order does not contain any direction to withhold the retiral dues of the deceased employee. Moreover, a copy of order dated 06/04/2014 of the criminal case pending before the Judicial Magistrate, First Class, Dharamjaigarh also shows that the criminal case against the deceased employee Chhahuwa Ram has been closed due to his death.

7. Learned counsel for the State could not satisfy this Court with reference to any provisions contained either in the Chhattisgarh Civil Services Pension Rules, 1976 or in any other law for the time being in force, authorising the respondents to withhold the retiral dues of the deceased employee or withholding of family pension to the petitioner, widow of the deceased employee. The relationship of master and servant as between the employee and the State is governed by statutory rules and regulations and not on undisclosed policies which did not form part of the rule binding both the parties. Unless there is a specific order passed in accordance with the provisions contained in the Rules of 1976 or under any other law to forfeit the retiral dues which were payable to the deceased employee after retirement, the payment of the aforesaid amount could not be withheld only on the basis of certain allegations which have not culminated in finding of guilt and subsequent order of recovery. It is not a case that in any legally constituted proceedings, under the applicable service rules, even after death of delinquent employee, orders were passed under the rules authorising the respondents to withhold retiral dues even after death of the employee only on the strength of allegations of certain embezzlement.

Moreover, learned State counsel also could not bring to the notice of this Court any provision contained in the Pension Rules which could authorise the respondents to deprive the petitioner of family pension only on the basis of certain allegations against the deceased husband of the petitioner. It is not even a case that the criminal case or the departmental enquiry are still pending. In fact, both of them have been closed which is clear from the documents referred to hereinabove. In the order passed by the State Government closing the departmental enquiry against the husband of the petitioner, there is no order to the effect that on the basis of allegations in the department enquiry, which could not be proved upon death of the employee, retiral dues of the deceased employee are forfeited.

8. This Court is of the considered opinion that in the absence of there being any order of forfeiting pension and withholding retiral dues, the respondents are not authorised under the law to withhold retiral dues of the deceased employee. It needs no authority for the settled legal position that the retiral dues and the pension payable to the employee or family pension payable to the widow of the deceased employee are not bounties but a right, which cannot be taken away except in the manner prescribed under the law.

9. In view of above consideration, this petition deserves to be and is accordingly allowed. The respondents are directed to disburse forthwith the retiral dues to which the deceased employee was entitled upon his retirement and also fix the family pension amount of the petitioner under the Pension Rules of 1976. After preparation of family pension case, the petitioner shall be entitled to payment of arrears of family pension from the due date after adjustment of the provisional pension which is being paid to the petitioner. No order as to costs.

**Sd/-
(Manindra Mohan Shrivastava)
Judge**