

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 10561 of 1999 (O/M)
Date of decision : 3.5.2017

Smt. Padmawati (since deceased) through her LRs Petitioner (s)

Versus

State of Punjab and others Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Sandeep Bansal, Advocate, for the petitioner.

Mr. R.S. Pathania, Deputy Advocate General, Punjab,
for respondents No. 1 and 5.

Mr. Jagdeep S. Virk, Advocate, for respondents No. 2 to 4.

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)

Heard.

The husband of the petitioner, namely, Amar Singh Mandyal, joined Punjab P.W.D., Hydro Electric Branch, Jogindernagar, now succeeded by Punjab Electricity Board, on 1.4.1933, as per the extract from the appointment letter Annexure-P-1, i.e. before the partition of the country. He was later on promoted as Line Superintendent and discharged from service on medical ground on 15.5.1956. He was not paid any pensionary benefits. The said Amar Singh Mandyal died on 24.11.1978. The petitioner, who is the wife of the deceased employee and has now been succeeded by the legal heirs claimed that she has been making requests to respondents for grant of all the terminal benefits including GPF, full family pension etc., but the same are declined.

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Respondents have taken the stand that the husband of the petitioner was appointed before the partition of the country and the appointment letter was issued from Lahore. After so many years, no record is available. There is nothing on record to show that the services of said Amar Singh were ever regularized. He was discharged from service on 15.5.1956 on medical ground. The family pension scheme for the first time was introduced with effect from 1.7.1964. Therefore, the petitioner is not entitled to family pension. It was further disclosed that the petitioner has concealed the fact from this Court that earlier she had filed a civil suit for mandatory injunction in the Court of Sub Judge, Joginder Nagar, District Mandi (HP) on 8.8.1992, which was dismissed in default on 5.1.1995. It was stated that no record is available and the petitioner is not entitled to the relief, claimed by her.

In the replication, the petitioner admitted the fact of filing of the civil suit before the Sub Judge, Joginder Nagar, District Mandi (HP).

I have heard the learned counsels for the parties and have also carefully gone through the file.

At the very outset, it comes out that the petitioner had earlier approached the Civil Court, Joginder Nagar (HP), claiming the grant of benefit of pension and GPF of her late husband. If any claim is not made in the said civil suit, filed in the year 1992, the same is deemed to have been abandoned under Order 2 Rule 2 of Code of Civil Procedure. The said civil suit was dismissed in default on 5.1.1995 and was never got restored. Once the petitioner has approached the civil court, the present writ petition is nothing, but misuse of process of law. In these circumstances, this is not a fit case where the writ jurisdiction should be exercised.

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Now, coming to the merits, there is nothing on file to show that when on 15.5.1956, the husband of the petitioner was discharged from service on medical ground, the pension scheme was in force and was applicable to the case of the husband of the petitioner. From 1956 till his death in the year 1978, husband of the petitioner did not approach any authority or Court to claim pension. The present writ petition was filed in the year 1999 i.e. after 43 years of discharge of husband of the petitioner from service, when the entire pre-partition record is lost. Even the record thereafter is not available in the office. The petitioner had to establish her claim.

The learned counsel for the petitioner has produced some Pension Rules of 1952, which were applicable to the employees, who joined the service on or after 10.6.1951, which is not so in the present case.

In these circumstances, I am of the view that the present writ petition is nothing, but misuse of process of law to get undue advantage due to loss of record after more than 5 decades and also by concealing the fact of filing the civil suit before the Sub Judge, Joginder Nagar (HP). Keeping in view the fact that the petitioner herself has died, this Court refrains from imposing heavy costs upon the petitioner.

In view of the above, the present writ petition is dismissed.

(KULDIP SINGH)
JUDGE

3.5.2017
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes