

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM No.15534-CWP of 2018 in/and
CWP No.2665 of 2015
Date of Decision: 13.11.2018

Dhanpati and others

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ravinder Malik, Advocate,
for the petitioners.

Mr. Harish Nain, AAG, Haryana.

RAJIV NARAIN RAINA, J.(Oral)

CM-15534-CWP-2018

1. Notice of the application.
2. Mr. Harish Nain, AAG, Haryana accepts notice.
3. The application is allowed and amended writ petition is taken on record.

Main Case

4. In view of the order proposed to be passed limited to set right a violation of the principle of *audi alteram partem*, there is no need to call for a reply from the State.
5. During the pendency of this petition, the Haryana Roadways has passed an order withdrawing family pension from the petitioning widow of the late driver and denying to her release of gratuity and other pensionary dues.

6. The husband of the petitioner Hari Ram was retired from service invoking Rule 5.16 of Punjab Civil Service Rules, Vol. 1 Part II on medical grounds on October 29, 2010. The petitioner's husband died on November 11, 2014. After his death she was allowed family pension. Family pension has been stopped by the impugned order for which this petition has been amended to lay challenge to that order. The order not only denies family pension but also gratuity etc. in the account of the deceased employee. It may be noticed that when Hari Ram was retired from Government service after being declared medically unfit by office order dated October 29, 2010 it was made subject to the condition of final outcome of a criminal revision pending against him. The petitioner was convicted by the Court of the Additional Chief Judicial Magistrate, Panipat and sentenced to one year imprisonment and was imposed fine or ₹1000/- for committing offences under Sections 279 and 304-A IPC. Appeal filed by late Hari Ram was dismissed by the Sessions Court, Panipat by order dated July 09, 2005. Criminal Revision No.1251 of 2005 was also dismissed by this Court on March 28, 2011. Against the orders of this Court, Special Leave to Appeal (Crl) No.(s) 5563/2011 was filed in the Supreme Court which was dismissed on August 23, 2011. The conviction and sentence was upheld till the Final Court.

7. The General Manager, Haryana Roadways, Karnal while passing the impugned order on September 21, 2018, seven years after the dismissal of the revision has not heard the petitioner and has, therefore, breached the principles of natural justice. A reasonable opportunity should have been given to the widow to state her case against any order

contemplated that would be adverse to her interest. Assuming that late Hari Ram was dismissed soon after the orders were passed by the Supreme Court while he was still alive then he could have urged that he had the protection of Article 311 of the Constitution of India that guaranteed that dismissal could only be upon conduct which led to the conviction. In this exercise, if it had been carried out, the General Manager, Haryana Roadways, Karnal would have had to examine not only the judgments but the evidence upon which the conviction was based and then to have formed opinion as to whether the petitioner's husband was guilty of manslaughter or there were any mitigating circumstances not from the standpoint of criminal law but from the standpoint of service law where the choice of punishment is among several, both major and minor. The General Manager, Haryana Roadways, Karnal has recorded that the claim through Hari Ram for entitlement to pension and gratuity would be admissible only on the basis of entire satisfactory service career and because of the conviction it cannot be said that the entire service career was satisfactory as per Rule 2.2 (a) (ii) of the Punjab Civil Service, Rules, Vol-II. One of the reasons given in the order is that the allegations levelled against Hari Ram were based upon a charge connected with his position as Government servant. Hari Ram has been held not entitled to pensionary benefits with consequential fall-out on the widow.

8. Without expressing any opinion on the merits of the case, the impugned order deserves to be re-visited by the General Manager, Haryana Roadways, Karnal by passing an order after putting the petitioner to notice and offering her an opportunity of hearing so that she can make her defence in writing that such an order deserves not to be passed depriving her of

gratuity and withdrawal of family pension which has been paid to her for a sufficiently long time till it was discontinued.

9. As a result, the petition is partly allowed, the impugned order dated September 21, 2018 is quashed with a direction to the competent authority to pass a fresh order in accordance with law. Payment of gratuity will await the final outcome of the remand proceedings. However, family pension will be restored to the petitioner and shall continued to be paid till the conclusion of the fresh proceedings and till one month thereafter to enable the petitioner to approach Court seeking judicial review, in case, the final order is still adverse to her interest. The reason which persuades me to pass such an order is that the innocent widow cannot be punished for the deeds of her husband in a fatal motor accident on a charge of rash and negligent driving of a Punjab Roadways bus. She was not on the steering wheel of the ill fated bus.

**(RAJIV NARAIN RAINA)
JUDGE**

13.11.2018
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Whether speaking/reasoned	Yes
Whether reportable	Yes