

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

**CWP NO. 17137 of 2011(O&M)
DATE OF DECISION : 01.08.2019**

Neel Kamal

... Petitioner

versus

Punjab State Warehousing Corporation & Ors.

... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : None for the parties.

ARUN MONGA, J. (ORAL)

1. 12 years after the death of an employee, who died in harness on 12.10.1998, the respondent Punjab State Warehousing Corporation(for brevity, the Corporation) awarded posthumous punishment whereby recovery of an amount of Rs.8,15,653.45 has been directed from his wife vide an order dated 24.05.2011(Annexure P-6), impugned herein.

2. Succinctly, the factual background. Petitioner was appointed as Accounts Clerk on 04.02.1999 on compassionate ground as her husband died in harness all of a sudden. Ever since she has been performing her duties diligently without any complaint against her.

3. As bolt from blue, after about 10 years, she received a show cause notice dated 23.06.2008 addressed to her minor son stating that a sum of Rs. 9,06,914.11 was to be recovered from her minor son. The petitioner being the natural guardian, vide her letter dated 25.07.2008 requested the respondent Corporation for supplying the necessary details as she was unaware of the details qua the recovery. The petitioner sought status with

regard to appeal, if any, qua punishment order and vide communication dated 02.03.2009(Annexure P-3) it was conveyed that the appeal filed by her late husband would be heard in due course. Notwithstanding, the respondent Corporation vide its communication dated 08.05.2009 stated that in case minor son did not deposit the amount to be recovered, then proper legal action would be taken against him. Matter rested there.

4. It seems that respondent Corporation later realized the fallacy of the situation and let the matter rest and did not initiate any further action against minor son. The tide suddenly changed its direction once again and this time instead of minor son, it headed towards the petitioner as she was served with a fresh notice dated 19.10.2009(Annexure P-2) whereby an amount of Rs. 8,15,653.45 was demanded, allegedly recoverable from her late husband. The petitioner was handicapped for lack of necessary information qua the recovery, so she requested the respondent Corporation to supply the necessary documents and the status of the departmental enquiry, if any, initiated against her late husband and status of appeal, if any, preferred by her late husband against the punishment order, before appropriately responding to the legal notice.

5. In this background, the petitioner was served with yet another show cause notice dated 28.05.2010(Annexure P-4), impugned herein, calling upon her as to why the recovery be not effected from her as per provisional opinion formed by the respondent Corporation. At the same time, petitioner was granted opportunity to put her point of view. In response thereto, the petitioner submitted her reply dated 30.06.2010 (Annexure P-5) and stated that proceedings initiated against her late husband are required to be dropped since he had passed away and in any

case, be kept in abeyance as the appeal was still pending adjudication. However, vide impugned order dated 24.05.2011(Annexure P-6) the contentions of the petitioner were rejected and it was also noted that qua the recovery sought to be effected from the petitioner, her late husband had not filed any appeal.

6. In the return filed by the respondent Corporation, dismissal of the writ petition has been sought on the ground that the petitioner was offered job on compassionate ground after the death of her husband in harness, therefore, amount qua punishment imposed on her husband is recoverable from her. It is stated that a recovery of Rs.16,98,440.75 was imposed on her late husband vide order dated 01.07.1997(not placed on record) for damages of wheat stocks at State Godown Khanori. After deducting the amount of Rs.7,45,580.64, an order was passed(again not placed on record) for recovery of Rs.9,52,860.52 from her late husband. But on account of his death, the aforesaid amount could not be recovered. After reconciliation of the accounts of her late husband, a sum of Rs.8,15,653.45 is still payable from the balance of Rs.9,52,860.52 and, therefore, the petitioner being the legal heir is liable to pay the said amount, which was to be recovered from her late husband.

7. As regards the contention of the petitioner that the appeal filed by her late husband is still pending, it has been stated that her husband never filed any appeal and letter dated 02.03.2009(Annexure P-3) was inadvertently issued as one Kewal Krishan had filed an appeal and not the husband of the petitioner i.e. Kewal Kumar. The said letter conveying appeal is pending was, thus, stated to be a clerical mistake.

8. None appears, when the case has been called out, but such a

pre-posturous and lackadaisical stand has been taken by the disciplinary authority in the impugned order and even in the return filed to the writ petition, that I do not deem it necessary to seek any assistance from the learned counsel of either side.

9. A perusal of impugned order shows that the same is *ex facie* not sustainable in the eyes of law and is liable to be set aside, assuming that every word stated therein is a gospel truth. The impugned order states that even though as per Punjab Government instructions dated 23.06.1992 in case of death of an employee, case pending against him is required to be closed. But since an opportunity of personal hearing was granted to the late husband of the petitioner by the Managing Director of the Corporation before awarding the punishment of recovery and, therefore, the said instructions are not applicable in the present case. The impugned order is completely silent as to the denial of right of appeal to the husband of the petitioner, had he been alive. Neither the punishment order passed against the husband of the petitioner was provided to her despite asking for the same nor the same has been placed before this Court so as to see the veracity/ legality of the same. To effect recovery after such an inordinate delay itself is fatal to the right of the Corporation, if any, to make the recovery against the deceased employee.

10. The other strange defence, completely impalatable, by the respondent Corporation is that since the petitioner had been given appointment on compassionate ground and, therefore, she is liable for the recovery to be effected from her deceased husband. If that were the case, there is nothing on record to show that the appointment was offered to the petitioner on a pre-condition that pending dues of her husband are to be paid

by her. Her appointment letter dated 04.02.1999(Annexure P-1) does not indicate with respect to any such demand of recovery qua her deceased husband. And now, after a passage of 10/12 years, the alleged amount due to be recovered from her husband is being imposed as a penalty on her. As already noted above, impugned orders are liable to be set aside merely on the short ground of delay itself.

11. I am also not in agreement with the cavalier justification rendered in the written statement by pleading that the communication dated 02.03.2009(Annexure P-3) was a clerical mistake. Petitioner has been repeatedly representing before the respondent Corporation and seeking the requisite information from time to time which though was never provided. But in letter dated 02.03.2009(Annexure P-3) which is addressed as c/o Neel Kamal(petitioner), it is unequivocally conveyed that appeals would be heard in due course. Thereafter, it is for the first time in the impugned order dated 24.05.2011(Annexure P-6) it is stated that no appeal was filed, when in the course of personal hearing the petitioner once again pointed that the appeal is not being adjudicated. Prior thereto, respondent Corporation never conveyed to the petitioner despite specific representations that appeal is pending. Be that as it may, even if it is presumed that no appeal was filed by the husband of the petitioner, it is but natural that the sole reason thereof is that he died prior to filing of the appeal. In such an eventuality, the husband of the petitioner was entitled to the benefit of relevant Government instructions and it was highly improper on the part of punishing authority to brush aside the objection of the petitioner that since her husband had been heard by the Managing Director and before imposition of punishment by the disciplinary authority, the said instructions would not be applicable to him.

12. There is a deliberate and stoic silence with regard to abating of proceedings due to denial of the right of the husband of petitioner to file an appeal against the punishment order on account of his death. In any case, I have already observed that the impugned recovery sought to be effected from the petitioner suffers from vice of delay. Recovery notices were served on the petitioner after a lapse of 10/12 years. The respondent Corporation cannot take advantage of its own negligence, having once slept over the matter for more than a decade by taking a specious plea that the recovery could not be earlier enforced against the minor son of the deceased husband and, therefore, the petitioner is now liable for the same. In any case, recovery, if maintainable, on the ground of petitioner being legal heir, was to be effected by way of instituting appropriate civil suit subject to law of limitation. That too is now barred by the limitation due to the inordinate delay attributable totally to the respondent Corporation.

13. In view of my discussion above and the reasons contained therein, seeing from any angle, none of the defence of the respondent Corporation is sustainable and the impugned order dated 24.05.2011 (Annexure P-6) is accordingly quashed.

14. No order as to costs.

(ARUN MONGA)
JUDGE

August 01, 2019

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| 1. Whether speaking/ reasoned: | Yes/ No |
| 2. Whether reportable: | Yes/ No |