IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-19043-2016
Decided on: 11.04.2019

Smt. Subhash Rani ....Petitioner

Versus

Food Corporation of India & another ...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.D.D.Bansal, Advocate, for the petitioner.

Mr.K.K.Gupta, Advocate, for the respondents.

G.S. SANDHAWALIA, J. (Oral)

Challenge in the present writ petition, filed under Articles 226/227 of the Constitution of India, is to the order dated 13/23.03.2015 (Annexure P-15) whereby the payment of arrears of salary and back-wages, for the period 27.02.2004 to 31.10.2007, due to the petitioner's husband, Shri Amrit Lal, Ex-Picker, have been declined. Similarly, prayer for grant of family pension has also been made from the date of superannuation till the date of payment.

The reason for denial by the respondents was on account of the fact that the said deceased-employee had never worked for the said period, since he had been dismissed from service on 27.02.2004 (Annexure P-4) on account of his conviction in a matrimonial dispute of his son on 06.11.2003.

It is a matter of record that on 07.10.2013 (Annexure P-8), the criminal appeal, filed by the family members including the petitioner-wife and the deceased-husband, was allowed partly, to the extent that the parents, as such, were given the benefit of acquittal whereas the son, Navjot Kumar had to undergo the sentence already undergone. In the meantime, Shri Amrit Lal had already reached the age of superannuation on 31.10.2007 and eventually, he expired in November, 2010, prior to the decision of the appeal. Resultantly, the other retiral benefits, as such, had been granted, except for the salary and back-wages for the period from 27.02.2004 to 31.10.2007, on the principle of 'No work no pay'. The penalty of dismissal from service was also set aside and the employee was, accordingly, reinstated in service from the date of dismissal. The same was done under Regulation 66(8) of the Food Corporation of India (Staff) Regulation, 1971.

Counsel for the petitioner has relied upon the said Regulations, to submit that where there is acquittal, the person would be entitled for full pay and allowances other than conveyance allowance. Said Regulation reads as under:

> "66(8) When the suspension of an employee is held to be unjustified or not wholly justified; or when an employee has been dismissed or suspended is reinstated, the disciplinary, appellate or reviewing authority, as the case may be, whose decision shall be final, may grant him for the period of his absence from duty;
> (a) if he is honourably acquitted, the full pay and allowances other than conveyance allowance, to which he would have been entitled, if he had not been dismissed or suspended, less the subsistence allowance"

From a reading of the above rule, it would be very clear that the benefits were to be given *per se* on reinstatement in case of honourable acquittal.

Counsel for the respondents has relied upon judgments of the

Apex Court in **Deputy Director of Collegiate Edu. (Admn.), Madras Vs. S.Nagoor Meera 1995 (3) SCC 377**, **Ranchhodji Chaturji Thakore Vs. The Superintendent Engineer, Gujarat Electricity Board 1996 (11) SCC 603**, **Union of India & others Vs. Jaipal Singh 2004 (1) SCC 121**, **Baldev Singh Vs. Union of India & others 2005 (8) SCC 747**, **State Bank of India & another Vs. Mohammed Abdul Rahim 2013 (4) SCT 133**, and the judgment of this Court in **Balbir Singh Vs. State of Haryana & others 2014 (3) SCT 451**, to submit that on account of not having worked, the petitioner was not entitled for the said dues of her husband. It was further the contention that on account of a private dispute, as such, the benefits had been withheld as the litigation was not initiated at the instance of the employer.

Per contra counsel for the petitioner has relied upon the judgment of this Court in **Sucha Singh Vs. State of Punjab & others 2014 (1) SCT 183**, which was a case also dealing with the statutory Rule 7.3 of the Punjab Civil Services Rules, Vol.I, Part I, Chapter VII.

Counsel for the respondents has tried to distinguish the said judgment on the ground that it was a case where the conviction was at the behest of the employer under the Prevention of Corruption Act, 1988.

However, in **Sucha Singh** (supra), the judgments of **Jaipal Singh** (supra) and **Ranchoodji Chaturji Thakore** (supra) had also been considered. Once the Rules, as such, provide that the benefit has to be given, reliance upon the judgments, as such, would be of no help to counsel for the respondents, especially since the acquittal is on merits.

The relevant portion reads as under:

> "22. Amrit Lal and Subhash Rani were living separately at Kurali. Monika was residing with Navjot Kumar at Mohali. It so seems that due to matrimonial dispute Amrit Lal and Subhash Rani his wife have separated his son and settled them at Mohali. This fact find mention in the complaint itself. So, after separation, the demand of dowry by these two appellants is not trustworthy, moreso when no specific instance has been mentioned. Amrit Lal was himself a Government employee and may be drawing good salary. So, the demand of dowry articles by Amrit Lal cannot be accepted. Otherwise also, the parties have arrived at compromise and complainant herself had stated at the Bar that she has no objection in accepting the compromise.
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> 23. So, in view of the above discussion, the appeal of Amrit Lal and Subhash Rani stands accepted and they stand acquitted from all the charges levelled against them. Accused Navjot Kumar stands acquitted under Section 313 of the IPC as discussed above."

The judgment of **Balbir Singh** (supra) is where the basic period of qualifying service was also not being fulfilled and despite repeated communications, the petitioner had failed to join duty and had been discharged and in such circumstances, the benefit of wages was denied whereas the employee, in the present case, was appointed way back in the year 1968. In **Mohammad Abdul Rahim** (supra), the provisions of the Banking Regulation Act, 1949 provided that the employee could not be retained in service and therefore, even though the employee was on bail, his services could not be utilized and the benefit was not given. In the case of **S.Nagoor Meera** (supra), the show cause notice had been quashed which had been issued on account of conviction, in view of the fact that the employer had been released on bail by the Appellate Court. Thus, the Apex Court was only considering the effect of the suspension of sentence order and that it did not amount to stay of conviction and thus, is not relevant to the present controversy.

It is clear that the petitioner is asking for a Mandamus, for enforcement of the payment of arrears and a Writ in the nature of Certiorari, for quashing the impugned order. Once the Rules provide a particular methodology which has to be followed by the respondents, they cannot turn around and say that they can choose, as such, to deviate from the Rules in question. Resultantly, the argument raised by counsel for the respondents is without any basis.

Qua the payment of family pension, the same has wrongly been denied on the ground that the official was dismissed from service of the Corporation and the same was ordered in the year 2004. The employee was given the benefit of reinstatement with all consequential benefits, vide the impugned order dated 13/23.03.2015 (Annexure P-15). In the reply to para No.23 of the writ petition, it has been stated that there was no contribution or deduction from the salary, as per the Employees Family Pension Scheme, 2004 and therefore, the petitioner has to deposit due amount towards the same and the case is to be taken up with the Employees Provident Fund Department. In replication, the petitioner has taken the stand that the benefit of family pension can be given by adjusting the payment of salary which is due from 27.02.2004 to 31.10.2007.

Resultantly, in view of the above discussion, the present writ petition is allowed, impugned order dated 13/23.03.2015 (Annexure P-15) is quashed. Respondents are directed to pay the arrears of salary and back-wages for the period from 27.02.2004 to 31.10.2007 and process the case of family pension of the petitioner, in view of the above stand taken in the replication. Needful be done within a period of 4 months.

11.04.2019 **(G.S. SANDHAWALIA)**
Sailesh **JUDGE**

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*