IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

230

CWP No.22453 of 2015
Date of decision: 12.04.2019

Ranjit Kaur **...Petitioner**

Vs.

Punjab State Power Corporation Ltd. and Ors. **..Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Shallie Mahajan, Advocate for
Mr. Sharwan Sehgal, Advocate
for the petitioner.

Mr. Amit Aggarwal, Advocate
for the respondents.

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HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the grievance of the petitioner is that the respondents wrongly recovered an amount of ₹5,88,771/- from the gratuity payable in respect of the services rendered by the late husband of the petitioner. A prayer has been made for refund of the said amount alongwith interest.

As per the facts mentioned in the writ petition, husband of the petitioner, namely, Rajinder Singh, was appointed as a Lineman in the Punjab State Electricity Board in September, 1985 and he was promoted as a Junior Engineer-II in September, 2009. While working as a Junior Engineer, husband of the petitioner died on 20.12.2012. After the death of the husband of the petitioner, provisional pension was granted to the petitioner and while calculating the grant of the pensionary benefits after the death of the husband of the petitioner in respect of the service rendered by him, respondents passed an order on 12.09.2013 (Annexure P-6) by which recovery of ₹5,88,771/- was ordered to be done.

Learned counsel for the petitioner states that in the order imposing the recovery, certain shortages of material were attributed to the late husband of the petitioner, due to which an amount of ₹5,88,771/- was recovered. The challenge is to the said order of recovery.

Upon notice of motion, respondents filed a reply justifying the recovery of an amount of ₹5,88,771/- which included shortage material amounting to ₹5,71,175/- and excess pay given to the husband of the petitioner amounting to ₹17,596/-. In the reply, respondents stated that after the death of the husband of the petitioner, a Committee was constituted for the issuance of No Due Certificate and the said Committee came to the conclusion that there was shortage of the material, which was entrusted to the late husband of the petitioner and, therefore, as the material was not accounted for, the Committee directed for the recovery. The relevant paragraph of the reply is as under:-

> *"6. That it is submitted that in the present case also the above stated procedure was followed and a committee was formed for settlement of the material at site (MAS) Accounts of the deceased JE as per Annexure R-1. That it is submitted that while checking the records for any dues, in the accounts of Major Works it transpired that the employee (husband of the petitioner herein) had not returned to the store goods worth Rs. 5,88,771/-. A true translated copy of the report of the committee is annexed herewith as Annexure R-4. That the fact of the goods worth Rs. 5,88,771/- not accounted for by the deceased JE was noted in the No Due Certificate by the concerned DDO as well. A copy of the No Due Certificate of the*

deceased JE i.e. the husband of the petitioner is annexed herewith as Annexure R-5. That it is submitted that as per the procedure the No Due Certificate alongwith the noting was thereafter sent to the Chief Account Officer, Pension (Audit Section), Patiala who after deducting an amount of Rs. 5,88,771/- from the gratuity of the deceased JE released the retiral benefits of the deceased employee to the petitioner.

7. *That it is submitted that there was no penalty either minor or major imposed on the husband of the petitioner under PSPCL Employees Punishment and Appeal Regulation, 1971. It is submitted that as enumerated above the deductions from gratuity were made on account of discrepancy in the material at site (MAS) Account. It is therefore submitted that in the present circumstances the procedure enumerated in PSPCL Employees Punishment and Appeal Regulation, 1971 does not apply and therefore has no application herein. It is submitted that as enumerated above the procedure enumerated in Annexure R-1 has to be followed for ascertainment of MAS Accounts in cases where the JE dies during execution of work and the same has been followed by the respondent corporation as well.*

8. *That it is further submitted that the deductions made from gratuity of the deceased are not in the form of any penalty or recovery imposed therefore the guidelines of different courts relating to recoveries from employees as reiterated by the petitioner in the corresponding petition are not applicable to the present case."*

During the course of hearing on 11.03.2019 it transpired that no details of the report of the Committee as mentioned in the reply, according to which the recovery was being effected by the respondents were given in the reply. No report of the Committee was attached with the reply and further, there were no details as to when the Committee met and decided that the shortages of the material is attributable to the late husband of the petitioner. It is also not clear as to whether the report of the Committee was prior to the death of the husband or thereafter? In the absence of any report, counsel for the respondents sought time to re-consider the case in respect of the recovery, which was ordered from the pensionary benefits given to the petitioner after the death of her husband in respect of the services rendered by him. Today, learned counsel for the respondents has produced before this Court an order dated 01.04.2019, which has been passed by the respondent-Board after reconsideration of the case.

Learned counsel states that respondents after reconsideration of the case passed an order dated 11.04.2019. As per the said order, upon reconsideration, keeping in view the comments received from the Deputy Chief Engineer dated 29.03.2019, the respondents have decided to refund the amount of ₹5,71,175/- which was deducted by the department and the said amount has already been received by the petitioner on 02.04.2019. Order dated 11.04.2019, produced before this Court today is as under:-

> "Office Order No. 234 Dated: -11.04.2019
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> The amount of shortage Rs. 5,88,771/- (Rs. 5,71,175/-) on account of shortage of goods/material + Rs. 17,596/- surplus salary) stood pending against Sh. Rajinder Singh J.E. Admin: Division Lalto Kalan was recovered from the pensionary benefits payable to his legal heirs. With regard to affecting this recovery, the instructions prescribed by department were not complied by Admin: Division

Lalto Kalan. The mention of constituting a committee has been given in speaking order prepared by Admin: Division Lalto Kalan, but as per information given vide its C.C. No. 1529/30 Dated 14.03.2019 any such committee was not constituted. As per Circular No. 5/2005 of Finance Department, it is compulsory to constitute a committee for preparing M.A.S. Accounts of J.E.s who die during service. In which regard, wife of the deceased employee has filed CWP No. 22453 of 2015 in Hon'ble Punjab and Haryana High Court.

In above case as per information given by Deputy Chief Er: Sub urban Circle, Ludhiana vide letter No. 3197 Dated 29.03.2019 the goods/material withdrawn by the deceased employee vide Estimate No. 12056 were received by the then Contractor Pandher Electrical, Pohir (Sukhwanshpal Singh Pandher) but during spot inspection by Sub Divisional Officer Lalto Kalan less material was found used at the spot, in which Rs. 5,71,175/- was of shortage of goods/material and Rs. 17,596/- was of surplus salary paid.

Hence, as per comment received from Deputy Chief Er: Admin: Sub urban Division, Ludhiana vide letter No. 3197 Dated 29.03.2019, order is hereby passed to refund Rs. 5,71,175/- (Cheque No. 960014 Dated 02.04.2019 has been received by the wife of deceased employee on dated 03.04.2019, who has filed the above C.W.P.) of the shortage of goods/material withdrawn by deceased employee vide Estimate No. 12056 and received by Contractor Pandher Electrical, Pohir (Sukhwanshpal Singh

Pandher), which was recovered from the pensionary benefits payable to the legal heirs of the deceased and to recover this amount from the Contractor.

Sd/-
Chief Engineer/Admin: Central,
PSPCL, Ludhiana".

Counsel for the petitioner states that the husband of the petitioner died in December, 2012 and the amount was recovered on 12.09.2013 (Annexure P-6)and as now the respondents themselves admit that the said amount was wrongly deducted, the petitioner will be entitled for interest on the said payment.

Counsel for the respondents on the other hand states that once the amount has been refunded, the claim of the petitioner for the grant of interest is unjustified.

From the pleadings above, it transpires that once the amount of Rs. 5,71,175/- was recovered on account of shortage and the said recovery was done on the basis of some Committee report, which never existed, the deductions which was made from the benefits accruing to the petitioner after the death of her husband, were totally arbitrary and illegal. The said amount was recovered without issuance of any how cause notice from them. Further, the respondents have now themselves realised that the recovery was bad in law and, therefore, they have already refunded the amount as per order dated 01.04.2019.

A Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab, 1997 (3) SCT 468*** has held that where an amount which an employee was entitled for after the retirement and the release of the same has been delayed without any valid justification, the employee will be entitlted for interest. The relevant paragraph of said judgment is as under:-

> *"Since a Government employee on his retirement becomes immediately entitled to pension and other benefits in terms of the Pension Rules, a duty is simultaneously cast on the State to ensure the disbursement of pension and other benefits to the retirer in proper time. As to what is proper time will depend on the facts and circumstances of each case but normally it would not exceed two months from the date of retirement which time limit has been laid down by the Apex Court in M. Padmanabhan Nair's case (supra). If the State commits any default in the performance of its duty thereby denying to the retiree the benefit of the immediate use of the money, there is no gainsaying the fact that he gets a right to be compensated and, in our opinion, the only way to compensate him is to pay him interest for the period of delay on the amount as was due to him on the date of his retirement."*

In the present case, the recovery made from the petitioner was unjustified. Even as per the respondents themselves, the amount has already been refunded by them to the petitioner in April, 2019. The petitioner could not use that amount for more than 7 years and, therefore, it was only due to illegal action on part of the respondents, the petitioner could not use the amount to her benefit when she needed it the most i.e., after the death of her husband and, therefore, the petitioner will be entitled for interest on the said payment.

Even a Coordinate Bench of this Court in ***J.S. Cheema Vs. State of Haryana and others, 2014(13) RCR (Civil) 355,*** has held that where an amount has been detained by the department and use, for which an employee was entitled for, the employee will be entitled for interest of the said amount. The relevant paragraph of the said judgment is as under:-

> *"The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it."*

In view of the above, the petitioner is held entitled for interest on the amount of Rs. 5,71,175/- from the date the same accrued to the petitioner i.e., upon the death of the petitioner in December, 2012 at the rate of 9% till the amount was paid to the petitioner on 03.04.2019.

Let the respondents calculate the interest in purusance to this order within a period of one month from the receipt of the certified copy of this order and the amount so calculated, shall be disbursed to the petitioner within a period of one month.

The writ petition stands allowed in the above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

April 12, 2019
Pooonam Sharma

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No