

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

**LPA No.1398 of 2019(O&M)
In CWP No.4666 of 2016
Date of Decision: 03.10.2019**

Central Warehousing Corporation and Ors. ...Petitioners

Versus

Lachhami Devi ...Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

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Present: - Mr. R.S Badhran, Advocate for the petitioners.

HARINDER SINGH SIDHU, J.

1. This Letters Patent Appeal has been filed against the judgment dated 02.05.2019 of the Ld. Single Bench, whereby, the writ petition bearing CWP No.4666 of 2019 filed by the respondent has been allowed.
2. The respondent had filed the writ petition for quashing order dated 19.04.2006 whereby the service of her husband had been ordered to be terminated. She had also prayed for quashing of the calculation sheet dated 19.04.2012 (P.7) where-under an amount of Rs.6,24,559/- had been shown as outstanding against her husband on account of House Building Advance, HHG, Conveyance Allowance and interest thereon. It was also prayed that the appellants be directed to grant death-cum-retiral benefits of her husband including CPF, pension, gratuity, leave encashment etc. along with interest.
3. Husband of the respondent was appointed as Chowkidar with the appellant-Corporation on 14.07.1982. He was promoted as Warehouse

Assistant Grade-II on 07.02.1986. He suddenly went missing on 23/24.03.2004. DDR No.10 dated 30.03.2004 was recorded with the police. Respondent also informed the appellants vide communication dated 07.04.2004 that her husband had been missing for the last two months.

4. The appellant-Corporation initiated departmental proceedings against the husband of the respondent on the charge of unauthorized absence. A public notice was issued and enquiry proceedings were conducted ex- parte. Enquiry Report dated 15.02.2006 was submitted. A public notice was issued in March 2006. Finally order dated 19.04.2006 imposing the penalty of removal from service of the Corporation with immediate effect was passed against him.

5. Vide communication dated 08.05.2012, the respondent was informed that the outstanding due in the CPF account of her husband at the time of termination of his services was Rs.1,25,514/-, (employee share) and Rs.2,72,067/- on account of employer share. Vide letter dated 19.04.2012, she was informed that the amount including interest recoverable from her husband was Rs.6,24,559/-. The respondent served a legal notice dated 12.08.2015 claiming benefits of pension, GPF and gratuity due to her husband. However no response was received. Aggrieved, she filed the writ petition, which has been allowed vide the impugned order.

6. Ld. Single Judge noticed that after completion of seven years from the date when her husband went missing, the respondent and her children instituted a civil suit for declaration to the effect that her husband be presumed dead. They also sought a declaration of being co-owners in

joint possession of the land owned by him. They also sought correction of entries in the revenue records in the name of the respondent and her children. In the suit prayer was also made that the employer of her husband i.e Central Warehousing Chandigarh be directed to give all his service benefits to the plaintiffs therein. During the proceedings, the claim of service benefits was withdrawn. Qua the other reliefs the Civil Suit was decreed. It was held that the plaintiffs had proved that Harbans Lal- the husband of respondent had not been heard of by anyone who would have naturally heard of him if he had been alive since 23.02.2004. The plaintiffs were declared to be co-owners in the joint possession of suit land along with all the rights appurtenant thereto.

7. With regard to the disciplinary proceedings against her deceased husband Learned Single Judge held that the case was covered by a decision of this Court in **Deepak Kumar Sharma vs. State of Punjab and Anr. 2014 (2) RSJ 640** wherein it was held that instituting and going ahead with departmental proceedings for unauthorized absence against a person who had gone missing despite having received notice of the fact that he had gone missing, could not be construed to be fair and reasonable and an order of termination passed in such proceedings was liable to be quashed. In that case, the order of dismissal was converted into an order of compulsory retirement and retiral benefits were granted to the legal heirs. Learned Single Judge accordingly held that the disciplinary proceedings against husband of the respondent were not est and he could not be denied the retiral benefits on account of 21 years of service to his credit before he went missing in March, 2004.

8. The Ld. Single Judge negated the plea of the appellant-Corporation that the claim for retiral benefits having been withdrawn in the civil suit could not be agitated in the writ petition subsequently. It was rightly held that the dispute in the Civil Suit was only regarding the civil death of the employee. In that regard a finding has been recorded that husband of the respondent was no longer surviving. The suit was against the General Public. The declaration of Civil death of husband of the respondent had not been objected to at any stage by the General Public including the Corporation and had become final.

9. The Learned Single Judge directed the appellant- Corporation to adjust a sum of Rs.3,97,581/- which had become due from the date, the employee went missing i.e with effect from 23.03.2004 in view of the retrospective presumption under Section 108 of the Indian Evidence Act. For this, reliance was placed on a judgment of Kerala High Court in **Indira vs. Union of India 2005 (3) CivCC 494**. This was a case where an Army person had gone missing. The Court held that the Army would be justified in declaring him as a deserter from that date. However, such position would continue only till expiry of seven years from the date when he went missing and presumption of death would be available under Section 108 of Evidence Act on the expiry of seven years. As and when the presumption of death under Section 108 of Evidence Act became available that would supersede any declaration of the person being a deserter. The family members could claim all the benefits as if the person was dead on the date he went missing.

10. Accordingly, learned Single directed that the respondent be granted the benefit of outstanding as CPF from 23.03.2004 on the amount which

the Corporation had retained. The same shall then be adjusted against the outstanding amount on account of advances taken under various heads as what was due on 23.03.2004. It would have a right to calculate the interest on advances in question only till that date. After adjusting that amount, the dues if any, be paid to the respondent. The amount of gratuity and leave encashment was directed to be calculated and the excess due was directed to be paid to the respondent along with interest @ 8% per annum from the said date.

11. The learned Single Bench has relied on a well settled judicial precedents in allowing the writ petition of the respondent.

12. There is no illegality or infirmity in the impugned order. This appeal is dismissed.

(RAJIV SHARMA)
ACTING CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

October 03, 2019

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No