IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

211 CWP-11240-2016
Date of decision : 23rd January, 2020

MUKHTIAR KAUR

......Petitioner

Versus

STATE OF PUNJAB AND ORS.

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. G.P.S. Bal, Advocate
for the petitioner.

Mr. Mehardeep Singh, Addl. A.G. Punjab.

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HARSIMRAN SINGH SETHI , J (ORAL)

The grievance which is being raised by the petitioner in the present writ petition is that a sum of ₹1,87,753/- has been deducted from the benefits, which were paid to the petitioner after the death of her husband in respect of the services rendered by her late-husband with the Department of Transport, Government of Punjab.

As per the facts mentioned in the writ petition, the husband of the petitioner-Balkar Singh was serving in the Transport Department as a Conductor when, unfortunately he died on 10.03.2006 in harness. After the death, petitioner became entitled for the release of the benefits in respect of the service rendered by Sh. Balkar Singh. As the benefits for which the petitioner was entitled for after the death of her husband, were not being paid to her, she filed CWP-7438-2008 and during the pendency of the said writ petition, the respondents stated that certain amounts were due from the deceased employee at the time of his death and the respondents sought three months time to finalize the proceedings which were pending against the late husband of the petitioner and were creating impediment in the release of the benefits. Respondents also undertook that the amount which will be due to the petitioner will be released to her within the said period of three months. Keeping in view the said statement the writ petition filed by the petitioner was disposed of.

After the disposal of the writ petition, a sum of ₹36,943/- was released to the petitioner but a sum of ₹1,87,753/- was withheld by the respondent on the ground that the said amount was due from the deceased husband of the petitioner and was later on recovered vide order dated 17.07.2014 (Annexure P-1). In the said order the respondents stated that Sh. Balkar Singh i.e., the deceased employee had received excess pay amounting to ₹1,09,141/- before his death and further as the deceased employee had taken a housing loan out of which a sum of ₹67,200/- was pending to be released and also the house rent of the house in which the employee was staying, was not paid, on which account amount of ₹11,412/- was liable to be recovered. The total amount calculated by the respondents in order dated 17.07.2014 (Annexure P-1) was ₹1,87,753/-, which was recovered by the respondents. This order Annexure P-1 is under challenge in the present writ petition.

Upon notice of motion, respondents have filed a reply and have defended their action. Respondents have stated that the husband of the petitioner was paid excess amount of ₹1,09,141/- while paying the salary, which has been rightly recovered and the remaining amount which was recovered was the re-payment of the loan amount as well as the pending house rent for which the deceased employee was liable.

I have heard the counsel for the parties and have gone through the record with their able assistance.

The only question which arises for the determination of this Court is whether the recovery, which has been effected from the benefits released to the petitioner in respect of the service rendered by late-husband, is permissible under Law.

Once the late husband of the petitioner had taken a loan and a sum of ₹67,200/- was yet to be repaid, it cannot be disputed that the same amount has to be recovered from the benefits of the late husband of the petitioner for repayment of the loan. Further, the house rent, which was pending to be paid by the late-husband of the petitioner for using the Government accommodation, cannot be also ignored for recovery of the same. The recovery of the above mentioned amount is permissible and has rightly been done by Government of Punjab while releasing the payment to the petitioner.

With regard to the recovery of the amount of ₹1,09,141/- which has been recovered as excess salary paid to the late-husband, the same is impermissible. The order of recovery of the excess amount was passed in the year 2014 whereas the concerned employee has already died in the year 2006, therefore no recovery could have been imposed and that too without giving any opportunity to the concerned employee. In the present case, the recovery was imposed unilaterally by the Department after eight years of the death of the employee and that too without giving any opportunity of hearing to the legal heirs as well. It is a settled principle of law that no order can be passed against a dead person and in the present case the order of recovery of excess amount has been passed by the respondents against an employee who has died eight years ago. No recovery order could have been passed by the respondents against the dead person and therefore, the recovery of amount of ₹1,09,141/- which is sought to be recovered as an excess payment, is consequently liable to set aside.

Hon'ble Supreme Court of India in the case of ***M/s. Daffodills Pharmaceuticals Ltd & Anr. Vs. State of U.P. & Anr, 2019 (12) JT 283***, has held that no person can be inflicted with an adverse order, without being afforded a minimum opportunity of hearing. Relevant paras of judgment are as under:-

> *"15. In the present case, even if one assumes that Surender Chaudhary, the accused in the pending criminal case was involved and had sought to indulge in objectionable activities, that ipso facto could not have resulted in unilateral action of the kind which the State resorted to- against Daffodils, which was never granted any opportunity of hearing or a chance to represent against the impugned order. If there is one constant lodestar that lights the judicial horizon in this country, it is*

> *this: that no one can be inflicted with an adverse order, without being afforded a minimum opportunity of hearing, and prior intimation of such a move. This principle is too well entrenched in the legal ethos of this country to be ignored, as the state did, in this case.*
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> *16. The High Court, in the opinion of this court, fell into error in holding that in matters of award of public contracts, the scope of inquiry in judicial review is limited. Granted, such jurisdiction is extremely circumscribed; no doubt the court had refused to grant relief to Daffodils against its plea of wrongful rejection of its tender. However, what the impugned judgment clearly overlooks is that the action of the state, not to procure indefinitely, on an assumption of complicity by Daffodils, was in flagrant violation of principles of natural justice.*

Even otherwise, this question has been settled by the Hon'ble Supreme Court in the case of ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195,*** wherein, it has been held that no recovery can be done from Class-III or Class-IV employees.

The relevant part of the said judgment of Hon'ble Supreme Court of India in ***Rafiq Masih's*** case (supra) is as under: -

> *"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:-*
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> *(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
>
> *(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

It has not been disputed by the learned counsel for the respondents that the Post of a Conductor is a Class-III Post.

Keeping in view the above, even if the husband of the petitioner was alive, then also the impugned recovery of excess payment was impermissible, that be so, it remains impermissible after the death and therefore the said recovery which has been imposed upon the petitioner is contrary to the settled principles of Law.

A bare perusal of the above-said judgment would make it clear that the Hon'ble Supreme Court has held that the recovery cannot be effected from a retired employee or an employee, who is nearing retirement.

Keeping in view the above the recovery of an amount of ₹1,09,141/- which has been recovered from the death-cum-retirement gratuity paid to the petitioner in respect of the service rendered by her late-husband is quashed. Respondents are directed to release the said amount to the petitioner within a period of two months from the receipt of certified copy of this order.

As the recovery was impermissible and the husband of petitioner had died in the year 2006 and the petitioner has been made to approach this Court for the claim of the relief more than once, petitioner is also entitled for interest @ 6 % per annum on the said amount which was recovered, from the date the said amount become due till the same will actually be released to the petitioner under this order.

Present writ petition is allowed in the above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

23.01.2020
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Whether speaking/reasoned : Yes

Whether reportable : Yes