

CWP No.7052 of 2017
Date of Decision: 06.02.2020

Sheela Rani and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Sajjan Singh, Advocate
for the petitioners.

Mr. Gaurav Jindal, Addl. Advocate General, Haryana.

NIRMALJIT KAUR, J. (ORAL)

The prayer in the present writ petition for directing the respondents to grant monthly financial assistance, General Provident Fund, GIS (Insurance), GIS (Savings), grant on death of employee, gratuity and leave encashment etc.

It is stated that the husband of petitioner No.1, who was father of petitioner Nos.2 and 3 committed suicide on 07.09.2016. An FIR No.223 dated 07.09.2016, under Sections 306/34 of IPC, Police Station, Narwana City, was registered against certain persons namely Goldy, Naresh, Chhotu, Rajesh, Fauji and Billu @ Mitthu. The petitioner No.1 approached the official respondents for grant of monthly financial assistance, General Provident Fund, GIS (Insurance), GIS (Savings), grant of death of employee, gratuity and leave encashment etc. vide Annexure P-2 dated 10.10.2016. The petitioner No.1 also presented no due form for this purpose on 21.09.2016 vide Annexure P-3 on which the General Manager and

Accountant did not put their signatures.

Reply has been filed. As per the said reply, the husband of petitioner No.1 was working as Cashier at Sub Depot, Narwana and during his service on 07.09.2016 he committed suicide. However, after his death, it came to light that there was an embezzlement of Rs.25.00 Lakhs. Accordingly, an FIR was registered by the respondent/department on 10.10.2016 under Sections 409 and 420 of IPC naming besides the others, the husband of petitioner No.1 as well. It is further stated in the reply that since the police investigation and departmental enquiry were pending against the husband of petitioner No.1, his dues were put on hold till the final outcome of the police investigation and departmental enquiry as per Haryana Civil Services (Pension) Rule 2016.

Heard.

It is evident from the petition and the reply as well as from the argument raised by learned counsel for the parties that:

- a) No FIR or departmental enquiry was pending against the husband of petitioner No.1 before his death on 07.09.2016.
- b) The FIR was registered by the respondents/department for the alleged embezzlement on 10.10.2016 after the death of petitioner No.1.
- c) The police filed challan only against Amrik Singh and Raj Kumar and not against the husband of petitioner No.1, who had since died.

Therefore, there is no denying the fact that there was neither any FIR registered against the deceased Radhey Shyam nor any charge-sheet was issued to him during his life time. If it is so, then the case of the petitioners is squarely covered by the various judgments rendered by

Hon'ble the Apex Court as well as this Court, laying down that the retirement benefits to the legal heirs of the deceased cannot be withheld in such circumstances.

The Division Bench of this Court in the case of Balwant Kaur Vs. State of Punjab and another, 1988 (2) ILR (Punjab) 6 held in no uncertain terms that the pension of the widow could not be withheld on the assumption that if something was due from the husband of the petitioner, the said widow should be held responsible for the same as if a liability was inherited by her. Para Nos.3 and 4 of the said judgment reads thus:-

“3. Both the respondents have filed returns. They do not deny that the petitioner is entitled to family pension but claim that since the Government dues are outstanding against the petitioner's husband those have to be adjusted against the claims of pension, gratuity and provident fund etc. The said dues, they claim, are on account of an embezzlement case initiated by the department against the petitioner's husband. The said sum is said to be to the tune of Rs.1,13,135.70. Death of the husband of the petitioner obviously has scuttled the proceedings against him in the embezzlement case.”

“4. We have heard the learned counsel for the parties. We are of the view that the petition must succeed. Family pension scheme embodied in rule 6.17 of the Punjab Civil Services Rules, Volume-II, is meant to benefit persons specifically designated, though connected with the Government employee by relationship. But the benefit is personal in nature. Sub-rule (4) of Rule 6.17 specifically says that the pension will be admissible in the case of a widow upto the date of her death or remarriage, whichever is earlier. The benefit conferred is not qualified or capable of exceptions. Pension due to the

widow cannot be confused with pension which would have been due to the husband had he been alive. Her pension being personal in character cannot be withheld by the respondents on the supposition that if something was due from the husband of the petitioner she should be held responsible' for the same as if a liability inherited by her. The idea is totally misconceived. Her right to his estate as an heir cannot be confused with her personal right to pension. We have no hesitation to hold accordingly.”

Further, Hon'ble the Apex Court in the case of State of Jharkhand Vs. Uma Parsad, decided on 20.05.2009, 2009 (16) SCC 767, held in para No.3 as under:

“However, on consideration of the records, we find that late Birendra Prasad, the deceased was put under suspension on 26.9.1998 on the order of Commissioner, Chhotanagar Division, Ranchi, and by another order dated 16.6.2000, his suspension was revoked. Thereafter, he died on 08.10.2004 in harness while working as Assistant in the Secretariat, Deptt. of Art, Culture, Sports and Youth Affairs, Jharkhand. That being the position and since the learned counsel for the respondent is unable to show us any order passed by the competent authority issuing any charge-sheet against the said deceased, there could be no recovery of any amount from the retiral benefits of the deceased Birendra Prasad. There is no record to show that any departmental proceeding was drawn up by the department against the deceased before his death. We find no error in the judgments passed by the Division Bench and by the learned Single Judge of the Jharkhand High Court. There is no merit in this appeal and the same is dismissed.”

While following the said judgment, learned Single Bench of this Court in the case of Krishna Shanwal Vs. Choudhary Charan Singh Haryana Agricultural University, Hisar and another, CWP No.11196 of 2009, decided on 19.08.2016 too was pleased to hold, that:

“Therefore, since no departmental proceedings were initiated against Dr. Azad Vir Shanwal, the family pension and other retiral benefits to the legal heirs cannot be withheld as was done by the respondents. Therefore, in these circumstances, the retiral benefits of the husband of the petitioner are to be released to his legal heirs.”

No judgment or law contrary to the same has been pointed out by learned counsel for the respondents. Therefore, the argument of learned counsel for the respondents that the departmental enquiry is still pending cannot be sustained. Any finding or any enquiry held behind the person and that too against a dead person or without associating the said person cannot be enforced against the said person or his legal heirs. In the present case, not only there was no departmental enquiry pending while he was alive but the very departmental enquiry has been initiated after his death. He shall never be able to defend himself. Thus, the report qua any embezzlement, if any, cannot be enforced against the widow and children of deceased in the present circumstances.

In view of the above, the present writ petition is allowed. The respondents are directed to release the pension and other retiral benefits within two months from the date of receipt of certified copy of this order alongwith 6% interest from the date they were found entitled up till the date

of payment. In case the same is not paid within two months, the same shall be paid thereafter alongwith 12% interest from the expiry of two months.

06.02.2020
sandeep

(NIRMALJIT KAUR)
JUDGE

Whether Speaking/Reasoned

:

Yes/No

Whether Reportable

:

Yes/No