(211) (Proceedings through V.C.)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.18236 of 2020

Date of Decision: 23.3.2021

Union of India and another ...Petitioners

Versus

Ms.Richa Dewan and another ... Respondents

CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr.Praveen Chander Goyal, Advocate for the petitioners

Mr.Rupam Aggarwal, Advocate for respondent no.1

ASHOK KUMAR VERMA, J.

1. The petitioners-Union of India have approached this Court through this writ petition invoking extraordinary writ jurisdiction under Articles 226/227 of the Constitution of India praying for issuance of a writ in the nature of Certiorari for quashing the order dated 5.9.2019 (Annexure P-5) passed by the Central Administrative Tribunal, Chandigarh Bench (for short 'the Tribunal') whereby the Original Application (OA) filed by respondent-Richa Dewan for release of arrears of pay and allowances on account of retiral benefits accrued on retirement of her late husband was allowed and respondent-Richa Dewan has been held entitled to interest at the rate as applicable to GPF from the date the amount became due to the actual date of payment within a period of one month. It is to be noticed that at the

time of issuance of notice of motion, learned counsel for the petitioners confined the dispute only to the extent of award of interest, which is reflected in the order dated 2.11.2020 passed by a co-ordinate Bench of this Court.

2. Briefly, the facts as culled out from the present writ petition are that respondent-Richa Dewan is a widow. Her late husband- Arun Dewan was placed as Additional Commissioner of Income Tax, Indore who was murdered on 10.06.2012 when he was posted at Indore. She was aggrieved against the action of the authorities whereby her request for release of arrears of pay and allowances, Death-cum-Retirement Gratuity on retirement of her husband and other retiral dues has not been acceded to, by the Chief Commissioner of Income Tax, Indore. Aggrieved against the inaction of the authorities, respondent-Richa Dewan being the widow and legal heir of the deceased employee approached the Tribunal with a prayer for release of retiral dues like family pension and other service related benefits w.e.f 11.06.2012 along with interest at the rate of 18% per annum. However, during the pendency of the Original Application before the Tribunal, the department has released an amount of ₹63,17,739/- on account of DCRG, encashment of leave, arrears of 6th and 7th CPC etc. The aforesaid amount was paid to her by the authorities on different dates in the year 2018. As such, the only issue which remained to be adjudicated by the Tribunal was the award of interest to respondent-Richa Dewan from the date the amount became due to the actual date of payment. The Original Application filed by respondent-Richa Dewan was allowed vide order dated 05.09.2019 passed by the Tribunal and the widow has been held entitled to interest at the rate as applicable to GPF from the date the amount became due to the actual date of payment. The department was further directed by the Tribunal to release the

same to respondent-Richa Dewan within a period of one month. The aforesaid order of the Tribunal has been challenged in this petition by petitioners.

3. Learned counsel for the petitioners submits that they have released the amount themselves during the pendency of the Original Application, and therefore, no interest is liable to be paid to the widow. It is further argued that No Objection Certificate from parents-in-law and daughter of the deceased were required since the deceased had not nominated anyone for family pension and gratuity. It is also argued that the parents of the deceased wrote a letter dated 24.8.2016 stating therein that respondent-Richa Dewan had deserted her husband w.e.f. 12.7.2004 i.e. 8 years before his murder took place. It is also argued that respondent-Richa Dewan was responsible for his murder due to her illicit relations. It is further argued that a legal notice for seeking divorce was also sent by her husband, the deceased on 25.5.2012. Learned counsel for the petitioners submits that due to all this, delay in payment of requisite dues has been caused.

4. On the other hand, learned counsel for respondent-Richa Dewan submits that immediately after the death of her husband, she had submitted the requisite documents to the authorities for release of pensionary benefits of her deceased husband to her. Even NOC from her daughter was submitted to the authorities by respondent-Richa Dewan. Even then the retiral benefits were not released. Learned counsel submits that the authorities acted in sheer violation of Rule 54(8) (ii) of the Central Civil Services (Pension) Rules, 1972 (for short "the Rules of 1972") which clearly mandates that the widow or widower and in their absence, the child is entitled for the family pension. The authorities have wrongly withheld the retiral benefits of the deceased husband of the respondent on baseless

grounds and bald allegations. Learned counsel for respondent submits that all sort of allegations with respect to validity of marriage, desertion and murder of her husband levelled against respondent-Richa Dewan were concocted without any basis and evidence. Learned counsel further submits that as far as the assertions with respect to murder of her deceased husband are concerned, the same are completely baseless since the deceased was murdered by his old driver and his companions, namely, Vayu Singh, Lokender Singh and Omkar Singh as they were having the impression that the deceased is having money lying at his home. Out of the aforesaid three accused persons, two have been awarded life imprisonment and against the third accused who was acquitted, the State has filed appeal which is pending before the High Court of Madhya Pradesh. As such the allegations against the respondent with respect to murder of her husband is totally baseless and have no leg to stand. Learned counsel submits that it is a settled proposition of law that even if there is a marital dispute between the spouses and there is no nomination, the spouse is still entitled to the benefits of family pension. The husband of the widow was murdered in the year 2012 and the department only released the amount in the year 2018 and that too after filing of the Original Application before the Tribunal.

5. We have anxiously considered the submissions of the learned counsel for the parties and perused the paper-book.

6. The arguments raised by the learned counsel for the petitioners pale into insignificance. The petitioners have acted in utter violation of the rules in this regard by insisting on matrimonial discord, No Objection Certificate and nomination etc. The axis of law on this aspect is very clear. Rule 54 (8) (ii) of the Rules of 1972 clearly mandates that if a deceased government servant or pensioner leaves behind a widow or widower, the

family pension shall become payable to the widow or widower, failing which to the eligible child. Furthermore, there is nothing on record to show that respondent-Richa Dewan is not a legally wedded wife of the deceased husband. It is an admitted fact that no decree of divorce existed between the wife and husband. For the sake of argument, even if it is assumed that the relationship between the spouses is not cordial and there is no nomination in terms of the rules and instructions for grant of service related benefits of wife or husband, even then the spouse is entitled to the retiral benefits of the deceased spouse. This issue is no longer *res integra.* In the case **of *G.L Bhatia Vs. Union of India and another,* 1999 (5) SCC 237,** the Hon'ble Supreme Court was dealing with a similar circumstance wherein the sole question that arose for consideration before the Hon'ble Supreme Court was whether the appellant who happened to be the husband of the deceased government servant, is entitled to family pension under the provisions of Rule 54 (8) (ii) of the aforesaid Rules of 1972 notwithstanding the fact that the deceased wife in her nomination did not include her husband. In this situation, the Supreme Court observed that it is too well settled that where rights of the parties are governed by statutory provisions, the individual nomination contrary to the statute will not operate. Conclusively, the Supreme Court held as under:-

> "5.In the light of the aforesaid provisions and there being no divorce between the husband and wife even though they might be staying separately, the appellant husband would be entitled to the family pension in terms of the rules as noted aforesaid and the authorities, therefore, committed error in not granting family pension to the appellant relying upon the nomination made by the deceased wife of the appellant."

7. Similar view was taken by the Supreme Court in the case of ***Smt. Violet Issac and Others Vs. Union of India & Others***, 1991 (1) SCC 725 and ***Jodh Singh Vs. Union of India and another,*** 1980 (4) SCC 306. The aforesaid pronunciation of law is fully applicable to the facts and circumstances of the present case. In the present case, the authorities have wrongfully acted and illegally withheld the retiral benefits of the husband of the widow-respondent on flimsy and sketchy grounds. The allegations levelled against the respondent-widow are totally bald and ornamental in nature and have no leg to stand in the absence of any evidence on record. Admittedly, the retiral benefits were released to the widow in the year 2018, whereas it became due after the death of her husband in the year 2012. As such the said retiral benefits containing a huge amount were kept withheld by authorities for such a long time without any lawful reason, and therefore, this Court cannot turn a nelson's eye to the problems and harassments faced by a hapless and helpless widow due to non-release of retiral benefits timely to her and therefore, the petitioners cannot escape from imposition of the liability of paying interest to the respondent-widow in order to compensate her for the loss caused to her due to non-use of such a huge amount for a long time.

8. There is no dispute in the proposition of law that a person who has been deprived of the use of money should be compensated in that behalf. Interest is nothing but another name for compensation for deprivation. A person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation by way of award of interest, as held by the Constitution Bench of the Supreme Court in the case of ***Secretary, Irrigation Department, Government of Orissa & Ors. Vs. G.C. Roy,*** AIR 1992 SC 732. The same principle has been

reiterated by the Hon'ble Supreme Court in ***Union of India Vs. Justice S.S Sandhawalia,*** (1994) 2 SCC 240 wherein it has been held as under:-

> "4.Once it is established that an amount legally due to a party was not paid to it, the party responsible for withholding the same must pay interest at a rate considered reasonable by the Court. Therefore, we do not see any reason to interfere with the High Court's order directing payment of interest at 12% per annum on the balance of the death-cum-retirement gratuity which was delayed by almost a year."

9. Similar view has also been taken in ***Dr. Uma Agrawal Vs. State of U.P and another,*** (1999) 3 SCC 438, ***Bal Kishore Mody Vs. Arun Kumar Singh and others,*** (2001) 10 SCC 174, ***Ghaziabad Development Authority Vs. Balbir Singh,*** (2004) 5 SCC 65 and ***S.K. Dua Vs. State of Haryana and another,*** (2008) 3 SCC 44.

10. The aforesaid propositions of law are fully applicable to the facts and circumstances of the present case. In the present case, admittedly, the retiral benefits became due after the death of her husband of the widow-respondent in the year 2012 whereas the same have been released to the widow-respondent in the year 2018 and that too, after filing of the Original Application before the Tribunal.

11. Apart from that, payment of retiral benefits is not an act of charity or bounty doled out by the government to its employee, but an indefeasible right of a government employee which is earned by him/her, in recognition of his/her past services. Terminal benefits of a government employee is a property under Article 300-A of the Constitution of India as also a fundamental right to livelihood under Article 21 of the Constitution of India. Any delay in release of such retiral benefits is fatal and has to be viewed seriously. In the present case, the authorities have acted in sheer

violation of the rules and well settled propositions of law. We are not denuded to come to the rescue of a hapless and helpless widow of a deceased government employee. In this view of the matter, the Tribunal has rightly awarded the interest at the rate as applicable to the GPF from the date, the amount became due till the actual date of payment and therefore, we see no reason to interfere with the impugned order dated 5.9.2019 (Annexure P-5) passed by the Tribunal.

12. For the foregoing discussions, we find no merit in this petition which is hereby dismissed.

(ASHOK KUMAR VERMA)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

23.3.2021
MFK

Whether speaking/reasoned	*Yes*
Whether Reportable	*Yes*