IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No.218

CWP No.21917 of 2016
Date of Decision: 02.08.2022

Shiksha Devi .... Petitioner

Versus

The Haryana State Federation of
Consumers Co-operative Wholesale Stores Ltd. ... Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Anshul Mangla, Advocate
for the petitioner.

Mr. Amit Jaiswal, Advocate
for the respondent.

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__HARSIMRAN SINGH SETHI, J. (ORAL)__

In the present petition, the prayer of the petitioner is that the husband of the petitioner was working with the respondent-Federation and after retirement of her husband, no benefit has been extended either to him till he remained alive or after his death to the petitioner in respect of the service, which the late husband of the petitioner performed with the respondent-Federation from 31.07.1980 till 30.04.2012. Further prayer of the petitioner is that the order dated 21.09.2020 (Annexure P-10) be also quashed by which the respondents have imposed a recovery to the tune of Rs.6,44,890/- to be recovered from the retiral benefits admissible in respect of the service rendered by her late husband.

As per the averments made in the petition, husband of the petitioner joined the respondent-Federation on 31.07.1980. After performing the duties for a period of approximately 32 years, he retired from the post of

Store Keeper on 30.04.2012 on attaining the age of superannuation. After the retirement, no pensionary benefit in respect of the service which the late husband of the petitioner rendered, were extended. It is the specific case of the petitioner that at the time of retirement, there were no disciplinary proceedings pending against the late husband of the petitioner, so as to give jurisdiction to the respondent to withhold the pensionary benefits.

Learned counsel for the petitioner further argues that the respondents, after the retirement of husband of the petitioner, issued him first chargesheet on 24.07.2012 for causing loss of Rs.17,87,086/-, second chargesheet was issued on 15.01.2014 for causing loss of Rs.3,54,057/-. Third chargesheet was also issued to the late husband of the petitioner on 12.02.2015 for causing loss of Rs.5,31,656/- and keeping in view the issuance of the chargesheets to the late husband of the petitioner, though an amount of Rs.9,41,091/- towards retiral benefits was admissible but the same was withheld by the respondents.

Learned counsel for the petitioner argues that though, after retirement of husband of the petitioner, three chargesheets were issued but during the pendency of those disciplinary proceedings, husband of the petitioner unfortunately died on 16.05.2015, hence, all the pending disciplinary proceedings became inconsequential but the respondents in totally illegal and arbitrary manner, continued those proceedings even after the death of the husband of the petitioner and also imposed a punishment of recovery of Rs.6,44,890/- by impugned order dated 21.09.2020 (Annexure P-10). The said order is under challenged in the present petition.

After notice of motion, the respondents have filed reply and they have justified their action saying that the late husband of the petitioner was not performing the duties as required under law and though, he had retired from service on attaining the age of superannuation on 30.04.2012 but keeping in view his conduct while in service, three chargesheets were issued to him after the retirement, which chargesheeets have been taken to the logical end and by the impugned order dated 21.09.2020, a recovery of Rs.6,44,890/- has been imposed. Learned counsel submits that remaining amount was sent to the petitioner but the same was not accepted and therefore, the claim of the petitioner in the present petition may kindly be rejected.

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

The first question which arises in the present case is whether the respondent had any jurisdiction to withhold the pensionary benefits in respect of the service rendered by the late husband of the petitioner. It is a conceded position that on the date when the late husband of the petitioner retired i.e.30.04.2012, there was no proceeding pending against him. All the proceedings which were initiated by the respondents were started after his retirement. In the present case, the post on which the husband of the petitioner was working, was a non-pensionable post.

The jurisdiction with the employer to continue with the disciplinary proceedings already initiated against an employee while in service or initiated after the retirement, stems from the rules governing the service. No rule, as it existed on the date of the retirement of late husband of the petitioner, has been brought into notice of this Court so as to extend jurisdiction to the respondents to serve chargesheet upon the husband of the petitioner after his retirement. In the absence of any such rule extending power to the respondents to issue a chargesheet to a retired employee, all the chargesheets issued against the late husband of the petitioner by the respondent after his retirement, which have been taken to the logical end by way of impugned order dated 21.09.2020 (Annexure P-10), has to be treated as an order passed without jurisdiction.

The said question came up for consideration before this Court in the case of the respondent-Federation itself in ***CWP No.6229 of 2018*** titled as **B*aldev Singh Saini versus Haryana State Federation of Consumers Cooperative Wholesale Stores Limited,*** wherein this Court quashed a chargesheet which was issued to a retired employee on the ground that there is no jurisdiction with the respondent-Federation to issue a chargesheet to a retired employee keeping in view the rules governing the service. The relevant paragraph of the said judgment is reproduced hereunder:-

> *"Keeping in view the settled principles of law noted above, the respondent-federation has no jurisdiction to issue chargesheet or to initiate disciplinary proceedings against a retired employee and, therefore, in the present case, once the petitioner had already retired on 31.05.2014, the chargesheet served upon the petitioner on 15.12.2017 (Annexure P-3) is beyond the jurisdiction of the respondent as no Rule permits the respondent-federation to initiate disciplinary proceedings against a retired employee."*

In the present case, no rule has been cited by the respondents to show their jurisdiction to issue a chargesheet to a retired employee, hence, the chargesheets which have been issued to the late husband of the petitioner after his retirement, which have been taken to the logical end by way of impugned order so as to impose the recovery of Rs.6,44,890/-, is held to be without any jurisdiction and the same is accordingly quashed along with consequential proceeding including the impugned order.

Even otherwise, even if it is assumed for the sake of argument that respondent had jurisdiction to issue the chargesheets to the late husband of the petitioner even after his retirement, then also the impugned order of recovery by way of punishment can not be sustained for the reason that no proceeding can continue against a dead employee. The husband of the petitioner unfortunately died on 16.05.2015. It is the conceded position that till the said date, none of the chargesheets had attained finality so as to give jurisdiction to the respondent to pass any orders on the chargesheet. After the death of employee, disciplinary proceedings abate, hence, as the husband of the petitioner had already passed away, proceeding initiated by the respondents in respect of three chargesheets could not have continued any further. Keeping in view the said factual position, the recovery of Rs.6,44,890/- which has been imposed upon late husband of the petitioner is held to be bad and accordingly quashed.

Learned counsel for the respondents at this stage, submits that though, the late husband of the petitioner was entitled for total amount of Rs.9,41,109/- but as after his retirement, he had not given the charge of the items which were under his possession, an order was passed by the authorities concerned on 07.11.2014 (Annexure R-6) imposing the recovery of Rs.1,36,094/- out of the total amount of Rs.9,41,109/-, which was done during the lifetime of the late husband of the petitioner and as the said order is not under challenge, the liberty be given to recover the said amount.

Learned counsel for the petitioner raises no objection with regard to the recovery of the said amount from the dues which the petitioner is entitled for in respect of the service rendered by her late husband.

The question which now arises is whether keeping in view the facts and circumstances of this case, the respondent had delayed the release of retiral benefits in respect of the service rendered by late husband of the petitioner or not. As per the settled principles of law laid down by Hon'ble Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab and others", 1997(3) SCT 468***, an employee is entitled for release of the pensionary benefits within a period of two month of the retirement in case, there is no impediment, failing which the employee is entitled for the grant of interest on the delayed release of the said benefits. The relevant paragraph No.8 of the said judgment reads 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 his 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 petition, there was no valid impediment in the release of the pensionary benefits of late husband of the petitioner, for the reason that on the date when he retired no proceeding was pending against him which would entitle the respondent to withhold his pensionary benefits. After the retirement of the late husband of the petitioner, the respondent had no jurisdiction to withhold the pensionary benefits in respect of the service rendered by late husband of the petitioner, hence, the petitioner is entitled for grant of interest on the delayed release of the benefits for which the late husband of the petitioner was entitled for after his retirement.

Further a Coordinate Bench of this Court while passing order in ***CWP No.15867 of 2001*** titled as ***J.S. Cheema Vs. State of Haryana and others***, decided on 20.11.2013, held that even where an amount has been retained by a Department, which actually belonged to the employee, and has used the same to its benefit, and the employee has suffered prejudice due to the non-release of the said amount, the employee becomes entitled for the grant of interest, so as to compensate him for the said prejudice. The relevant paragraph No.5 of the judgment is as under:-

> *"In my opinion, even if the assertion made in the written statement is presumed to be correct it would not disentitle the petitioner for claiming interest. 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 laying 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."*

Keeping in view the above, in the present case, the amount for which the late husband of the petitioner was entitled for as on 01.05.2012 has been retained by the respondent for over 10 years now, hence, the petitioner is entitled for grant of interest on the delayed release of pensionary benefits @6% per annum from the date the amount became due till the actual release of the same.

The parties are agreeable that keeping in view the facts and circumstances of this case, the amount which the petitioner is entitled for is Rs.9,41,109-Rs.1,25,036=8,16,073/-. The said amount will be taken into account for computing the interest also.

Let this order be complied with within a period of two months from the receipt of copy of the same.

The petition stands allowed.

(HARSIMRAN SINGH SETHI)
JUDGE

02.08.2022
Maninder

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No