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

**(210)** **CWP-3899-2016**
**Date of Decision : March 08, 2022**

**Sushil** **.. Petitioner**

**Versus**

**DHBVN Ltd. and others** **.. Respondents**

**CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. R.K. Chaudhary, Advocate, for the petitioner.

Mr. Namit Kumar, Advocate for the respondents.

**HARSIMRAN SINGH SETHI J. (ORAL)**

Present petition has been filed for quashing of the order dated 08.02.2016 (Annexure P-5) vide which the petitioner was directed to pay penal rent for occupying Government accommodation wherein she overstayed along with her husband. The further prayer of the petitioner is that the petitioner is entitled for interest on the delayed payments of pensionary benefits released in favour of her husband, who was medically invalidated from service on 21.03.2001.

The facts as stated in the writ petition are that the husband of petitioner namely Prem Singh joined as Work-Charge T.mate with the respondent-Haryana State Electricity Board (hereinafter referred as DHBVN) in the year 1975. He was made regular Work-Charge T-mate on

19.04.1981 and thereafter was promoted as Shift Attendant on 20.04.1981. The husband of the petitioner was further promoted as Assistant Sub Station Attendant and while working on the said post, he suffered from brain hemorrhage on 23.05.2000 due to which, he became 100% disabled and could not perform his duties. Keeping in view the medical condition of the petitioner, which was duly certified by the medical authorities on 22.03.2001, holding the petitioner as in capable of discharging the duties of his post, the petitioner's husband was retired from service after invalidating him vide order dated 16.04.2001. At the time when the husband of the petitioner was invalidated, he was in possession of a Government accommodation and as the husband of the petitioner was in a helpless condition keeping in view the financial distress as the pensionary benefits for which the husband of the petitioner was entitled for after invalidation, were not released to him, therefore, he could not vacate the said premises and continued to occupy the same.

Vide order dated 08.02.2016 (Annexure P-5), husband of the petitioner was asked to deposit a sum of Rs.8,38,851/- as a penal rent for the accommodation which they occupied, which order is under challenge in the present petition.

Learned counsel for the petitioner submits that though the husband of the petitioner was entitled for the release of pensionary benefits but the same was not released and it was only in the year 2016 that the pension for which the husband of the petitioner was entitled for was released in his favour but without interest and therefore, the petitioner is also entitled for interest on the pensionary benefits, which were released to the husband of the petitioner after a period of approximately fifteen years of his retirement.

After notice of motion, the reply has been filed. In the reply, it has been mentioned that though the pensionary benefits in respect of the service rendered by the husband of the petitioner were prepared on 17.05.2002 but as the retiree did not vacate the premises, which he was occupying, the said pensionary benefits were not released. Further averment is that the pensionary benefits of the husband of the petitioner could not be released as the same could not be calculated as there was a dispute regarding the total length of service, which the husband of the petitioner rendered, which was to be treated as qualifying service. The work charge service, which the husband of the petitioner had rendered from 09.04.1976 till 19.04.1981, was yet to be regularized, which was actually regularized by the authorities concerned by passing appropriate order in January, 2016 after which the pensionary benefits for which the husband of the petitioner was found entitled for, were released and therefore, the delay, which had occurred in release of the pensionary benefits related to the husband of the petitioner was due to the administrative action only.

Learned counsel for the respondents submits that once the petitioner was occupying the Government accommodation without any valid approval, the petitioner is liable to pay the penal rent for occupying the premises beyond the permissible limit.

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

It is a matter of fact that husband of the petitioner was 100% disabled. A 100% disabled man is being asked to pay penal rent by the authorities concerned for retaining a Government accommodation and that too when the pensionary benefits for which the said disabled man was entitled for in respect of the service rendered by him with the respondents were not being released to him due to which he suffered from financial distress along with the medical difficulties being faced by him. The circumstances under which the Government accommodation was being retained has to be seen before opining whether, in those facts and circumstances, the employee is liable to pay penal rent or not.

In the present case, on one hand, while in service the petitioner's husband was invalidated being 100% disabled and on the other hand, his financial benefits were retained on account that some part of the service rendered by the husband of the petitioner on work charge basis was yet to be regularized which action had put financial burden upon the family so as to survive along with medical difficulties being faced by a 100% disabled man. The non-grant of the benefits by the respondents, which created a financial difficulty with the petitioner, cannot be ignored while considering the plea whether the petitioner is liable to pay the penal rent or not for occupying the Government accommodation. It is a conceded position that though the husband of the petitioner was invalidated in the year 2001, the pensionary benefits for which the husband of the petitioner was entitled for, were only released in 2016 i.e. after 15 years of invalidation that to only after the family of the petitioner approached the Court. Under these circumstances, when the family was suffering financial distress and had no other place to live, the petitioner had no other option but to retain the accommodation which was allotted to a disabled man (her husband) while in service. Coordinate Bench of this Court while hearing the petition passed an order on 30.09.2016, directing payment of normal rent and staying the order for demand of penal rent.

Further, even otherwise, keeping in view the facts and circumstances of this case, the prayer of the petitioner has to be considered in view of the provisions of the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred as '1995 Act'). As per Section 47 of the 1995 Act, in case any employee acquires disability while working, he is entitled to continue with the service benefits which the said employee is holding at the time of suffering disability till he attained the age of superannuation. Section 47 of the 1995 Act is as under:-

> "47. Non-discrimination in Government employments. -
>
> (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service: Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits: Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.
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> (2) No promotion shall be denied to a person merely on the ground of his disability: Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.
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> In view of the above provisions of the Act the husband of the petitioner is entitled to the benefit of full salary till his retirement on superannuation."

In the present case, disability, which the petitioner suffered in the year 2000, was at the age of 38 years and the retirement age of an employee is 58 years meaning thereby that by the time the petitioner vacated the accommodation, which was allotted to him while in service in the year 2014, the petitioner had not attained the age of superannuation. Section 47 of the 1995 Act gives the authority to a disabled to retain the service benefits already being enjoyed and the Government accommodation extended to an employee in course of the employment, is a service benefit, hence under Section 47 of the 1995 Act, the petitioner was eligible to retain the said accommodation on normal rent till he attained the age of superannuation. As the petitioner had vacated the premises in question prior to attaining the age of superannuation, even otherwise, no penal rent could have been charged from the petitioner and it cannot be said that the petitioner had overstayed in the accommodation allotted to him. Therefore, in fact the claim of the respondents of penal rent is without considering the law keeping in view the facts and circumstances of this case and therefore, even on this account, the petitioner is not liable to pay penal rent as being claimed by the respondents.

Further, it is not a disputed fact that there is a delay in release of the pensionary benefits relating to the husband of the petitioner. A Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab and others, 1997(3) SCT 468***, has held that an employee is entitled for the release of the pensionary benefits within a period of two months of retirement in case, there is no impediment. In the present case, the impediment being cited is that certain period of the service rendered by the husband of the petitioner was yet to be regularized to be computed as qualifying service for computing the pension. The said reason cannot be attributed to the petitioner but it was the respondents who were to take action in the said regard and the respondents took 15 years to decide the said issue. Hence, the delay in release of the pensionary benefits for which the husband of the petitioner was entitled for, cannot be attributed to the family. The husband of the petitioner is held entitled for the grant of interest on the delayed payments. Let the respondents calculate the interest on the delayed payments at the rate of 9% per annum from the date amount became due till the release of the same in favour of the petitioner.

It is made clear that the respondents will calculate the normal rent of the house and the amount so calculated will be deducted from the payment of interest for which the petitioner is being held entitled for in the present case.

The present writ petition is allowed in above terms.

**March 08, 2022** **(HARSIMRAN SINGH SETHI)**
*harsha* **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : Yes