

224

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

CWP No.6279 of 2019 (O&M)

Date of Decision: 30.01.2023

KASTURI DEVI

.....Petitioner

Vs

STATE OF HARYANA AND OTHERSRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Pulkit Jain, Advocate
for the petitioner.

Mr. Tapan Kumar Yadav, D.A.G., Haryana.

RAJ MOHAN SINGH, J.(Oral)

The petitioner has preferred this writ petition for the issuance of an appropriate writ in the nature of mandamus directing the respondents to release the death-cum-retiral benefits of her husband and further to pay the pension in accordance with the rules.

The husband of the petitioner was appointed as a driver in Haryana Roadways in the year 1977-1978. On 09.02.1990, husband of the petitioner was transferred from Bhiwani Depot to Haryana Roadways, Gurgaon. The husband of the petitioner ultimately died on 31.05.2000.

The respondents have taken a specific stand in the written statement that after the transfer of husband of the

petitioner vide order dated 09.02.1990, he never joined in Haryana Roadways, Gurgaon Depot and remained absent till his death on 31.05.2000.

After the demise of husband of the petitioner, the petitioner ventured to file Civil Suit for declaration against General Manager, Bhiwani as well as the General Manager, Gurgaon and other authorities in hierarchy for grant of pension, gratuity and other pensionary benefits of husband of the petitioner. In the Civil Suit, it was noticed as a fact that husband of the petitioner was working with the respondent-Department and was transferred to Gurgaon Depot from the Bhiwani Depot vide order dated 09.02.1990 and thereafter he never joined his duty at Gurgaon and remained absent from the duty till his death on 31.05.2000. The petitioner could not produce any document during the suit proceedings as regards illness of his husband from 09.02.1990 to 31.05.2000. No reasons for his absence came on record. At the same time, the respondent-Department also could not produce any order punishing the husband of the petitioner from his continuous absence from the duty. The suit was disposed of by directing the General Manager, Gurgaon to decide the matter pertaining to retiral benefits of the husband of the petitioner within three months from the date of representation to be given by the plaintiff/petitioner.

In view of judgment and decree dated 09.06.2004 passed by the Civil Judge (Jr. Divn.) Bhiwani, the petitioner filed representation before the General Manager, Haryana Roadways, Gurgaon on 09.08.2004. The said representation was decided by the General Manager, Haryana Roadways, Gurgaon on 08.11.2004 by way of passing the following order:-

“Your representation dated 9.8.04 received in this office on dated 11.8.04 on the subject cited above.

It is intimated that your representation has been considered and rejected in the light of the citation mentioned below:-

1. *B.V. Ramnaryana Versus State Bank of India
Hyderabad & other 1997 L.L.R. 612 (AP. H.C.)*
2. *Hindustan paper Co.op verus Purnedhu
Chakarbarty & others 1997(2) L.L.N.1007 (S.C.)*
3. *Beemakunju Versus F.C.I. 2001 L.L.R. 743
(Ker. H.C.)*
4. *Abdul Kalam Sheikh Versus Registrar M.L.S.
University & Others 2002 L.L.R. 190 (Raj.H.C.).*
5. *Inder Dev Yadav Versus National Thermal Power
Co.op. Ltd. & others 2002 L.L.R. 361
(Delhi H.C.)*
6. *Anil Kumar Srivastava Versus Chairman Life
Insurance Corp. Bombay & Others 2003
L.L.R. 336 (Jhar. H.C.)*

Moreover, you have not even furnished satisfactory documents of your husband regarding absent, illness. etc. on the basis of which your case could be considered.

*General Manager
Haryana Roadways, Gurgaon”*

The petitioner has assailed the aforesaid order in the present writ petition. Even after passing of the aforesaid order, the petitioner kept on representing before the General Manager, Haryana Roadways, Gurgaon and on one of such representation, the General Manager, Haryana State Roadways, Bhiwani also passed an order dated 08.06.2015, rejecting the representation by alleging that the services of the husband of the petitioner were terminated on account of his absence from the duty from 09.02.1990.

Learned counsel for the petitioner submits that no order of termination has ever been highlighted by the respondent-Department in any proceedings during earlier proceedings of the suit as well as while deciding the representation of the petitioner vide order dated 08.11.2004. The order dated 08.11.2004 is totally non-speaking and the respondent No.4 has not recorded any reason except to observe that the representation of the petitioner has been considered and rejected as the petitioner could not furnish any satisfactory documents regarding absence of her husband. Even in the said order, the respondent has not recited any reason as regards the termination of the services of the husband of the petitioner at any point of time. No departmental enquiry is shown to have been culminated in any logical end. Though the learned State counsel has pointed out that at one point of time, the

departmental proceedings were initiated on account of absence of husband of the petitioner.

Learned State counsel submits that as of now the service record of husband of the petitioner is not available with the respondent-Department and factum of initiation and culmination of departmental enquiry cannot be established on record.

Evidently, the husband of the petitioner was appointed in the year 1977 and had worked till his transfer from Bhiwani Depot to Haryana Roadways, Gurgaon on 09.02.1990. Even if the husband of the petitioner remained absent since 09.02.1990 and there was no order of termination passed against him, therefore, the case regarding retiral dues on the basis of service rendered by him from the year 1977 till 1990 has to be considered by the respondent-Department in accordance with the rules.

Since the order dated 08.11.2004 is totally non-speaking order and in the order dated 08.06.2015, the additional fact has been mentioned that the service of the petitioner has been terminated without any reference of any specific date on which the order of termination was passed that too on the basis of concluded proceedings, therefore, the order dated 08.06.2015 is in continuation of order passed on 08.11.2004. The cause of action accrued to the petitioner only

on the basis of order dated 08.11.2004 vide which the representation filed by the petitioner in pursuance of civil Court decree dated 09.06.2004 was dismissed. Evidently, the provident fund has been released to the petitioner after demise of her husband on 17.11.2016.

In view of aforesaid facts and circumstances, it would be appropriate to direct the respondent No.4 to consider the case of the petitioner on the basis of available record. If no record regarding termination of service of the husband of the petitioner is established then the respondent-Department shall be bound to consider the case of the petitioner towards retiral dues on the basis of the services rendered by the husband of the petitioner from 1977 till 1990. If the relevant record is ultimately found to be in existence, then the respondent No.4 shall proceed to consider the case of the petitioner afresh in accordance with law.

In view of aforesaid direction, this writ petition is disposed of.

January 30, 2023	(RAJ MOHAN SINGH)
Atik	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No