

245

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.11269 of 2022 (O&M)

Date of Decision: 28.03.2023

Krishna Devi

..... Petitioner

V/s.

State of Punjab and Others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. H.S. Dhindsa, Advocate for the petitioner.

Mr. Sandeep Chopra, DAG, Punjab
for respondent Nos.1 to 3.

Ms. Nitika Garg, Advocate for respondent No.4.

JASGURPREET SINGH PURI, J (Oral)

The present petition has been filed under Articles 226/227 of the Constitution of India seeking writ in the nature of *mandamus* for direction to the respondents to release the admitted benefits of Rs.14,93,373/- as per the speaking order dated 22.02.2022 (Annexure P-7) in shape of death-cum-retiral benefits, Gratuity, Provident Fund, Leave Encashment, Ex-gratia, of the late husband namely, Manohar Lal (Sweeper), of the petitioner who died in service on 13.07.2019, alongwith interest @18% per annum with a further prayer that as per 6th Punjab Pay Commission report, the dearness allowance, pay, gratuity alongwith the ex-gratia grant and other benefits have been increased and after 01.01.2016 the 6th Pay Commission report has been adopted vide letter dated 29.10.2021 issued by the Department of Finance, Punjab and therefore, the revised death-cum-retiral benefits to be released as per letter of Department Finance, Punjab, are prayed for.

Learned counsel for the petitioner submitted that it is a case where the petitioner is a widow and her husband was a sweeper in Municipal Council, Dhariwal-respondent No.4 and he died in service, on 13.07.2019 and thereafter the

petitioner being a widow was entitled for the retiral benefits of her husband. He submitted that in the first round of litigation vide Annexure P-7A, this Court had directed the respondents to dispose of the representation moved by the petitioner and decide the same in accordance with law by passing a speaking order and with a further direction that if the petitioner is found to be entitled and if there is no impediment, the same be granted to the petitioner, without any delay, as per law.

He submitted that in pursuance of the aforesaid orders, the respondent-Council passed an order (Annexure P-7) dated 22.02.2022 in which the total amount which is admissible to the petitioner has been given in a tabulated form in para No.2. He submitted that so far as the ex-gratia grant and GPF is concerned, the same have already been paid to the petitioner and the petitioner does not have any grievance with regard to the same but so far as the amount of leave encashment and gratuity is concerned, the same has not been paid to the petitioner and the only reason which has been mentioned in the aforesaid order is that due to weak financial condition of the Council that the same could not be paid to the petitioner and even the Municipal Council, Dhariwal has undertaken to make the payment of the above dues to the petitioner, as and when the same is received from the Government. Learned counsel submitted that in this way, the ground which has been taken by the Municipal Council, Dhariwal is not sustainable in view of the judgment of this Court in “***Ram Karan Vs. Managing Director, PRTC***”, 2005(4) SCT 438.

On the other hand, Ms. Nikita Garg, appearing on behalf respondent No.4-Municipal Council, Dhariwal has submitted that so far as liability of the Municipal Council, Dhariwal-respondent is concerned, the same is not disputed but the amount of gratuity and leave encashment could not be paid to the

petitioner because of paucity of funds and the same can be done only on receipt of the same from the State Government. She further submitted that immediately after the death of the husband of the petitioner, an amount of Rs.2,64,425/- has already been paid against the component of GPF and later on an amount of Rs.3 lacs has also been paid and the remaining amount could not be paid due to paucity of funds.

I have heard learned counsel for the parties.

It is a case where the petitioner is a widow and is asking for the retiral benefits of her husband who had died during service. The plea taken by learned counsel for the respondents as well as the impugned speaking order that due to paucity of funds and weak financial position of the Municipal Council, Dhariwal, the amount which is due to the petitioner, could not be paid, is not sustainable because of two reasons. Firstly, in view of the judgment of this Court in ***Ram Karan's*** case (supra), paucity of funds is not a ground for denial of retiral benefits. Secondly, retiral benefits is a Constitutional right under Article 300-A of the Constitution of India. Apart from above, since the petitioner is a widow and her husband who was working as a Sweeper, the provisions of Article 21 can also be pressed because it affects the right of life. No specific reason has come forth from the respondent-Municipal Council, Dhariwal as to why the amount has not been paid except for the paucity of funds, which is not a sustainable ground.

In view of the above, the present petition is allowed, the respondent No.4 is directed to release the retiral benefits which are admissible to the petitioner, within a period of 04 months from today alongwith interest @6% per annum till the date of disbursement. In case the aforesaid amount is not paid within a period 04 months from today, then the petitioner shall be entitled for future rate of interest @9% per annum instead of 6% per annum.

CWP No.11269 of 2022 (O&M)

-4-

A perusal of order dated 03.11.2021 which is an order passed by this Court vide Annexure P-7A would show that it was rather directed that if the petitioner is found entitled and in case, there is no impediment for release of the payment, the same shall be granted to the petitioner, without any delay, as per law. The aforesaid order was passed in November, 2021 and there is no legal impediment even as per the stand taken by respondent No.4-Municipal Council, Dhariwal and therefore although this Court may have issued a notice of contempt to respondent No.4-Municipal Council, Dhariwal for non compliance of the aforesaid order but taking a lenient view, this Court deems it fit and proper to impose cost.

Since the petitioner is a widow, her husband was working a Sweeper and the petitioner has filed the present petition as a second round of litigation, the petitioner shall also be entitled for a cost which is assessed at Rs. 20,000/- which shall also be paid to the petitioner within a period of 04 months from today.

The present petition, is accordingly, disposed of.

28th March, 2023

Sonia Puri

**(JASGUPREET SINGH PURI)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No