

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-13191-2021 (O&M)
Date of decision: 21.08.2023

Anita

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Aditya Bhushan, Advocate for the petitioner
Mr. SS Mann, Addl. AG Haryana
Mr. Randeep Tanwar, Advocate for respondents No.2 to 4

Sandeep Moudgil, J.

(1). The petitioner has filed the present writ petition invoking the jurisdiction of this Court under Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *mandamus* directing the respondents to release commutation value along with 18% interest from the date of retirement till actual realization and to pay interest @ 18% on the delayed payment of gratuity.

(2). Learned counsel for the petitioner submits that the husband of the petitioner, namely, Chander Parkash Sheokand retired from the post of Addl. Sub Divisional Engineer w.e.f. 31.07.2019 and later on unfortunately expired on 24.02.2021. He states that due to pendency of charge-sheet, provisional pension was released, however, the said charge-sheet was filed, entitling the deceased employee for all his pensionary dues from the date of retirement i.e. 31.07.2019. It is urged that despite application dated 24.12.2020 (Annexure P1), pensionary benefits like full pension and gratuity has been released though with delay of 1 year and 9 months but still commutation value of pension has not been released so far in favour of the petitioner.

(3). Notice of motion was issued on 20.07.2021 and thereafter, respondents have filed their replies.

(4). In the written statement dated 31.03.2022 filed by respondents No.2 to 4, it is submitted that due to pendency of two charge-sheets dated 01.04.2016 and 22.02.2019, wherein the husband of the petitioner was exonerated and as such he became entitled for regular pension and gratuity w.e.f. 23.12.2020 which was paid to him on 01.03.2021 i.e. 3 months after finalization of disciplinary proceedings pending against the deceased employee.

(5). In so far as the commutation of pension is concerned, learned counsel for respondents No.2 to 4 submits that as per Rule 102 of the Haryana Civil Services (Pension) Rules, 2016, since the application for commutation of pension was received after more than one year of retirement of the concerned employee i.e. on 24.12.2020, the medical examination of the deceased employee was required to be conducted by the civil surgeon. The husband of the petitioner submitted medical certificate from a private hospital (Annexure P-2), which is not authenticated as per Rule 102 *ibid* and as such, the case for commutation of pension could not be processed and since the husband of the petitioner has already expired, the petitioner cannot be given such benefit.

(6). Heard learned counsel for the parties.

(7). The husband of the petitioner, Chander Parkash Sheokand retired on 31.07.2019. He applied for commutation of pension etc. on 24.12.2020 i.e. one year after his retirement, and thereafter, on 01.02.2021, the husband of the petitioner submitted his medical certificate dated

01.02.2021 and soon thereafter, he died on 24.02.2021. The case of the petitioner for release of commutation of pension has been rejected on the ground that the medical certificate submitted by the husband of the petitioner, is not as per Rule 102 of Haryana Civil Services (Pension) Rules, 2016.

(8). In the peculiar facts and circumstances, where the husband of the petitioner submitted medical certificate but having been issued by a private hospital, the respondents ought not to have rejected the case of the petitioner for release of commutation of pension outrightly. The husband of the petitioner applied for commutation of pension after one year of retirement and thus was required to submit medical certificate issued by a civil surgeon of the district in which he is ordinarily residing.

(9). Had it been a case where the applicant would be alive, in that scenario, fresh certificate can be called for by the prescribed authority. But in the present case, the applicant submitted his fitness certificate and thereafter died. In my opinion, the action of the respondents for holding the petitioner not entitled for the benefits of commutation of pension is not correct. The basic right is the right to pension. Commutation thereof is an ancillary right and if the right for pension is recognized and accepted, the right to commute that pension cannot be taken away.

(10). Accordingly, this writ petition is allowed and the respondents directed to release the commutation of pension in favour of the petitioner being wife of the deceased employee, along with interest @ 6% p.a. from the date it became due till the date of its realization. It is further directed that needful be done within a period of two months from the date of receipt of certified copy of this order.

21.08.2023

V.Vishal

(Sandeep Moudgil)

Judge

1. Whether speaking/reasoned?

Yes/No

2. Whether reportable?

Yes/No