

2023:PHHC:166534

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-14695-2020
DECIDED ON: 31st JULY, 2023

KAMLA DEVI

PETITIONER

VERSUS

DAKSHIN HARYANA BIJLI VITRAN NIGAM LTD. AND
OTHERS

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. S.K. Bhardwaj, Advocate,
for the petitioner.

Mr. Jagbir Malik, Advocate,
for respondents.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court under Article 226 of the Constitution of India has been invoked seeking a writ in the nature of *Certiorari* to quash the impugned order 27.01.2020 (Annexure P-8) whereby, the service benefits have been denied to the petitioner during the pendency of criminal appeal before this Court against the judgment of conviction with further prayer for issuance of a writ in the nature of *Mandamus* directing the respondents to grant the benefit of financial assistance and family pension along-with all other consequential service

benefits as well as interest thereupon.

2. Mr. S.K. Bhardwaj, learned counsel for the petitioner has argued that during lifetime of the husband of the petitioner, after registration of criminal case, he was charge-sheeted under Haryana Civil Services (Punishment and Appeal) Rules, 2016 (for short 'Rules of 2016') and vide order dated 20.03.2019 (Annexure P-7) the charge-sheet issued to him was dropped. The judgment of conviction dated 07.11.2007 (Annexure P-3) has been challenged by filing appeal before this Court, which is still pending. The respondents were within their jurisdiction to continue with the departmental proceedings started by issuing charge-sheet and dropping of the same vide order dated 20.03.2019 (Annexure P-7) is clear intention of the respondent-Nigam that the deceased husband of the petitioner was innocent otherwise respondent-Nigam could continue with the departmental proceedings and pass order of dismissal, which they have not done and now on the ground of conviction under Section 7 & 13 of Prevention of Corruption Act, 1988 (hereinafter referred to as 'Act of 1988') by Special Judge, Jind, the family pension and financial assistance cannot be denied on the ground of pendency of criminal appeal against the judgment of conviction.

3. Mr. Jagbir Malik, learned counsel for the respondents has vehemently argued that the husband of the petitioner was convicted, vide judgment of conviction dated 07.11.2007 passed by Special Judge, Jind, for commission of an offence under Section 7 and 13(1) (d) of the Act of 1988 beyond all reasonable doubts and he was sentenced to undergo rigorous imprisonment for one year along-with fine of Rs.1000/-. He

further argued that as per the judgment of Apex Court rendered in the case of **“Raj Narain vs. Union of India and others”; (2019) 2 SCT 582**; the employee would not be entitled for any benefit even in a case of acquittal till it is not held that the prosecution was malicious. In the present case the deceased husband of the petitioner was convicted by the trial Court and the case of the respondents is on better footing in comparison to ***Raj Narain's*** case supra. Thus, the deceased husband of the petitioner would not entitle for any service benefits because he has been convicted beyond any reasonable doubts and the judgment of conviction is on merits. He further argued that the dropping of charge-sheet on the ground of pendency of criminal trial would not debar the respondents from implementing the judgment of conviction, fate which is pending before this Court in criminal appeal filed by the deceased husband of the petitioner.

4. It has been submitted on behalf of respondents that Rule 12 of Haryana Civil Services (Pension) Rules, 2016 (hereinafter referred to as “the Pension Rules of 2016”), the appointing authority has a right to withheld the pension of pensionary benefits of an employee who has been held guilty in judicial proceedings and the benefits of the deceased husband of the petitioner have rightly been withheld as he stands convicted vide judgment of conviction dated 07.11.2007 passed by Special Judge, Jind, for commission of an offence under Section 7 and 13(1) (d) of the Act of 1988 beyond all reasonable doubts. He further submitted that the impugned order has rightly been passed by the competent authority and deserves to be upheld.

5. No other argument has been raised by the parties.

6. Heard learned counsel for the respective parties.
7. It is an undisputed fact that the deceased husband of the petitioner was charge-sheeted during his lifetime and vide order dated 20.03.2019 (Annexure P-7), the charge-sheet issued to the deceased husband of the petitioner stands dropped keeping in view the comments offered by the concerned Executive Engineer and as per advise tendered by LR/HPU, Panchkula. No body had stopped the respondents from continuing with the disciplinary proceedings and culminating the same in the order of punishment of dismissal. This Court cannot lose sight of the settled proposition of law that the finding given by a criminal court cannot be made basis for declining a civil right to any citizen, as the finding of criminal court cannot be relied upon in a civil dispute.
8. Reliance can be placed upon Rule 10 of the Pension Rules of 2016, under which the authorities are duty bound to pass an order taking into consideration the judgment of conviction but in the case in hand no such order has been passed by the competent authority and without the same declining the terminal benefits to the petitioner, who is a widow of the deceased employee, would be violative of the Pension Rules of 2016. The terminal benefits are the property of an employee enshrined under Article 300-A of the Constitution of India, which cannot be denied to an employee without any authority. In the present case, no order has been passed and this Court is of the considered opinion that the petitioner is entitled for all the terminal benefits of her deceased husband.
9. On the foregoing reasons, the present writ petition is allowed and the impugned order dated 27.01.2020 (Annexure P-8) is set aside and

the respondents are directed to release all the terminal benefits accrued to the deceased husband of the petitioner and consequential benefits of family pension/financial assistance be also released to the petitioner within two months from the date of receipt of certified copy of this order.

(SANDEEP MOUDGIL)
JUDGE

31st JULY, 2023
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- 1. Whether speaking/ reasoned : Yes / No
- 2. Whether reportable : Yes / No