

CM-17811-CWP-2023 in/& -1-
CWP-19789-2018

. 2023:PHHC:135850

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

103+211

CM-17811-CWP-2023 in/&
CWP-19789-2018
Date of Decision : October 18, 2023

Phool Pati

...Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Mukesh Kumar Verma, Advocate for the petitioner.

Mr. Pankaj Middha., Addl. AG, Haryana.

* * *

Harsimran Singh Sethi, J. (Oral)

CM-17811-CWP-2023

Application is allowed as prayed for.

Annexure R-1 is taken on record.

Main case

1. In the present petition, the grievance of the petitioner is that a sum of Rs.4,41,461/- has been recovered from her while extending the service benefits in respect of the services rendered by her late husband with the respondent-department.

2. Certain facts need to be mentioned for the correct appreciation of the issue in hand.

3. Husband of the petitioner was appointed on the post of Forest Guard on 22.05.1976 and while working on the said post, disciplinary proceedings were initiated against him vide charge sheet dated 21.07.2014

for imposing a major punishment. Husband of the petitioner did not reply to the charge sheet and the punishing authority ordered holding of departmental enquiry against him in respect of the allegations alleged in the charge sheet and the Range Forest Officer, Bhiwani was appointed as Enquiry Officer.

4. Meanwhile, the husband of the petitioner retired from service on 31.08.2015. An enquiry report was given by the Enquiry Officer on 05.10.2015 holding the late husband of the petitioner guilty of the allegations alleged therein. Thereafter, a show cause notice was issued to the late husband of the petitioner to defend himself as to why the enquiry report should not be accepted and punishment be not imposed upon him. Before any order could be passed on the basis of the enquiry report, the husband of the petitioner unfortunately died on 19.01.2016.

5. It may be noticed that after the death of the husband of the petitioner, the respondents passed an impugned order dated 27.01.2016 (Annexure P/5) holding the late husband of the petitioner guilty of the allegations and recovery of the loss of Rs.5,60,853/- was ordered.

6. After the passing of the impugned order, an appeal was preferred by the petitioner before the authorities concerned and vide order dated 29.03.2016, the appeal was decided and the recovery amount was reduced from Rs.5,60,853/- to Rs.4,41,461/-.

7. In the present petition, order dated 27.01.2016 (Anexure P/5) imposing punishment of recovery upon the late husband of the petitioner as well as order dated 29.07.2016 (Annexure P/8) passed by the appellate authority are under challenge.

8. Learned counsel for the petitioner argues that the impugned

order of recovery of loss has been passed by the respondent after the death of the husband of the petitioner cannot be sustained in the eyes of law as no order causing prejudice can be passed against a dead employee. Learned counsel for the petitioner submits that once during the period when the late husband of the petitioner was an employee of the respondent-department concerned, no order imposing punishment was passed against him but only order of holding an enquiry had been passed, hence, the action of respondents of passing of impugned order dated 27.01.2016 was impermissible as upon death of an employee, any pending disciplinary proceedings stand abated and in the present case husband of the petitioner had died on 19.01.2016 whereas order of punishment was passed on 27.01.2016 hence, the impugned order of punishment as well as order passed in appeal are liable to be set aside and are accordingly set aside.

9. Learned State counsel on the other hand submits that in the present case, where late husband of the petitioner had participated in the disciplinary proceedings and as per the enquiry report allegations alleged against the husband of the petitioner were proved and he was also issued a show cause notice as to why punishment of recovery of the loss should not be imposed upon him while he was alive and merely that an employee died before the passing of the actual punishment order will not exonerate the dead employee so as to recover the amount of loss caused from the legal heirs of the dead employee from the dues which are to be paid in respect of the services rendered by the late employee.

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

11. As per the settled principle of law, no order causing prejudice can be passed against a dead employee. An employee, who dies while in service, any proceedings pending against the said employee stand abated and hence, in the present case, upon the death of the late husband of the petitioner which occurred on 19.01.2016 i.e. prior to the passing of the impugned order of punishment dated 27.01.2016, disciplinary proceedings which were pending against the husband of the petitioner immediately stood abated upon the death of the husband of the petitioner.

12. Facts which have been stated hereinbefore are conceded facts. That being so, keeping in view the settled principle of law settled by this Court in CWP-21917-2016 titled as *Shiksha Devi. The Haryana Federation of Consumers Co. Op. Wholesale Stores Limited*, decided on 02.08.2022, impugned order of punishment which has been passed after the death of the husband of the petitioner holding him liable for recovery of loss is without jurisdiction and is liable to be set aside and is accordingly set aside. Relevant paragraph of the judgment is as under:-

“11. Even otherwise, even if it is assumed for the sake of argument that respondent had jurisdiction to issue the chargesheets to the late husband of the petitioner even after his retirement, then also the impugned order of recovery by way of punishment can not be sustained for the reason that no proceeding can continue against a dead employee. The husband of the petitioner unfortunately died on 16.05.2015. It is the conceded position that till the said date, none of the chargesheets had attained finality so as to give jurisdiction to the respondent to pass any orders on the chargesheet. After the death of employee, disciplinary proceedings abate, hence, as the husband of

the petitioner had already passed away, proceeding initiated by the respondents in respect of three chargesheets could not have continued any further. Keeping in view the said factual position, the recovery of Rs.6,44,890/- which has been imposed upon late husband of the petitioner is held to be bad and accordingly quashed”.

13. Once the order of punishment has been held to be invalid, order of holding the same as valid by the appellate authority is also set aside.

14. At this stage, learned counsel for the petitioner submits that while extending the service benefits to the petitioner in respect of the services rendered by her late husband, a sum of Rs.4,41,461/- has already been recovered, which recovery may kindly be directed to be refunded to the petitioner.

15. Keeping in view the fact that impugned order of punishment on the basis of which recovery was effected, has already been set aside hence, the respondents are directed to refund a sum of Rs.4,41,461/- to the petitioner within a period of 04 weeks from the date of receipt of copy of this order.

16. Learned counsel for the petitioner submits that though, the petitioner is seeking grant of benefit of interest but keeping in view the facts and circumstances of the present case, the said prayer is not being pressed before this Court.

17. Petition stands allowed in above terms.

October 18, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No