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

**CWP No.4486 of 2016 (O&M)
Date of Decision: 24.03.2023**

MUNNI BAI

.....Petitioner

Vs

STATE OF HARYANA AND ORSRespondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Devender Punia, Advocate
for the petitioner.

Mr. Naveen Singh Panwar, D.A.G., Haryana
for the respondents No.1 to 3.

Mr. I.S. Sidhu, Advocate
for the respondent No.4.

RAJ MOHAN SINGH, J.(Oral)

[1]. The petitioner has preferred this petition for the issuance of an appropriate writ in the nature of mandamus, directing the respondents to release the arrears of pension from the date of superannuation of the husband of the petitioner on 31.01.2002 till the date of death i.e. 12.07.2004. The petitioner has confined his prayer only to the extent of aforesaid relief.

[2]. The husband of the petitioner Sh. Makna Ram was appointed as Beldar on regular basis in the office of the respondent No.3 on 01.02.1965. After attaining the age of 60 years, the husband of the petitioner superannuated on 31.01.2002. The husband of the petitioner was not granted any

pension and other ancillary benefits at the time of his retirement and he ultimately died on 12.07.2004 owing to his ill-health.

[3]. The petitioner made numerous representations for the grant of family pension to her and other benefits payable to her husband on the date of retirement. Owing to inaction on behalf of the respondents, the petitioner ventured to file CWP No.2523 of 2009 which was allowed by the High Court vide order dated 20.05.2015 after noticing the fact that the respondent-State could not controvert the plea that the husband of the petitioner had ever been issued any show cause notice, chargesheet or faced any enquiry for his alleged absence from the duty. Relevant operative part of the order dated 20.05.2015 passed in the said petition reads as under:-

“Learned State counsel was unable to controvert the fact that the husband of the petitioner had ever been issued any show cause notice, charge sheeted or any enquiry was initiated against him for the said alleged absence.

Keeping in view the fact that during the service period, the respondents neither opted to charge sheet the husband of the petitioner with regard to the alleged absence during service nor after attaining the age of super-annuation till his death and allowing him to super-annuate on attaining the age of retirement and that he had never been issued any show cause notice or chargesheet and that, too, without any enquiry or punishment etc. for the above said alleged absence, the petitioner is therefore

entitled for the family pension of her deceased husband Sh.Makna Ram, Beldar along with arrears of family pension with effect from 12.07.2004 the date of death of her husband as per rules according to his qualifying service and the GPF, in the eventuality of non disbursement of GPF. However, the learned counsel for the petitioner does not press for the claim of interest on the delayed payment.

Accordingly, the present petition is partly allowed with a direction to the respondents to release the family pension as per rules w.e.f 12.07.2004 along with arrears of family pension and GPF, in the eventuality of non disbursement, to the petitioner. The petitioner will submit the complete papers for family pension and GPF etc. within fortnight from the receipt of certified copy of this judgment. The respondents shall release the family pension and GPF, within four months from the receipt of papers.

20.05.2015

**(JITENDRA CHAUHAN)
JUDGE”**

ashok

[4]. After passing of the order dated 20.05.2015 in the aforesaid writ petition, the order was implemented by the respondent No.4 on 19.10.2015 thereby releasing the arrears of family pension to the petitioner from the date of death i.e. 12.07.2004 till 19.10.2015. Perusal of order dated 19.10.2015 passed by the respondent No.4 particularly in the list of observations would indicate that the family pension was being paid to the petitioner w.e.f. 01.10.2015 and was requested that the sanction under Rule 10.2 of Punjab Civil Services Rules Volume II be obtained from the Finance Department for the

payment of pension w.e.f. 01.02.2002 to 13.07.2004 till the pension is withheld.

[5]. Learned counsel for the petitioner has made a statement at the Bar that so far as arrears of family pension are concerned, the petitioner had already received the same and there is no issue pending in respect of entitlement of the petitioner with regard to the arrears of family pension as on date.

[6]. Learned counsel for the petitioner with reference to the order dated 19.10.2015 passed by the respondent No.4 submits that factum of payment of pension to her husband from 01.02.2002 to 13.07.2004 came to the knowledge of the petitioner only after receipt of order dated 19.10.2015 in due course as the said letter was never addressed to the petitioner. The petitioner could not incorporate the plea of non-payment of pension of her husband in the earlier writ petition as the said fact was never in the knowledge of the petitioner.

[7]. Learned State counsel with reference to Annexure R-6 attached with the written statement submits that in respect of legal notice dated 01.11.2008 submitted by the petitioner, the following recital was made in the para no.2 of the reply to legal notice dated 08.12.2008:-

“2. Sh. Makna Ram, had never applied for

regularisation of his absence period to this office. Even after his date of retirement on 31.01.2002 till date of his death on 12.07.2004 he never did so. In view of his wilful absence he was not entitled to any retiral benefit.”

[8]. On the basis of aforesaid reply dated 08.12.2008, learned State counsel submits that the factum of non-release of pension of husband of the petitioner from 01.02.2002 to 13.07.2004 was very much known to the petitioner and she did not plead the same in her earlier writ petition, therefore, the claim with regard to the arrears of pension payable to her husband now at this stage is barred by limitation.

[9]. During course of arguments, learned counsel for the petitioner has brought to the notice of this Court that in the legal notice dated 01.11.2008 got served by the petitioner upon the respondents, there was no such prayer made for the release of arrears of pension of her husband from 01.02.2002 to 13.07.2004, therefore, in view of the recital of the legal notice, the reply to the same on 08.12.2008 cannot be considered to mean that the factum of non-payment of arrears of pension of husband of the petitioner was known to the petitioner even prior to the date of order dated 19.10.2015 passed by the respondent No.4.

[10]. Having considered the issue in the light of the fact that the petitioner had already been paid arrears of family pension

from 13.07.2004 till date, therefore, it has to be presumed that the husband of the petitioner was entitled for pension from the date of superannuation on 31.01.2002 till his death on 12.07.2004. For the delay in question, the interest component can be warded off but the petitioner cannot be made to suffer on account of her not pleading the factum of non-payment of arrears of pension of her husband prior to the date of decision of the CWP No.2523 of 2009 in any manner.

[11]. In view of above, the writ petition is partly allowed. The pension of the husband of the petitioner from 01.02.2002 to 13.07.2004 is ordered to be fixed with reference to the basic pension and admissible emoluments payable thereupon. The respondents No.1 to 3 are directed to compute the total arrears of pension of the husband of the petitioner for 29 months and thereafter release the same in favour of the petitioner. It is made clear that no amount of interest is applicable to the petitioner on account of delay in espousing the cause. The necessary exercise in the aforesaid context be done within a period of three months from the date of receipt of certified copy of this order.

March 24, 2023

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No