

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

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**CM-14909-CWP-2023 IN /AND
CWP-4004-2017 (O&M)
Decided on : 03.10.2023**

Meenu Devi

. . . Petitioner

Versus

State of Haryana and others

. . . Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Diwan S. Adlakha, Advocate
for the petitioner.

Mr. Pankaj Middha, Addl. AG, Haryana.

Mr. Harneet Singh Oberoi, Advocate
for respondent No. 2.

HARSIMRAN SINGH SETHI, J. (ORAL)

CM-14909-CWP-2023

1. Present application has been filed under Order 9 Rule 9 CPC read with Section 151 CPC for restoration of the main case..
2. Notice in the application.
3. Mr. Pankaj Middha, Addl. AG, Haryana who is present in the Court, accepts notice on behalf of respondent-State and does not oppose the prayer in case the writ petition is restored to its original number.
4. Keeping in view the facts mentioned in the application which is duly supported by an affidavit and coupled with the fact that learned State counsel has not opposed the application, same is allowed and the writ petition is restored to its original number status and as prayed for by learned counsel for the parties, same is taken up for consideration.

CWP-4004-2017

1. In the present petition, the prayer of the petitioner is that the retiral benefits, for which she became entitled after the death of her husband namely Ishwar Chand, have not been released to her and that too without any valid reason and justification.
2. Upon notice of motion, the respondents have filed a reply wherein they have submitted that while the husband of the petitioner was in service and before his retirement, there were disciplinary proceedings pending against him for the embezzlement of huge amount and in those disciplinary proceedings, an order has been passed for recovery of amount of Rs.87,329, Rs.22,000/- and Rs.18,000/- which has not been deposited by the petitioner due to which, certain pensionary benefits could not be released. Learned counsel for respondent No. 2 further submits that the petitioner be directed to deposit the said amount and the action for the release of the withheld pensionary benefits will be undertaken by the Department.
3. Faced with this situation, learned counsel for the petitioner submits that the husband of the petitioner had retired on 31.05.2011 and had unfortunately died in the month of December 2011 and two recoveries are being put upon the husband of the petitioner i.e. amounting to Rs.22,000/- and Rs.18,000/-, the orders were passed in November 2013 which recovery could not have been done from the husband of the petitioner as he had already died by the said date.
4. Learned counsel for respondent No. 2 submits that once a charge sheet had already been issued to the husband of petitioner while he was alive, merely the fact that he had died during the pendency of the disciplinary proceedings, will not affect the right of the department to recover the amount

from the pending dues of the late husband of the petitioner.

5. Learned counsel for the respondent further submits that once the recoveries which have been ordered in the year 2013, after the death of the husband of the petitioner, are not under challenge, no relief can be extended to the petitioner.

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

7. From the pleadings, it transpires that at the time of death of the husband of the petitioner, there were charge sheets pending against him. Prior to the retirement of the husband of the petitioner, in one of the charge sheet, order dated 15.03.2010 was passed for recovery of an amount of Rs.87,329/-. That being so, once an order of recovery was passed at the time when the husband of the petitioner was alive and was in service, the respondents are well within their jurisdiction to recover the said amount from the pending dues of the late husband of the petitioner.

8. With regard to the charge sheet dated 16.05.2011 and 25.05.2011, which were also issued to the late husband of the petitioner while he was in service, the order has been passed on 13.11.2013 for the recovery of Rs.22,000/- and Rs.18,000/-. In this regard, it may be noticed that husband of the petitioner had unfortunately died in December 2011 and no order causing prejudice to a dead employee can be passed. The order dated 13.11.2013 was passed unilaterally by the department even without giving any notice to the heirs of the deceased employee.

9. Further, as per the settled principle of law settled by this Court in ***CWP No. 21917 of 2016***, titled as ***Shikha Devi Vs. Haryana State Federation of***

Consumers' Cooperative Wholesale Stores Ltd. decided on 02.08.2022, after the death of an employee, the disciplinary proceedings abate. Hence, after the death of the husband of the petitioner in December 2011, the departmental proceedings in respect of the charge sheet dated 25.05.2011 as well as 16.05.2011 stood abated. Hence, the recovery of Rs.22,000/- and Rs.18,000/- being ordered from the benefits admissible to the petitioner in respect of the service of her late husband, is totally arbitrary and illegal. The said recovery of Rs.22,000/- and Rs.18,000/- cannot be effected.

10. With regard to the arguments of learned counsel for respondent No. 2 that the said order dated 13.11.2013 is not under challenge, an order has been passed against a dead employee and that too after more than one and a half year of his death, the same need not be challenged by the petitioner who is claiming the benefits of the service. Further, nothing has come on record that the said orders were even served upon the petitioner at any given point of time before being brought to the notice of the Court in the reply. Hence, the argument that the order dated 13.11.2013 is not under challenge so as to decline the benefits to the petitioner cannot be accepted.

11. Keeping in view the fact that the husband of the petitioner had retired from service on 31.05.2011 and thereafter, died in December 2011 and his pensionary benefits have been withheld for the recovery of Rs.87,329/-, the respondents should have done the recovery from the outstanding dues and release the remaining amount as per the letter dated 13.11.2013 wherein the respondent No. 2 themselves has mentioned that the amount for which the petitioner becomes entitled for should be released after effecting the recovery from the pending entitlement of the petitioner. That being the factual position, retaining the total

amount even thereafter was without any jurisdiction. Hence, the respondents are well within the right and are allowed to deduct an amount of Rs.87,329/- from the admissible benefits to the petitioner in respect of the service rendered by her late husband and after deducing the said amount, the remaining amount be released to the petitioner within a period of two months from the receipt of the copy of the present order and the said amount be released along with interest @ 6% per annum from 13.11.2013 onwards till the release of actual payment. The said interest is being granted keeping in view the settled principle of law settled by a Coordinate Bench of this Court in **J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355**, according to which an employee will be entitled for the interest on an amount which has been retained and used by the respondents without any valid justification. The relevant paragraph of **J.S. Cheema's case (supra)** is as under: -

“The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.”

12. Petition is allowed in above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

03.10.2023

Mehak

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No