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2023: PHHC : 126622
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-21369-2020
Date of decision : 18.08.2023

Harbhajan Kaur
Vs.
State of Punjab and others

...Petitioner
...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Arun Bansal, Advocate
for the petitioner.

Mr. T.P.S.Walia, AAG, Punjab.

Mr. Naresh Gopal Sharma, Advocate and
Mr. Parkash Chand Shandil, Advocate
for respondent Nos.2 and 3.

DEEPAK MANCHANDA, J.(Oral)

1. Through present petition, petitioner has sought quashing of the order dated 14.04.2005 (Annexure P-1) vide which the respondent No.2 ordered for effecting recovery and compulsory retirement of the petitioner along with issuance of directions to respondent No.3 for modification of impugned order dated 06.05.2019 (Annexure P-2), whereby although the appeal against the order dated 14.04.2005 for recovery of loss was accepted and order dated 14.04.2005 pertaining to recovery was set aside, no order with regard to reinstatement of petitioner by setting aside the said order for compulsory retirement was passed.
2. The grievance raised in the present petition is that once vide order dated 06.05.2019 passed in the appeal an order effecting recovery of the amount of Rs. 42,64,106.50, the said recovery has already been set aside on merits, then the said order for compulsory retirement of petitioner should also have been set aside, which has not been done. Aggrieved by the same, the petitioner who is wife of the deceased-employee (Jagtar Singh) who had expired on 02.08.2016 during the pendency of the appeal has prayed for modification of impugned order dated

06.05.2019, whereby appeal of the husband of the petitioner has been partly allowed. Hence, the present writ petition.

3. Learned counsel for the petitioner refers to the orders dated 06.05.2019 (Annexure P-2) and 26.04.2019 (Annexure P-4) to contend that Jagtar Singh and Varinder Kumar were held responsible for the alleged losses together, therefore, Jagtar Singh cannot be discriminated. He further contends that if there is no loss on account of any alleged negligence of Jagtar Singh, then no order of compulsorily retirement of Jagtar Singh can be sustained, therefore, Jagtar Singh be treated in service and all pensionary benefits be released to him and prays that appropriate directions be issued to the respondent No.3 to modify the impugned order.

4. While opposing the prayer of the petitioner, learned counsel representing respondent Nos.2 and 3 submits that during the enquiry proceedings, many opportunities were given to petitioner's husband to join the inquiry proceedings, but he intentionally avoided the same, therefore, *ex parte* inquiry was conducted against him. Thereafter, he preferred appeal against the punishment order of compulsorily retirement. It is further contended by him that in a separate case of recovery of Rs.4,68,48,827.40 against Jagtar Singh and Varinder Kumar, vide order dated 22.08.2006 (Annexure P-3), punishing authority ordered recovery of Rs.2,34,24,413.70 each from them. Further, after the order of appellate authority for remanding the case back to the punishing authority and it passed the fresh order to file the charge-sheet dated 12.02.2004 issued to petitioner's husband in view of the instructions of Govt.of Punjab dated 23.06.1992, wherein instructions have been issued to drop disciplinary proceedings against the deceased employee. Therefore, the appellate authority considering the fact that the petitioner's husband has expired, it set aside the order of recovery. Learned counsel prays that the prayer of the petitioner be dismissed.

5. I have heard learned counsels appearing for the parties.

6. A perusal of order dated 06.05.2019 reveals that the appellate authority after discussing and considering the merits partly accepted the appeal filed by the deceased-husband of the petitioner and order dated 14.04.2005 pertaining to the recovery of loss of Rs.42,64,106.50 was set aside. After going through the contents of order dated 14.04.2005 passed by the Managing Director, who concluded on the basis of charge sheet filed against the deceased husband of the petitioner by holding that deceased-husband of the petitioner being guilty, and ordered for effecting recovery of Rs.42,64,106.50 i.e. 50% of total loss of Rs.85,28,213.00 each from husband of the petitioner and one Varinder Singh. Apart from the same, a consequential order for compulsorily retiring the deceased husband of the petitioner was also passed. But once the appellate authority after considering the merits had decided to set aside the recovery, which was ordered to be effected vide the same order dated 14.04.2005, but no reasoning has been given for not setting aside the order of compulsorily retirement and same should also have been set aside, as same was the consequential order followed by the order of effecting recovery, which has not been done.

7. Moreover, as per the additional affidavit dated 17.08.2023, the respondents took a stand that the appellate authority had only set aside the order of recovery of Rs.42,64,106.50/- vide order dated 06.05.2019 by taking a lenient view in the appeal as the husband of petitioner has already been expired and no order has been passed regarding the punishment of compulsorily retirement of the petitioner's husband, which is factually incorrect. The order dated 06.05.2019 was decided on merits, but without issuing notice to the petitioner as the appeal was filed by her husband, who passed away in August, 2016 during its pendency. The issue of compulsorily retirement was not considered inspite of accepting the appeal even after reaching at conclusion that no recovery can be effected from the deceased-husband of the petitioner.

8. Further, another employee, namely, Varinder Kumar on whom 50% recovery was imposed along with husband of the petitioner and who was also compulsorily retired from service vide order dated 14.04.2005 (Annexure P-1), consequently he was dismissed from service vide order dated 22.08.2006 (Annexure P-3), who was still in service. An appeal was preferred by him, which was accepted vide order dated 30.05.2019 (Annexure P-6).
9. Thus, in view of the foregoing discussion, this Court deems it appropriate to issue directions to respondent No.3 for modifying the order dated 06.05.2019 by re-examining the same in the light of observation made by this Court.
10. Consequently, the writ petition is allowed and the matter is remanded back to respondent No.3 with the directions to pass the fresh order within three months from the receipt of certified copy of this order.

(DEEPAK MANCHANDA)
JUDGE

18.08.2023
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No