

CM-13082-C-2014 &
CM-13083-C-2014 in/&
RSA-5516-2014 (O&M)

. 2023:PHHC:057915

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-13082-C-2014 in
CM-13083-C-2014 in/&
RSA-5516-2014 (O&M)
Date of Decision :24.04.2023

Punjab National Bank

....Appellant

Versus

Sharda Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.S. Bhatia, Advocate for the appellant-bank.

Mr. Aseem Aggarwal, Advocate for the respondents.

* * *

Harsimran Singh Sethi, J. (Oral)

CM-13082-C-2014

The present application has been filed for condonation of delay of 70 days in filing the present appeal.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the application is allowed. Delay of 70 days in filing the present appeal is condoned.

CM-13083-C-2014

The present application has been filed for condonation of delay of 158 days in re-filing the present appeal.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the application is allowed. Delay of 158

days in re-filing the present appeal is condoned.

RSA-5516-2014

Present regular second appeal has been filed against the judgments and decrees dated 09.11.2011 and 03.10.2013 of the Courts below by which, claim of the respondents-plaintiffs for the grant of benefits in respect of the service rendered by Sunil Dutt Sharma, who was an employee of the appellant-bank, has been allowed and action of the appellant-bank in adjusting the service benefits for which, the legal heirs of the Sunil Dutt Sharma was entitled for, on the ground that there were allegations of embezzlement of money qua the said Sunil Dutt Shama, was held to be bad and a direction was given to the appellant-bank to release the service benefits to the legal heirs of Sunil Dutt Sharma along with interest. The said judgments and decrees of the Courts below dated 09.11.2011 and 03.10.2013 are under challenge in the present regular second appeal.

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

Sunil Dutt Sharma was working with the appellant-bank on the post of Head Cashier. While working on the said post, on 10.03.2003, he was picked up by the police in respect of certain allegations made by the appellant-bank and it is a conceded position that on the said date itself he died. On very next date i.e 11.03.2003, two FIRs were registered against him being FIR No.163 and FIR No.164. In one of the FIR, the allegations were made against the Sunil Dutt Sharma qua certain embezzlement of money on the basis of the complaint received from the appellant-bank and the other FIR was registered keeping in view the suicide committed by the Sunil Dutt

Sharma while he was in police custody.

After the death of Sunil Dutt Sharma, his family claimed the service benefits in respect of the services rendered by him but they were intimated by the appellant-bank that as there were allegations of embezzlement against Sunil Dutt Sharma, a sum of Rs.1,47,762.30 out of the gratuity and sum of Rs.2,79,290.21 out of the GPF, admissible to Sunil Dutt Sharma, has been withheld in respect of the embezzled amount.

As the withheld amount has not been paid, the legal heirs of Sunil Dutt Sharma i.e. respondents-plaintiffs filed a civil suit claiming the withheld benefits along with interest.

Keeping in view the evidence which came on record while interpreting the same in view of the facts and circumstance of the case, the trial Court vide judgment and decree dated 09.11.2011 allowed the suit of the respondents-plaintiffs and directed the appellant-bank to release the withheld service benefits along with interest @ 9% per annum from the date the benefits were withheld till its realization of the same.

Feeling aggrieved against the judgment and decree of the trial Court, an appeal was preferred by the appellant-bank before the lower Appellate Court and after appreciating all the grounds taken, the said appeal was also dismissed vide judgment and decree dated 03.10.2013 of the lower Appellate Court the judgment and decree of the trial Court dated 09.11.2011 was upheld. Hence, the present regular second appeal.

Learned counsel for the appellant-bank argues that in the present case, there was an allegations of embezzlement of approximately Rs 10 lacs by the Sunil Dutt Sharma and in order to recover the said

amount, certain recoveries have been made from the gratuity and GPF of Sunil Dutt Sharma, which cannot be termed as arbitrary and illegal and the Courts below have failed to appreciate the facts of the present case in a correct perspective while directing the appellant-bank to release all the service benefits of Sunil Dutt Sharma along with interest. Hence, the findings recorded by the Courts below are perverse to the evidence and facts on record.

Learned counsel for the respondents-plaintiffs submits that the Courts below have appreciated the evidence in correct perspective keeping in view the facts of the present case and the same cannot be termed as arbitrary and illegal and the finding of the Courts below that no benefit in respect of the service rendered by Sunil Dutt Sharma could have been withheld by the appellant-bank after his death, is correct and liable to the upheld.

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

It may be noticed that it is a admitted fact that a complaint was made by the appellant-bank to the police authorities in pursuance to which Sunil Dutt Sharma was picked up by the police on 10.03.2003. It is also a conceded fact that in the police custody, Sunil Dutt Sharma committed suicide. FIR qua the allegations of embezzlement was registered after the death of Sunil Dutt Sharma on 11.03.2003. Once, even the allegations on the basis of which, an FIR was registered, was after the death of Sunil Dutt Sharma, no action could have been taken by the police upon the said complaint or in relation to the FIR qua embezzlement of amount as accused

had already died even before the registration of an FIR. Learned counsel for the appellant-bank concedes the factum that no departmental enquiry could have been conducted to record any finding qua the conduct of Sunil Dutt Sharma after his death. That being so, it is a conceded position that any material which might have come in respect of the allegations in the investigation which the police conducted in respect of FIR No.163 dated 11.03.2003, was beyond their jurisdiction and could not have been relied upon in any purpose much less withholding of certain service benefits for which, legal heirs of the Sunil Dutt Sharma were entitled for and that too by assuming that the said allegations stood proved. Hence, no valid evidence, which would have justified withholding of the benefits in respect of service rendered by Sunil Dutt Sharma, has been brought to the notice of this Court so as to hold that findings recorded by the Court below are perverse.

Further, it is also a conceded position that no charge sheet was ever issued to Sunil Dutt Sharma qua the allegations of embezzlement prior to his death. That being so, it can be safely said that there is no evidence which had come on record to prove the said embezzlement at the hands of Sunil Dutt Sharma. That being so, once, there were no disciplinary proceedings or criminal proceedings pending against Sunil Dutt Sharma qua the allegations of embezzlement up to his death, any allegation alleged against him after his death cannot be taken into account for proving any allegation so as to withhold the service benefits for which, legal heirs of the Sunil Dutt Sharma became entitled for, in respect of the services rendered by Sunil Dutt Sharma. Further, it is a settled principle of law that no proceedings either criminal or departmental can be undertaken against a

dead employee.

The said question of law has already been decided by this Court in CWP-21917-2016 titled as *Shiksha Devi vs. Haryana State Federation of Consumers Cooperative Wholesale Stores Ltd* decided on 02.08.2022.

Relevant paragraphs of the judgment are as under:-

“10. In the present case, no rule has been cited by the respondents to show their jurisdiction to issue a chargesheet to a retired employee, hence, the chargesheets which have been issued to the late husband of the petitioner after his retirement, which have been taken to the logical end by way of 4 of 8 ::: Downloaded From Local Server on - 03-05-2023 09:44:03 ::: CWP No.21917 of 2016 5 impugned order so as to impose the recovery of Rs.6,44,890/-, is held to be without any jurisdiction and the same is accordingly quashed along with consequential proceeding including the impugned order.

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.”

In the present case, nothing has come on record that allegations qua embezzlement have been proved against Sunil Dutt Sharma so as to

withhold the service benefits for which, family of the deceased is entitled for. Once, the allegations have not been proved in any proceedings either departmental or criminal before the death of the employee concerned withholding of the service benefits on the assumption by the appellate-bank that the allegations stood proved after the death of the employee cannot be allowed as it will amount to condemning a dead person without giving opportunity of hearing.

Keeping in view the facts and circumstances noticed hereinbefore, withholding of the service benefits in respect of the service rendered by Sunil Dutt Sharma cannot be treated as valid action on the part of the appellant-bank and the judgments and decrees of the Courts below cannot be treated as perverse on any account. Hence, no interference is called for by this Court and the present regular second appeal is accordingly dismissed.

**CM-13084 to 13086-C-2014 &
CM-4890-C-2015**

Applications are disposed of.

Civil miscellaneous application pending, if any, is also disposed of.

April 24, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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