HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
****
CWP-31282-2019 (O&M)
Date of decision: 19.10.2023
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Dharamwati ... Petitioner

VS.

Dakshin Haryana Bijli Vitran Nigam (DHBVN) & Ors. ... Respondents
****

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL
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Present: Mr. DS Rawat, Advocate for the petitioner

Ms. Aditi Sharma, Advocate for
Mr. CS Bakshi, Advocate for the respondents
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Sandeep Moudgil, J.

(1). The petitioner-Dharamwati wife of late Sh. Ranvir Singh has filed the present writ petition invoking the jurisdiction of this Court under Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 29.04.2019 (Annexure P9) vide petitioner's claim for commutation of pension of her late husband and interest on the delayed payment of retiral benefits to her late husband, has been rejected. Further a direction is sought to the respondents to release commutation of pension which became due and payable to late husband of the petitioner on 30.06.2017 on account of his superannuation along with interest at GPG rates in accordance with instructions dated 20.02.2002 (Annexure P1) w.e.f. 30.06.2017 and also to release the leave encashment from 05.03.1999 to 30.03.1999 along with interest.

(2). Learned counsel for the petitioner submitted that the husband of the petitioner, namely, Ranvir Singh was initially appointed as Assistant Lineman with the respondent-DHBVNL on 02.01.1981 and was promoted to the post of Junior Engineer and retired as such on 30.06.2017 after attaining the age of superannuation and thereafter, on account of some illness, he died on 23.01.2018. It is further submitted that the husband of the petitioner applied for commutation of pension as well as for release of other retiral benefit in the office of SDO, Sub Divn. No.1, DHBVNL, Faridabad well in time before his retirement as can be seen from the document Annexure P7 which is letter addressed to Chief Accounts Officer which shows that the Executive Engineer has acknowledged the fact of receiving the pension case of the petitioner, however, the respondents sat over the matter and did not forward the documents to the competent authority.

(3). The further argument raised on behalf of the petitioner is that as per the instructions dated 09.07.2004 (Annexure P6), the husband of the petitioner, who died on 23.01.2018, could apply for commutation of pension till 30.06.2018 i.e. before one year of the date of retirement. He further submitted that the respondents have not released leave encashment from 05.03.1999 to 30.03.1999 since the deceased employee was on medical leave and the said period was wrongly treated as earned leave by the respondents and as such, they did not release the leave encashment for the said period.

(4). It is further averred that in pursuance to the order dated 26.02.2019 passed by this Court in an earlier writ petition i.e. CWP-5067-2019 filed by the petitioner, the respondent vide impugned order dated 29.04.2019 (Annexure P9), rejected the claim of the petitioner for release of commutation of pension on the ground that the petitioner is neither eligible nor entitled to receive commutation of pension after the death of the retiree husband of the petitioner, on 23.01.2018.

(5). It is lastly contended that once all the pension papers were submitted by the petitioner again including the application for commutation of pension, which have been considered, the benefit of commutation of pension cannot be denied to the petitioner on the ground that late husband of the petitioner did not apply for commutation of pension after his retirement.

(6). Notice of motion was issued on 30.10.2019 and thereafter, respondents have filed written statement by way of an affidavit of Jitender Singh Dhull, Executive Engineer (OP) Divn. DHBVN, Faridabad.

(7). It is averred in the affidavit that the petitioner has been paid the pension, death-cum-retirement benefit besides family pension admissible in accordance with rules as also leave encashment to the tune of Rs.90,036/- paid on 30.03.2018. It is further averred that the commutation of pension is non-admissible to the petitioner family pension after 23.01.2018 due to death of retiree because commutation of pension is admissible to the living retiree and not to the family pensioner.

(8). Learned counsel for the respondents then maintained that the delay in payment has been caused due to adoption of 7th Pay Commission on 23.05.2017. It is then submitted that the husband of the petitioner superannuated on 30.06.2017 and before his retirement the service book and service verification was required to be finalised and as a result admissible leave encashment 213 days lying at his credit was sanctioned vide order No.78 dated 29.06.2017 by making adjustment of Rs. 3,56,130/- outstanding balance amount of loan and advances and balance amount Rs 25,026/- paid to the retiree, but after his retirement the retiree made the request by sending application to make the sanction of his leave from 05.03.1999 to 30.03.1999

& 1.1.15 to 12.2.15 under medical rules instead of already sanctioned under Rule 8.133 so that he could get more leave encashment amount and as a result his subsequent application after his retirement was considered and proceeded for review and its re-sanction under Medical Rules 8.119 for the period 1.1.15 to 12..2.15 (43 days) but the leave 5.3.99 to 30.3.99 already recorded in service book found in order with the proviso to make exceptional benefit of leave encashment at the request of the retiree and as a result of re-sanctioned leave of above period, the balance amount of Rs. 90,036/- and arrears of 7th Pay Commission i.e. Rs 1,28,260/- were released to the petitioner on 30.03.2018.

(9). Heard learned counsel for the parties and gone through the record.

(10). It cannot be denied that the late husband of the petitioner, namely, Ranvir Singh submitted his pension papers including the application for the grant of the benefit of commutation of pension as is evident from letter (Annexure P7) before his retirement, but those pension papers were never forwarded to the competent authority for releasing of the pensionary benefits and in the meantime, unfortunately the husband of the petitioner died on 23.01.2018. The respondents, though having received the claim of commutation/pension, before the death of husband of the petitioner, showed their utmost insensitivity and returned all the pension papers to the petitioner asking her to fill the pension papers afresh, which she did, but while granting the pensionary benefits, the benefit of commuted value of pension was declined to the petitioner on the ground that the application for the said benefit was not given by late husband of the petitioner in that regard.

The fact that the pension/commutation papers of the husband of the petitioner were returned duly acknowledges the fact that all the pension/commutation papers were submitted by the husband of the petitioner well before expiry of one year period from the date of retirement and before his death. Once all the pension papers were submitted by the petitioner again including the application for commutation of pension, which have been considered, the benefit of commutation of pension cannot be denied to the petitioner on the ground that late husband of the petitioner did not apply for commutation of pension after his retirement.

(11). Reference is made to Rule 11.16 of Punjab CSR Vol.-II (as applicable to Haryana), which reads as under:-

> *"If the petitioner dies on or after the day on which commutation became absolute but before receiving the commutation value, this value shall be paid to his heirs."*

(12). A perusal of the above makes it clear that a provision has been made for payment of commuted value of pension to the heirs. If a pensioner dies on or after the day on which the commutation became absolute but before receiving the commutation value, the same shall be paid to his heirs. The husband of the petitioner retired from service on 30.06.2017. He expired on 23.01.2018 and was entitled to receive the commutation after his retirement on 30.06.2017 but he died before receiving the commuted value of pension. This value, thus, is to be paid to his heir i.e. the petitioner. That seems to be the operation of this rule. The respondent-Nigam, being a part and parcel of the welfare State, instead of helping a person who has lost her husband after illness, have created one problem or the other for her. It cannot be denied that petitioner, being a legal heir, is entitled to receive the pensionary benefits due to her late husband. Surely, a dead person cannot come alive to sign documents and indeed there are ample instances where an employee dies suddenly or accidentally, therefore, he would not be expected to leave signed documents for release of benefits. Surely such documents would be signed by a heir, who is entitled to receive benefits. The objection on this ground to deny this payment of commuted value certainly appears misconceived. If an heir is entitled to receive some benefit, he would certainly be entitled to sign for the grant or release of such benefit. The objection of the respondents is frivolous and misconceived and, thus, cannot sustain.

(13). As regards payment of interest on the delayed realization of the dues, it is an admitted position that due to delay on the part of the respondent-Nigam authorities in adoption of 7th Pay Commission report, there has been delay in payment of pensionary benefits to the petitioner. That being so, since the husband of the petitioner died after the date he became entitled on account of 7th Pay Commission, the benefit of commutation of pension as well as the late payment of gratuity, pension and other retiral benefits etc.

(14). Accordingly, this writ petition is allowed; the order dated 29.04.2019 (Annexure P9) is quashed and the respondents are directed to release the commutation of pension in favour of the petitioner being wife of the deceased employee, which became due on 30.06.2017 along with interest @ 6% p.a. The petitioner shall also be entitled for interest @ 6% p.a. for the delay in payment of pension and other retiral dues. The consequential arrears of dues and commutation of pension shall be disbursed in favour of the petitioner as early as possible but not later than *two months* from the date of receipt of certified copy of this order.

(15). The contention of the petitioner that the respondents have wrongly treated the period from 05.03.1999 to 30.03.1999 as earned leave and not as medical leave for the purpose of calculation towards leave encashment, the respondents are directed to sympathetically consider the claim of the petitioner for grant of leave encashment by treating the period from 05.03.1999 to 30.03.1999 as medical leave particularly in view of the fact that the husband of the petitioner remained ill before his death and as such, the period of sick leave of the husband of the petitioner cannot be treated to be as earned leave.

(16). Ordered accordingly.

19.10.2023
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned? Yes/No
2. Wheter reportable? Yes/No