

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

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CWP-34771-2019
Decided on : 23.11.2023

Suman

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Manoj Chahal, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

HARSIMRAN SINGH SETHI, J. (ORAL)

1. In the present petition, challenge is to the order dated 16.10.2017 (Annexure P-7) by which after the death of the husband of the petitioner, his appointment has been withdrawn on the ground that the deceased husband was not entitled for appointment.

2. The facts leading to the filing of the present petition are that the husband of the petitioner was appointed as a driver with the Haryana Roadways after being recruited through the Haryana Staff Selection Commission (hereinafter to be referred as 'HSSC') vide appointment letter dated 20.06.2008. Thereafter, all the documents submitted by the late husband of the petitioner in order to claim the eligibility were verified and ultimately, he was allowed to join the duty. Unfortunately, within a period of 3 months of joining the duty, the husband of the petitioner died on 03.08.2008.

3. After the death of her husband, the petitioner claimed the benefit being the widow of a government employee who was regularly working on the post of the Driver with the Haryana Roadways.

4. Rather than granting the benefits, by the impugned order dated 16.10..2017 i.e. after approximately more than 9 years of the death of the husband of the petitioner, the respondents withdrew the appointment given to the deceased husband on the ground that he was not entitled to be recruited as he did not fulfilled the qualifications required for the appointment. The financial/*ex gratia* financial benefits which were awarded in favour of the petitioner were also withdrawn. The said order is under challenge in the present petition.

5. Learned counsel for the petitioner argues that after the death of an employee, no order causing prejudice to the said dead employee can be passed by the respondent. Hence, the impugned order, which has been passed after the expiry of more than 9 years of the death of the employee concerned, withdrawing the appointment of the late husband of the petitioner, is totally arbitrary and illegal and the said order is liable to be set aside.

6. Learned counsel for the petitioner further submits that the financial benefits for which the petitioner, being the widow the deceased-employee, is entitled for, are liable to be released in her favour alongwith arrears and interest.

7. Learned State counsel submits that though, it is a conceded position that upto the death of the employee, no action was taken and rather, he was appointed after verifying all the documents, but certain facts came to the notice of the department, on the basis of which the impugned order was passed.

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

9. The first question which arises for the determination is whether, an order causing prejudice to the dead employee can be passed and that too without giving any opportunity of hearing even to the legal representative of the said

deceased employee.

10. The settled principle of law in this respect can be cited being **CWP-21917-2016** decided on 02.08.20222 titled **Shiksha Devi Vs. Haryana State Federation of Consumers Co-operative, Wholesale Stores Ltd.** wherein, it has been mentioned that even where the disciplinary proceedings are pending against the employee, the same abates after his death on the ground that after the death, there exists no master and servant relationship so as to pass any order causing prejudice to the dead employee. The relevant para of the said judgment is as under:-

“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.”

11. In the present case, the respondents have withdrawn the appointment of the deceased employee after more than 9 years of the death of employee concerned. Keeping in view the settled principle of law in **Shiksha Devi (supra)**, no order causing prejudice to the dead employee could have been passed by the respondents, muchless, withdrawing the appointment which was given to the employee concerned after due verification in the year 2008. Hence the impugned

order dated 16.10.2017 is contrary to the settled principle of law cited hereinbefore.

12. Accordingly, the impugned order dated 16.10.2017 is set aside. The respondents are directed to grant the petitioner all the benefits which the widow of the deceased employee will get including the family pension as well as the *ex gratia* financial assistance.

13. As the order passed by the respondents is contrary to the settled principle of law and prejudice has been caused to the petitioner as she has been restrained from getting the benefit for the last more than 6 years and has been made to litigate with the department, on the arrears for which the petitioner will become entitled for under this order, the petitioner will also be paid interest @ 6% per annum keeping in view the judgment of the coordinate Bench of this Court in ***J. S. Cheema Vs. State of Haryana, 2014 (3) RCR (Civil) 355***, relevant para of which is being reproduced hereunder:-

“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 laying 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.”

14. The present writ petition is being allowed in abovesaid terms.

(HARSIMRAN SINGH SETHI)
JUDGE

23.11.2023

Mehak

Whether reasoned/speaking?
Whether reportable?

Yes/~~No~~
~~Yes~~/No