



CWP-743-2023

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-743-2023
Date of Decision: 22.05.2024

Maya Devi

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Rajesh Goyal, Advocate,
for the petitioner.

Mr. Bhupinder Gupta, Advocate for
Mr. G.S. Madaan, Advocate,
for the respondents.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing the impugned letter dated 10.04.2013 (Annexure P-2) and recovery letter dated 06.12.2013 (Annexure P-3) whereby the pension of the husband of the petitioner has been reduced by the respondents and an amount of Rs.5,65,524/- was sought to be recovered from him. Further prayer in the nature of *mandamus* directing the respondents to release full pension of the husband of the petitioner along with interest.
2. The brief facts of the present case are that the husband of the petitioner was working as a Chowkidar in the respondent-Corporation and was thereafter promoted to the post of Lower Division Clerk (LDC) on



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15.09.1989. There was a condition under the Rules that a person, who is promoted, has to pass typing test within a specific period. Repeatedly, the husband of the petitioner was informed with regard to the aforesaid passing of the typing test and the husband of the petitioner had also been seeking exemption but neither he passed the typing test nor any exemption was granted to him and ultimately the husband of the petitioner retired on 31.10.2012. It was after his retirement vide Annexure P-2, the Chief Engineer wrote a letter to the husband of the petitioner on 10.04.2013 directing him to pass the mandatory typing test within a period of three months otherwise he will be reverted to the post of Chowkidar. The aforesaid letter (Annexure P-2) issued by the Chief Engineer to the petitioner is reproduced as under:-

**“HARYANA POWER GENERATION CORPORATION
LIMITED**

AN ISO: 9001, ISO: 14001 & OHSAS 18001 COMPANY
Regd. Office: C-7, Urja Bhawan, Sector 6, Panchkula-134109

HPGCL Ph. No. 0172-5023444

Fax No.0172-5022404

From

*Chief Engineer/Admn.
HPGCL, Panchkula.*

To

*Sh. Prem Chand, LDC (Retired)
R/o V&PO Assan Kalan,
Tehsil & Distt. Panipat-132105.*

Memo No.516 Ch. 13/HPGC/ENG-2103

Dated: 10-4-13

***Subject: Exemption from Type Test-NGE Sh. Prem Chand,
LDC(Retired).***

*Please refer to your request application dated
10.12.2012 on the subject noted above.*

In this context, it is intimated that your



representation regarding exemption in passing the type test was placed before the Competent Authority for taking appropriate decision in the matter. The Competent Authority after having considered all the facts and circumstances has decided to reject the same in terms of decision of BOD meeting held on 04.11.2009, wherein, it was decided that you will have to pass the mandatory type test within a period of 3 months failing which, you will be reverted to the post from which you were promoted as LDC. Besides, you were afforded number of opportunity, but you did not clear the Type Test. It is therefore, you are informed accordingly.

This issues with the approval of Chief Engineer/Admn., HPGCL, Panchkula.

Sd/-

*Under Secy./Estt. (NG
For Chief Engineer/Admi
HPGCL, Panchkula”*

3. Thereafter, after the retirement of the husband of the petitioner, his pension and pensionary benefits were refixed on the basis of the aforesaid reversion although the order of reversion is not on record and he was paid the pensionary benefits for the post of Chowkidar. Some recoveries were also made, out of which, some of them are reflected in Annexure P-3 which is an amount of Rs.2,86,261/-. Thereafter, unfortunately, the husband of the petitioner died on 29.04.2018 and thereafter, family pension and other benefits of the petitioner, who is a widow, were also fixed on the basis of the salary of her husband as Chowkidar. The action of the respondents is under challenge in the present petition.

4. Learned counsel for the petitioner submitted that although at the time when the husband of the petitioner was promoted to the post of LDC,



there might have been some violation of Rule pertaining to non-passing of the typing test but the husband of the petitioner was never reverted from the post of LDC to the post of Chowkidar while he was in service. He further submitted that after the husband of the petitioner had retired, there was no authority of law with the respondents to have issued a letter to the husband of the petitioner directing him to pass the typing test otherwise he will be reverted. He submitted that the master and servant relationship ceases to operate after the retirement and no such letter could have been written by an Officer of the rank of Chief Engineer and it was without any provision and authority of law and the aforesaid letter was given effect to and pension of the husband of the petitioner was refixed to that of the Chowkidar and recovery was sought from the husband of the petitioner. He submitted that the entire exercise of the respondents is illegal and against the law.

5. On the other hand, learned counsel appearing on behalf of the respondents submitted that it is correct that while the husband of the petitioner was in service, he was never reverted and he retired on the post of LDC but while he was in service he was bound to pass the typing test in pursuance of the Rules which he failed to pass nor any exemptions were granted to him and even repeatedly reminders were given to him vide Annexures R-3 & R-4 and for a number of times, intimation was given to him to pass the test but he never passed the test and since the husband of the petitioner did not fulfill the prescribed qualification, he was required to be reverted. He further submitted that it was because of this reason that the husband of the petitioner was reverted after his retirement and his pension was refixed to that of the post of Chowkidar.



6. I have heard the learned counsels for the parties.

7. It is a case where a widow has knocked the doors of this Court by filing the present petition by raising a grievance that after her husband retired as LDC, the respondents had issued a letter to her husband directing him to pass the mandatory typing test otherwise he will be reverted and thereafter, he was actually reverted after his retirement because of non-passing of the typing test and his pension and pensionary benefits were refixed to that of the post of Chowkidar and thereafter when he died on 29.04.2018, then the petitioner, who is his widow, her family pension and other benefits were also given on the aforesaid post of Chowkidar.

8. When the husband of the petitioner was in service although there might have been a provision for passing of the typing test for the purpose of getting promotion or even after the promotion within the time limit otherwise as per the Rules, he might have been reverted but it is a case where the husband of the petitioner was never reverted while he was in service and he retired as LDC. Thereafter, it is very strange and shocking to read the language of letter vide Annexure P-2 which has been issued by an Officer of the rank of Chief Engineer wherein he directed the petitioner to pass the typing test after his retirement otherwise he will be reverted and thereafter, he was actually reverted although there is no order of reversion on record but it is an admitted position. Thereafter, the entire benefits were recalculated to that of the post of Chowkidar.

9. It is a settled law that after the retirement of an employee, the master and servant relationship ceases to operate. If any action is required to be taken after the retirement of an ex-employee, then same can always be



taken when there is an express authority of law and provision of law. In other words, an action can be taken against a retired employee only when the law permits to do so in a particular fashion but not in such like arbitrary and capricious manner. When there is no provision of law or no authority of law or such kind of reversion being made after the retirement and directing the retired employee to pass a typing test, the action of the respondents is arbitrary, *ex facie* illegal and therefore, is liable to be set aside.

10. In view of the aforesaid facts and circumstances, the present petition is allowed. The respondents are directed to refix the pension and all the pensionary benefits starting from the time when the husband of the petitioner had retired to the post of LDC and to grant all the consequential benefits to the petitioner, who is his widow, with regard to the benefits which the husband of the petitioner was entitled as LDC along with interest @ 6% per annum (simple) within a period of three months from today. The recovery, if any, made either from the petitioner or from her husband, shall be refunded back to the petitioner with interest @ 6% per annum (simple) within the aforesaid period of three months from today. Similarly, the family pension and pensionary benefits and other retiral benefits of the petitioner shall also be refixed as if the husband of the petitioner had retired on the post of the LDC and pay to the petitioner along with interest @ 6% per annum (simple) within the aforesaid period of three months from today.

11. The aforesaid is a case where a widow had to knock the doors of this Court for the purpose of enforcement of not only her Statutory Rights but also her Constitutional Rights envisaged under Article 300-A of the Constitution of India. The action of the respondents is absolutely arbitrary



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and shocking wherein a letter was issued by an Officer of the rank of Chief Engineer directing the husband of the petitioner to pass a typing test after the retirement otherwise he will be reverted and thereafter the aforesaid action was acted upon. Therefore, the action of the respondents was *ex facie* illegal. The petitioner being a widow would be entitled for costs of Rs.2,00,000/- (Rupees Two Lacs Only) which shall also be paid by respondents to the petitioner within the aforesaid period of three months from today. The respondent-Corporation shall be at liberty to recover the aforesaid costs from the officer(s) after fixing responsibility strictly in accordance with law.

22.05.2024

(JASGURPREET SINGH PURI)

JUDGE

Bhumika

1. Whether speaking/reasoned:

Yes/No
2. Whether reportable:

Yes/No