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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-3304-2020
Date of Decision: 01.05.2024

Phoolwati

..... Petitioner

Versus

Haryana State Federation of Consumers Cooperative Wholesale Stores Ltd.

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Dhiraj Chawla, Advocate,
for the petitioner.

Mr. Vivek Saini, Advocate,
for the respondent.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 15.07.2019 (Annexure P-6) whereby the claim for grant of interest on the delayed retiral dues has been arbitrarily rejected with a further prayer in the nature of *mandamus* directing the respondents to grant interest on the delayed payment of retiral benefits.

2. Learned counsel for the petitioner, while giving the facts of the case, submitted that the husband of the petitioner was appointed as Store Keeper on 18.05.1981 in the respondent-CONFED. While he was in service, he was issued a charge-sheet dated 19.03.2004 pertaining to the allegation of less gain of moisture. However, on 05.10.2006, the husband of the petitioner

disappeared and thereafter on 25.10.2006, an FIR was lodged in this regard. On 05.10.2006, the petitioner informed the department that her husband is missing. Thereafter, the husband of the petitioner was dismissed from service on 29.04.2008, since he was missing and was absent from duty. Thereafter, the petitioner filed a civil suit seeking a declaration that the husband of the petitioner is missing from more than 7 years and is presumed to be dead and after the decree of the aforesaid civil suit, a death certificate was issued by the competent authority on 17.03.2015 vide Annexure P-2 in which the date of death has been mentioned to be 05.10.2006.

3. Learned counsel for the petitioner submitted that thereafter, the petitioner filed a writ petition before this Court in which a direction was issued to decide the representation, since there was a declaration of the Civil Court that the petitioner is presumed to be dead and consequent upon the direction issued by this Court on 24.10.2017, the respondents withdrew the order of dismissal vide Annexure P-3 on 26.04.2018 and it was also directed that all the due benefits be released to the legal heirs as per the rules. Consequently, all the retiral benefits and all the legal dues were paid to the petitioner vide Annexure P-4 on 28.09.2018. He also submitted that although all the retiral benefits etc. and all the dues have already been paid to the petitioner but the claim in the present petition is only with regard to grant of interest by fixing notional date of retirement of the husband of the petitioner and thereafter, to grant interest on the delayed retiral benefits from the notional retirement date i.e. 30.04.2008 and even otherwise also the date of dismissal of the husband of the petitioner was one day prior to that i.e. 29.04.2008.

4. On the other hand, Mr. Vivek Saini, learned counsel for the respondent submitted that the prayer of the petitioner is misconceived in view of the fact that the respondents have rightly dismissed the husband of the petitioner at that point of time when he was absent and was missing and once an employee is dismissed from service all the retiral benefits are forfeited and it was thereafter on the basis of a civil suit that a death certificate was issued in the year 2015 vide Annexure P-2 i.e. 17.05.2015 and consequent upon the direction issued by this Court to decide the representation, immediately the order of dismissal was withdrawn on 26.04.2018 vide Annexure P-3 and immediately all the retiral benefits were paid to the petitioner vide Annexure P-4 and therefore, there was no question for grant of interest because there was no delay in the payment because the entire exercise has taken after the withdrawal of the dismissal order and prays for dismissal of the present petition.

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

6. The facts of the present case are straight. The husband of the petitioner remained absent because he disappeared on 05.10.2006 and consequent upon the same an FIR has been registered on 26.10.2006. Thereafter, the petitioner informed the department on 05.10.2006 with regard to disappearance but thereafter, the petitioner filed a civil suit seeking a declaration and consequent upon the decree passed in her favour that the husband of the petitioner is presumed to be dead after seven years of disappearance that a death certificate was issued on 17.03.2015. As per the impugned order which has been passed vide Annexure P-6, it has been so stated by the respondent that the petitioner has produced the death certificate

for the first time on 18.01.2018 at the time of personal hearing and thereafter, immediately on 26.04.2018 vide Annexure P-3, the order of dismissal was withdrawn and it was directed that all the retiral benefits be released to the petitioner.

7. This Court is of the considered view that when an employee is dismissed from service, then all the benefits are to be forfeited. However, later on a subsequent development took place wherein on the basis of a decree passed in a civil suit seeking declaration, a death certificate was issued in the 2015 which was brought to the notice of the respondent in January, 2018 and the petitioner was given all the retiral benefits in the April, 2018 and the learned counsel for the petitioner has not disputed with regard to the same and he is only wanting interest w.e.f. date of death of the husband of the petitioner/notional date of retirement. Such kind of plea which has been raised by the learned counsel for the petitioner is absolutely misconceived. No right vests with the petitioner for grant of any interest on the payments because the payments cannot be termed to be delayed payments in view of the aforesaid circumstances.

8. Consequently, finding no merit in the present petition, the same is, hereby, dismissed.

01.05.2024

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |