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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-10930-2001 (O&&M)
Date of decision: 19.04.2024

Smt. Kanta Rani widow of Late S. Kartar Singh through her L.R Harpreet Kaur

...Petitioners

VERSUS

Uttar Haryana Bijli Vitran Nigam and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Ms. Shifali Goyal, Advocate, for the petitioner.

Mr. Dhananjay Mittal, Advocate, for the respondents.

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JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 27.02.2001 (Annexures P-2) and order dated 16.03.2001 (Annexure P-3) whereby a recovery of Rs. 4,14,373.45 was imposed on the deceased employee and the same has been deducted from the gratuity amount of Rs. 1,72,606.50 and balance further illegally ordered to be recovered from the arrears of pension.

2. Brief facts of the present case are that the husband of the petitioner who was working as Junior Engineer in the respondent-Nigam unfortunately

died on 17.06.1999 while he was in service. During his service, various letters were issued to the husband of the petitioner with regard to some missing parts in the store but neither any show-cause notice was issued to him nor any charge-sheet was issued against him nor any disciplinary proceeding was initiated against him nor any criminal action was taken against him. After his death, petitioner namely, Kanta Rani (since deceased) being the widow of the aforesaid employee namely, Kartar Singh was not paid anything and vide GPO No.12118 dated 27.02.2001, the family pension was fixed but as per Annexure P-2, Senior Accounts Officer of Pension Division recovered an amount of Rs. 4,15,373.45 out of which Rs. 2,42,766.95 was recovered from the arrears of pension and Rs.1,72,606.50 from the gratuity as miscellaneous recovery. In this way, total amount of Rs.4,15,373.45 has been recovered from the petitioner namely, Kanta Rani (since deceased).

3. Ms. Shifali Goyal, learned counsel appearing on behalf of the petitioner submitted that during the pendency of the present petition, the petitioner Kanta Rani also passed away and now she is being represented through her legal heir. She submitted that the aforesaid Kanta Rani after the death of her husband had to face a lot of financial difficulties and also to take care of her daughter who is the legal representative in the present case was aggrieved by the action of the respondent-Nigam to have recovered the aforesaid amount from the pensionary benefits of her father namely, Kartar Singh without any authority of law and without any jurisdiction. She submitted that at the time when the aforesaid Kartar Singh was in service, there was no disciplinary proceeding or any charge-sheet or any kind of show-cause notice against him, although there were allegations with regard to some missing parts

transformer in the store but during his life time no action was taken by the respondent-Nigam at all. It was only after the death of the aforesaid Kartar Singh that from his widow a huge amount of Rs. 4,15,373.45 was recovered from her pensionary benefits and that too without passing any order by any competent authority but by way of making of adjustments by the Senior Accounts Officer which is clear from Annexure P-2. She submitted that after the death of the aforesaid Kartar Singh no action could have been taken for recovery of the aforesaid amount nor the respondents were within their rights to have done so under any provision of law. She also submitted that the recovery from the pensionary/retiral benefits amounted to an action which is taken against a dead person and qua her mother namely, Kanta Rani who is the petitioner (since deceased), no notice has been issued to her and straightaway recovery has been effected from the pensionary benefits and that too without any provision of law. She submitted that the present petition has been filed in the year 2001 which was thereafter admitted and the petitioner is entitled for the refund of the aforesaid amount alongwith interest.

4. On the other hand, Mr. Dhananjay Mittal, Advocate, learned counsel appearing on behalf of the respondent-Nigam submitted that so far as the facts as so stated by learned counsel for the petitioner are concerned, the same cannot be disputed because at the time when the aforesaid Kartar Singh was in service till his death, although various letters were issued to him but no show-cause notice was issued to him nor the same has been placed on record. He submitted that since there was a shortfall of various materials from the store where he was incharge, loss to the State Exchequer has been caused which the respondents were entitled to recover even from the family pension and the

pensionary benefits of his widow. He also submitted that at the time when the aforesaid Kartar Singh was in service no charge-sheet or disciplinary proceedings or any show-cause notice etc. were issued to him.

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

6. It is a case wherein the petition has been filed by a widow of one Kartar Singh and the petition was filed in the year 2001. During the pendency of the present petition, the petitioner Kanta Rani died and now she is represented by her daughter who is her legal heir. The aforesaid Kartar Singh died in the year 1999 and his widow namely, Kanta Rani was paid the pensionary benefits after deducting a huge amount of Rs. 4,15,373.45 which carried a lot of value in the year 2000 wherein not only she had to make her both ends meet but she also had to take care of her daughter. Even aforesaid Kanta Rani passed away during the pendency of the present petition. It is an admitted position that while the aforesaid Kartar Singh was in service there was no action taken against him either by way of a show-cause notice or by a charge-sheet or any disciplinary proceeding or any criminal case at all. After his death again no notice has been issued to the aforesaid Kanta Rani who was the family pensioner and widow of aforesaid Kartar Singh. Apart from the above, there is no order on record to show that any order was passed by competent authority for either forfeiting or for recovering of any amount from pensionary benefits. However, some arrangement of recovery of the aforesaid amount has been made by a Senior Accounts Officer of the Pension Division vide Annexure P-2 on his own. Such kind of action is not sustainable in the eyes of law. In case any recovery is to be effected, then the same can be effected only by following the procedure and in accordance with law and under any

provision of law. However, after the death of the aforesaid Kartar Singh, learned counsel for the respondent-Nigam has not been able to show any provision of law under which such recovery could have been effected. Not only this, even there is no order on record to show that by way of a conscious decision the aforesaid recovery has been effected. In the absence of the same, the action of the respondent-Nigam cannot be justified.

7. A Division Bench of this Court in ***Hans Raj Sharma Versus Uttar Haryana Bijli Vitran Nigam Limited, CWP-152-2004, decided on 29.07.2004*** which is a case of the same respondent of the present case observed that when there is no charge-sheet during the continuous of the service of an employee which is *sine-qua-non* for initiation of any departmental enquiry, then there is no justification for withholding the pension of the petitioner. Although in the present case the aforesaid Kartar Singh did not retire but he died in the year 1999 but the ratio of the aforesaid judgment will be applicable in the present case.

8. The right to receive pension and pensionary benefits is a valuable right and also a Constitutional Right. Way back in the year 1971, a Constitution Bench of Hon'ble Supreme Court in ***Deokinandan Prasad Vs. State of Bihar and others***", ***1971(2) SCC 330*** observed that pension and the pensionary benefits are not a bounty of the State or its instrumentalities and rather it is a valuable right. The pension and pensionary benefits are therefore a right to property. Earlier right to property was a part of Fundamental Right under Article 31 of the Constitutional of India covered in Part-III of the Constitution of India. However, later on by way of 44th amendment of the Constitution of

India it became a Constitutional Right under Article 300-A of the Constitution of India.

9. The State or its instrumentalities do not give the pension and pensionary benefits as a charity but it is the bounden duty of the State to act in accordance with law and to provide the aforesaid benefits within time.

10. Thereafter, Hon'ble Supreme Court in another authoritative judgment passed in "***State of Jharkhand and others Vs. Jitendra Kumar Srivastava and another***", ***2013(12) SCC 210*** again discussed the entire law regarding valuable rights pertaining to the grant of pensionary benefits. Para Nos.8 and 16 of the aforesaid judgment is reproduced as under:-

> *"8. It is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and un-blemished service. Conceptually it is so lucidly described in D.S. Nakara and Ors. Vs. Union of India; (1983) 1 SCC 305 by Justice D.A. Desai, who spoke for the Bench, in his inimitable style, in the following words:*
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> > *"18. The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?*
> >
> > *19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and*

incidental questions so as to render just justice between parties to this petition.

20. The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deokinandan Prasad v. State of Bihar and Ors. (1971) 2 SCC 330 wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied maters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab and Another Vs. Iqbal Singh(1976) 2 SCC 1".

It is thus hard earned benefit which accrues to an employee and is in the nature of "property". This right to property cannot be taken away without the due process of law as per the provisions of Article 300-A of the Constitution of India.

16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognized as a right in "property". Article 300-A of the Constitution of India reads as under:

*"**300-A Persons not to be deprived of property save by authority of law**.- No person shall be deprived of his property save by authority of law."*

> *Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced."*

11. In the present case, a widow has been deprived of her Constitutional and Statutory Rights without the authority of law and without passing any order by the competent authority by which it can be said to have been forfeited or withheld or recovered. A mere adjustment of an amount by the Accounts Department cannot deny the aforesaid rights in such like mechanical manner. Therefore, it is crystal clear that the action of the respondent-Nigam was not only unjustified and unfair but it was also insensitive towards a widow. Here is a case where the husband of Kanta Rani died in the year 1999 and she had a small girl child who is now representing the petitioner because even Kanta Rani also died during the pendency of the present petition in the year 2007. In this way, considering the effect of the aforesaid wrongful action on the part of the respondent-Nigam, the petitioner is also entitled for costs which are assessed as Rs. 1,00,000/- (One lac).

12. Consequently, the present petition is allowed. The respondents are directed that the amount which has been recovered from the pensionary benefits of the aforesaid Kanta Rani shall be refunded to the petitioner alongwith interest @ 6% per annum (simple) within a period of three months from today. It is made clear that if apart from the amount which has been

recovered from the pensionary benefits of the aforesaid Kanta Rani, any other amount is also due in favour of the petitioner, then the same shall also be refunded to the petitioner alongwith interest @ 6% per annum (simple) within a period of three months from today. In case, the aforesaid amount is not paid to the petitioner within a period of three months from today, then the petitioner shall be entitled for future interest @ 9% per annum. The aforesaid costs of Rs. 1,00,000/- (One lac) shall also be paid to the petitioner within the aforesaid period of three months.

(JASGURPREET SINGH PURI)
JUDGE

19.04.2024
rakesh

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