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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-15155-1997 (O&M)
Date of decision: 19.03.2024

ASHA BHARDWAJ

...Petitioner

VERSUS

HSEB, SHAKTI BHAWAN AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Sanjeev Kumar, Advocate
for the petitioner.

Mr. C. S. Bakhshi, 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 an appropriate writ, order or direction, especially in the nature of *mandamus* directing the respondents to pay all the pensionary and other benefits to the petitioner, to which she is entitled, along with interest @ 24% per annum from the due date.

2. The short facts involved in the present case are that the petitioner, who is a widow, is seeking retiral/pensionary benefits which accrued to her after the death of her husband, namely, V. C. Bhardwaj. The husband of the petitioner was appointed in the respondent-Board, namely HSEB (now called as HPGCL and DHBVNL) as an Assistant and thereafter, he was promoted to the post of Store Keeper. However, on 28.08.1992, the petitioner was suspended on the

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basis of some allegations against him pertaining to some embezzlement and even FIR was lodged against him under Sections 409, 420, 467, 468, and 471 of the IPC. Unfortunately, the husband of the petitioner died on 24.06.1993. Since the petitioner died, the proceedings against him in the criminal case were abated and were dropped on 25.01.1994. During the aforesaid period of suspension as well, the petitioner remained absent from duty and during his service period, there were some charge-sheets against him. However, as per the learned counsel for the parties, there was no inquiry conducted in pursuance of the aforesaid charge-sheets and admittedly, no punishment order at all was passed qua the husband of the petitioner in any of the aforesaid charge-sheets. After the death of the husband of the petitioner, the petitioner, being a widow was paid provisional pension and according to Annexure R-1, the petitioner was paid 100% family pension vide PPO No.5038 dated 28.07.1994, but the remaining retired benefits were not paid to the petitioner. The prayer in the present writ petition is for release of the aforesaid retiral benefits and also for interest on the delayed payment of the family pension.

3. Learned counsel for the petitioner submitted that when the husband of the petitioner died on 24.06.1993, there was no punishment order against him in any of the charge-sheets and even so far as Annexure R-1, whereby PPO was made pertaining to the family pension is concerned, the disbursal of the family pension was also very late and not from the date when the aforesaid PPO was sanctioned and that is why the petitioner moved repeated representations to the respondents for grant of retiral benefits and pension and in this regard, he referred to Annexures P-3, P-8, P-9, P-10. He further submitted that although 100% family pension was paid to the petitioner with a delay but so far as the

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other retiral benefits are concerned, they have not been paid till date and there is no order of any competent authority either to withhold or to forfeit any of the benefits and in this way, the petitioner was entitled for grant of all the retiral benefits from the date of death of her husband.

4. Learned counsel for the petitioner also submitted that at the time of death of the husband of the petitioner in the year 1993, she had two minor children i.e. one son of the age of 16 years and one daughter of the age of 12 years and after the death of the husband of the petitioner, it became very difficult for them to make their both ends meet and as there was no other source of income. The entire family went into penury. He further submitted that the respondent-Board not only infringed the Statutory Rights of the petitioner but also infracted Right to Life under Article 21 of the Constitution of India and also Constitutional Right under Article 300-A of the Constitution of India and besides being insensitive to the petitioner, who was a widow of their own employee. He further submitted that there was no justification at all for withholding the aforesaid retiral benefits from the petitioner in this regard.

5. On the other hand, Mr. C. S. Bakhshi, learned counsel for the respondents while referring to para No.1 of the written statement filed on behalf of the respondents dated 09.02.1998, wherein bifurcation has been given with regard to different payments, submitted on instructions from Pardeep Kumar, AEE Office of Resident Engineer, Hydel (Bhudkalan), District Yamuna Nagar that with regard to the revised pension, the petitioner was granted 100% family pension vide PPO No.5038 dated 28.07.1994 (Annexure R-1). So far as the Group Insurance amount is concerned, since the petitioner was not joining the duty, the premium of the group insurance was not paid by the respondents and

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therefore, the Life Insurance Corporation rejected the claim of the petitioner because the policy qua the husband of the petitioner had elapsed because the premium was not paid. So far as the House Rent Allowance for one year is concerned, the same could not be paid because the requisite certificate was not furnished and as regards the arrears of salary for the suspension period is concerned, it is so stated in the written statement that on the death of the husband of the petitioner during the pendency of the suspension period, the said period was regularized and was ordered to be treated as duty period and therefore, dues for this period were calculated to be Rs.34,667.95/- but the same has been ordered to be adjusted against the outstanding recoveries which occurred during the lifetime of the deceased and the balance amount of the recoveries after adjustment remains to be Rs.1,30,070.81/-. So far as the Leave Encashment amount is concerned, the same was calculated to be Rs.25,192/- and the same has been adjusted against the aforesaid recoveries against the husband of the petitioner and so far as the medical allowance is concerned, the same had been given to the petitioner from time to time.

6. Learned counsel for the petitioner while replying to the aforesaid submissions made by the learned counsel for the respondents submitted that out of the aforesaid heads, so far as the claim for House Rent Allowance and Medical Allowance is concerned, he does not wish to press the same but he would press on the following heads:-

(i) Revised Pension.

(ii) Group Insurance amount

(iii) Arrears of salary for the suspension period.

(iv) Leave Encashment.

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7. I have heard the learned counsel for the parties.

8. The petitioner is stated to be a widow. At the time of death of her husband on 24.06.1993, she had two minor children i.e. one daughter of the age of 12 years and one son of the age of 16 years and as per the learned counsel for the petitioner, there was no other source of income to the family after the death of the husband of the petitioner and it was very difficult for them to make their both ends meet and family went into state of penury. During the pendency of the present writ petition, an affidavit was also filed by the Executive Engineer (Electrical) dated 29.06.1998, wherein it has been stated that while the husband of the petitioner was in service and working as a Store Keeper, there were some shortages detected against him. The details of the two purported recoveries have been mentioned in paras No.2 and 3 of the aforesaid affidavit. Paras No.2 and 3 of the aforesaid affidavit is reproduced as under:-

> *2- That on perusal of the whole record lying with the HSEB, it has been noticed that the deceased Shri V.C.Bhardwaj who was working as Store Keeper entrusted with the specific quantities of material from time to time and on conducting of the physical verification in his presence shortages amounting to Rs.1,10,025.32 were detected in his presence, which was duly acknowledged by him under his own signatures. The details of the same are mentioned in para 'A' of Annexure R/3 attached with the affidavit. Besides it shortages amounting to Rs.79884.74 paisa were detected by store verifier and SDO Incharge (Store) but the same could not be acknowledged from late Shri V.C.Bhardwaj because of his absconding from the duty. The details of such shortages are mentioned in para 'B' of the enclosed Annexure R/3.*

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> *3. That out of the aforesaid acknowledged shortages of Rs.1,10,025.32, a sum of Rs.34667.95 paise on account of arrears of salary and Rs.25192.00 paise on account of leave encashment i.e. a total sum of Rs.59,559.95 paise has already been adjusted. Now, a sum of Rs.1,30,070.00 are yet to be recovered from the legal heirs of the deceased. In this way the action of the respondents in adjusting the aforesaid amount out of the recoverable amount of the deceased, is fully justified and legal in the facts and circumstances explained in the written statement as well as in the aforesaid paras.*

9. As per the learned counsel for the respondents, when the husband of the petitioner was in service, there was a shortfall in the stock amounting to Rs.1,10,025-32/-, which was detected in his presence and which was duly acknowledged by him under his own signatures and thereafter, a raid was conducted with regard to another shortage which was amounting to Rs.79,884.74/- and which was detected by the Store Verifier and SDO Incharge (Store) but this shortfall was not acknowledged by the husband of the petitioner because of his absconding from duty. After adding up the aforesaid shortfalls, the aforesaid recovery comes out to be approximately Rs.1,90,000/- and from the said amount, an amount of Rs.25,192/- on account of Leave Encashment and an amount of Rs.34,667.95/- on account of arrears of salary for the suspension period have been adjusted and therefore, as on today, approximately an amount of Rs.1,30,000/- is yet to be recovered from the legal heirs of the deceased.

10. During the course of arguments, a specific query was raised to the learned counsel for the respondents as to whether during the lifetime of the

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husband of the petitioner any enquiry was conducted or any punishment order etc. was passed qua the husband of the petitioner or not, to which he submitted that as per the written statement filed by the respondents, no such enquiry or punishment order has been passed. Another query was raised to the learned counsel for the respondents as to whether before forfeiting or withholding the aforesaid amount from the arrears of salary for the suspension period and Leave Encashment any order has been passed by any competent authority, particularly in view of the fact that the husband of the petitioner died on 24.06.1993, to which also he submitted that there is no order on the record with regard to the same. In other words, the aforesaid recoveries from the arrears of salary for the suspension period and Leave Encashment have been made in a mechanical manner and without passing any order by any competent authority. The recoveries which are now sought to be made effective from the petitioner, who is a widow, are based upon two grounds which have been so stated in para No.2 of the aforesaid affidavit as reproduced above.

11. The claim in the recovery is that when the husband of the petitioner was in service, there was some detection of shortfall and in one of the aforesaid deductions, the husband of the petitioner also acknowledged the same by putting his signatures, but there was no acknowledgment with regard to the second detection. However, even if some shortfall was detected during the time when the husband of the petitioner was in service and even if assumingly some charge-sheet is also issued qua the same, although not stated in the affidavit, but no enquiry with regard to the same was conducted at all, nor any punishment order has been passed at all either during the lifetime of the petitioner nor even thereafter. In other words, the aforesaid amounts of Rs.1,10,025.32/- and

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Rs.79884.74/- are only the allegations against the husband of the petitioner that some shortfall has been detected, but there is neither finding of fact nor proving of any fact nor passing of any order whatsoever of any kind at any point of time. However, the amount of Leave Encashment and arrears of salary for the suspension period has been deducted from the aforesaid amount. Therefore, it is crystal clear that the aforesaid recovery of the amount of Leave Encashment and arrears of salary for the suspension period is without the authority of law. In the absence of any kind of finding of fact or enquiry etc., no such recovery could have been effected from the retiral benefits of the husband of the petitioner.

12. In view of the aforesaid totality of circumstances of the present case, the present writ petition is allowed. It is directed that the respondents shall pay to the petitioner all the remaining retiral benefits from the date of its accrual i.e. immediately after the death of the husband of the petitioner, within a period of three months from today, along with interest @ 6% per annum (simple). In case the aforesaid amount is not paid to the petitioner within a period of aforesaid three months, then the petitioner shall be entitled for future rate of interest @ 9% per annum (simple).

13. So far as 100% family pension is concerned, the same was already paid to the petitioner but with delay, although the date of disbursal has not come on the record but even as per the learned counsel for the respondents, there was a delay. It is therefore directed that the petitioner shall be entitled for interest on the aforesaid family pension as well immediately after the death of the husband of the petitioner till the date of its actual disbursement, along with interest @ 6% per annum (simple). So far as the Group Insurance amount is concerned, as

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per the learned counsel for the respondents, the premium could not be paid because of the absence of the husband of the petitioner from duty and since the policy of LIC already stands elapsed, no such direction can be issued in this regard.

14. It is more than 30 years which have elapsed after the death of the husband of the petitioner and the retiral benefits have been withheld without the authority of law. At the time of the death of the husband of the petitioner, the petitioner was in a state of penury and she was to support her 2 minor children. Therefore, this Court is of the considered view that the petitioner shall also be entitled for costs in the nature of compensation. The costs are assessed as Rs.1,00,000/- (one lac), which shall be paid to the petitioner within a period of aforesaid three months.

(JASGURPREET SINGH PURI)
JUDGE

19.03.2024
Chetan Thakur

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

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