

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(204)

CWP-16357-2000 (O&M)

Date of Decision : 16.09.2024

Manjit Kaur Bhatia

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Anupam Bhardwaj, Advocate for the petitioner.

Mr. T.P.S. Chawla, Senior Deputy Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

1. In the present petition, the grievance of the petitioner is that a sum of ₹21,726/- was deducted vide letter dated 09.09.1999 (Annexure P-2) while giving the service benefits to the petitioner in respect of the service rendered by the late husband of the petitioner.

2. It may be noticed that the husband of the petitioner was working as a Lecturer and was appointed on ad-hoc basis on 18.08.1972. Thereafter, his services were regularized w.e.f. 01.04.1985. The respondents gave the late husband of the petitioner the benefit of proficiency step up and while giving the said benefit, even the ad-hoc service rendered by the late husband of the petitioner was taken into account. Unfortunately, while in service on 31.12.1997, the husband of the petitioner died. Thereafter, the benefits admissible to the petitioner were to be released in respect of the service rendered by the late husband of the petitioner.



3. While computing the benefits admissible to the petitioner after the death of her husband, the respondents found that the husband was wrongly granted the proficiency step up by taking into account the ad-hoc service, which was not permissible. Unilaterally without giving any notice, a sum of ₹21,726/- was deducted from the total amount admissible to the petitioner in respect of the service rendered by the late husband of the petitioner. The said deduction (Annexure P-2) is under challenge in the present writ petition.

4. Upon notice of motion, the respondents have filed the reply, wherein, they have submitted that the ad-hoc service could not have been taken into account for the grant of proficiency step up, hence, the said benefit was withdrawn and the excess payment made to the late husband of the petitioner to the tune of ₹21,726/- is being recovered. On the factum, whether any notice was issued, learned counsel for the respondents submits that as the husband of the petitioner had already died and his service benefits were to be released, no notice was required to be given.

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

6. The first question which needs to be decided is whether, any order against a dead person can be passed by the State or not. In the present case, after the death of the husband of the petitioner on 31.12.1997, a benefit extended to him was withdrawn after his death, which is impermissible. After the death, no order causing prejudice to a dead employee can be passed. Hence, on the fact of it, withdrawing the benefit of proficiency step up from a



dead employee in order to compute the entitlement of the legal heir is arbitrary and illegal and cannot be sustained in the eyes of law.

7. Even otherwise, nothing has come on record that the benefit was taken by the late husband of the petitioner by misrepresentation. Any benefit which has been extended by the State on its own without there being any misrepresentation on the part of employee, no recovery can be done and the reliance can be placed upon the judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No.7115 of 2010 titled as Thomas Daniel versus State of Kerala and others***, decided on 02.05.2022. The relevant paragraph of the said judgment is as under:-

“(9) This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess.”



8. Keeping in view the above, once the recovery order dated 09.09.1999 (Annexure P-2) is being done from the dead employee, the same was impermissible and the recovery order was passed unilaterally without giving any opportunity of hearing to even the legal heirs, the order of recovery dated 09.09.1999 (Annexure P-2) is set-aside and the respondents are directed to refund the amount of ₹21,726/-.

9. As the said amount was retained by the respondents and used to their benefits, keeping in view the judgment of a Co-ordinate Bench of this Court in of *J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355*, the respondents are also liable to pay interest, hence, from the date the amount was deducted till the refund of the same, on the amount of ₹21,726/-, the petitioner will be entitled for interest @ 6% per annum.

10. Let the order be complied with within a period of eight weeks of the receipt of copy of this order.

11. Petition is allowed in above terms.

12. Pending miscellaneous application, if any, also stands disposed of.

September 16, 2024
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes