

LPA-311-2023 (O&M)

2024:PHHC:108417-DB



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

LPA-311-2023 (O&M)

Date of Decision: August 22, 2024

Saroj Bala

..... Appellant

Versus

State of Punjab and others

..... Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present: Mr. Manu K. Bhandari, Advocate;
Mr. Rohit Kataria, Advocate;
Mr. Manu Gaur, Advocate and
Mr. Arjun Sawhni, Advocate for the appellant.

Mr. R.S. Pandher, Sr. DAG, Punjab.

LISA GILL, J.

1. Prayer in this appeal is for setting aside order dated 06.02.2023 whereby CWP-10268-2009 filed by present appellant (writ petitioner) has been dismissed.

2. Brief facts necessary for adjudication of the matter are that CWP-10268-2009 was filed by appellant (writ petitioner) claiming to be widow of Mr. Sardari Lal, who was working as Inspector, Department of Co-operative Societies, Punjab. Appellant's husband sought voluntary retirement on 30.04.2002 which was rejected on 08.05.2002. Thereafter, charge sheet was issued to him on 23.05.2000. Reply is stated to have been filed after which second charge sheet was issued on 27.12.2000 with 3rd and 4th charge sheet also being issued to appellant's husband on 22.03.2001 and 22.05.2001 respectively.

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Appellant's husband was ultimately dismissed from service on 06.06.2003 after giving him an opportunity to show cause. Appeal was filed by appellant's husband on 19.08.2003 which was dismissed on 31.05.2004 with order being issued on 07.06.2004. In the interregnum, appellant's husband unfortunately passed away on 19.05.2004. Appellant preferred appeal before Financial Commissioner, which was rejected. Review application was filed by her before Financial Commissioner. Financial Commissioner in review application observed that disciplinary proceedings cannot be undertaken against a dead employee and must come to an end at his death. In para 6 of order dated 17.11.2005, it was observed that proceedings had not been completed until his death, as orders were not issued till then, therefore, the same cannot take effect. In this view of the matter, order issued on 07.06.2004 was directed to be withdrawn.

3. It was then brought to the notice of Financial Commissioner by Registrar Co-operative Societies vide letter dated 23.12.2005 that instructions dated 23.06.1992 which provide that cases of departmental disciplinary proceedings/inquires which had not been concluded till death of employee should be closed, is not applicable in the given facts because order of dismissal had attained finality on 06.06.2003 i.e. much before the death of employee on 19.05.2004. In view of correct facts brought before him, Financial Commissioner withdrew order dated 09.12.2005 vide order dated 19.01.2006 endorsed on 16.03.2006 and held that order dated 07.06.2004 would remain effective.

4. Writ petitioner submitted representation/legal notice. CWP-823-2008 filed by her was disposed of on 18.01.2008 directing the competent

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authority to take final decision upon legal notice dated 01.11.2007 (Annexure P24) within a period of two months from receipt of copy of the order. Pursuant thereto, order dated 26.03.2008 was passed by Registrar Co-operative Societies, Punjab, Chandigarh holding dismissal of appellant's husband to be in accordance with law. Appellant then represented on 02.01.2009 before Registrar Co-operative Societies that as her husband had been dismissed from service on 03.06.2003 after rendering over more than 30 years of service, retiral benefits should be released. Various reminders were also issued. Appellant filed CWP-10268-2009 for setting aside order dated 26.03.2008 and for direction to respondents to grant pensionary benefits in terms of representations submitted by appellant (attached as Annexures P27 and P29 with writ petition).

5. Writ petition was contested by respondents, who filed reply with preliminary submissions that husband of appellant was charge sheeted on four occasions on serious allegations of disobedience of orders of Higher authorities, negligence in performance of duties, non-compliance of order of Higher authorities, not taking interest in Government work, absence from duty and misappropriation of property of Sabha by misusing his power. Learned Single Bench on considering the facts and circumstances and the submissions made by learned counsel for parties, dismissed the petition finding no merit therein. Aggrieved therefrom, present appeal has been filed.

6. Learned counsel for appellant vehemently argued that once Financial Commissioner vide order dated 17.11.2005/09.12.2005 had directed withdrawal of order dated 07.06.2004, said order dated 17.11.2005/09.12.2005 itself could not have been withdrawn vide subsequent order dated 19.01.2006/16.03.2006. While withdrawing this order even if factually incorrect,

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appellant should have been provided an opportunity of hearing. Furthermore, disciplinary authority did not take into account over 30 years of service rendered by appellant's husband. It was further contended that order dated 26.03.2008 passed in compliance of order dated 18.01.2008 in CWP-823-2008 is far from being a speaking order. It was incumbent upon respondent – authorities to have decided legal notice dated 01.11.2007 (Annexure P24) served by the appellant seeking consequential benefits, family pension and retiral benefits. In these circumstances, punishment of dismissal should be converted to that of compulsory retirement and retiral benefits should be released. It was, thus, prayed that this appeal be allowed.

7. Learned counsel for State controverted the averments addressed by learned counsel for appellant while submitting that serious allegations had been raised against appellant's husband and were duly proved on record against him. There was repeated failure on the part of appellant's husband to appear before the Inquiry Officer. There are allegations of 18 plots being illegally allotted by appellant's husband while he was Administrator of a Society. Order of punishment was passed during life time of appellant's husband and proceedings before appellate authority were almost concluded when employee unfortunately passed away. Instructions dated 23.06.1992 wherein pending proceedings against employee are to be dropped in the event of his death, are not applicable in the present case because order of dismissal had already been passed. Furthermore, Financial Commissioner had evidently passed order dated 17.11.2005/ 09.12.2005 under a misconception that disciplinary proceedings had not concluded till the death of employee. Once correct facts were brought to his

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notice, order dated 19.01.2006/16.03.2006 was rightly passed. While not challenging said orders, appellant submitted representations for release of pensionary benefits. Detailed order dated 26.03.2008 dealing with each and every averment as raised by appellant in her legal notice, was passed. Thus, present appeal being devoid of any merit should be dismissed.

8. We heard learned counsel for parties at length and have carefully perused the file.

9. Learned Single Bench in para 6 of impugned order dated 06.02.2023 concluded as under:-

“i) As many as four charge sheets were issued against the petitioner’s husband wherein, after detailed inquiries, the respective charges were held to be proved. The petitioner’s husband was given opportunities to show cause while ensuring proper hearing. The disciplinary authority passed the order dismissing the petitioner’s husband from service on 06.06.2003. Even the appeal filed by the petitioner’s husband was dismissed on 31.05.2004, though the order was issued on 07.06.2004. Thus, the disciplinary proceedings culminated into final order on 06.06.2003 when the disciplinary authority, finally, dismissed him from service. Hence, the disciplinary proceedings could not be dropped on account of the death of the petitioner’s husband.

ii) It would be noted here that the appeal filed by the petitioner’s husband was dismissed on 31.05.2004. Though, she filed a review which was allowed, however, subsequently, the order was withdrawn on 19.01.2006. The petitioner did not challenge the correctness of the aforesaid order, however, started filing various applications for grant of retiral benefits. This writ was filed by the petitioner on 13.07.2009. Once the petitioner’s husband has been duly dismissed from service, the petitioner or her husband are not entitled to the retiral benefits.”

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10. In the factual matrix as narrated above, learned counsel for appellant was unable to point out any ground whatsoever, which calls for interference in this matter. We find no occasion to convert the order of dismissal to that of compulsory retirement. No procedural defect as such has been pointed out by learned counsel for appellant in the procedure adopted by the authorities neither is punishment imposed so disproportionate or opposed to logic so as to shock the conscience of the Court.
11. No other argument has been addressed.
12. Consequently, this appeal being devoid of any merit is dismissed.
13. Pending application(s), if any, stand(s) disposed of.

(LISA GILL)
JUDGE

August 22, 2024
Rts

(SUKHVINDER KAUR)
JUDGE

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