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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-9088-2020(O&M)
Date of decision: 18.03.2024

Anjana

...Petitioner

VERSUS

Haryana State Federation of Consumers Co-operative Wholesale Stores
Ltd.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

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

Mr. Hitesh Pandit, Advocate, for the respondent.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Article 226 of the Constitution of India by a widow, who was about 50 years of age at the time of filing of petition in the year 2020. This is a second round of litigation by the petitioner for seeking the retiral benefits pertaining to her late husband which is not only a Statutory Right but also a Constitutional Right under Article 300-A of the Constitution of India which provides that no person shall be deprived of his property except by the authority of law. Right to property has also been held to be a Human Right by the Hon'ble Supreme Court.

Factual Matrix:-

2. The facts of the present case are that the husband of the petitioner was working as an Accountant from the year 1980 in the Haryana State

Federation of Consumers Co-operative Wholesale Stores Ltd. (CONFED) (hereinafter referred to as 'CONFED'). He retired on 31.08.2015 after attaining the age of superannuation vide Annexure P-3. In the aforesaid order of superannuation, it was also ordered that his retiral dues will be released after finalization of the pending proceedings. Unfortunately, he died on 22.03.2017.

3. While the husband of the petitioner was in service, a charge-sheet dated 03.12.2012 (Annexure P-1) was issued against him with an allegation of shortfall due to less moisture gain. Thereafter, second charge-sheet dated 09.01.2013 (Annexure P-2) was served upon the husband of the petitioner with a similar kind of allegation pertaining to less moisture gain in the stocks. In both the charge-sheets no Enquiry Officer was appointed and after the issuance of charge-sheets, no progress had taken place till the time of the death of the husband of the petitioner. In this way, disciplinary proceedings after the issuance of the charge-sheet did not continue at all till the death of the husband of the petitioner. After the retirement of the husband of the petitioner, he was served with third charge-sheet dated 21.03.2016 (Annexure P-4) with an allegation of similar nature with regard to less moisture gain in the stocks. However, before the proceedings could commence in the third charge-sheet which was issued after the retirement of the husband of the petitioner, the husband of the petitioner died on 22.03.2017. In the aforesaid third charge-sheet, the allegations were pertaining to crop year of 2011-2012 and the allegations were that during the aforesaid crop year of 2011-2012, there was less gain delivered by the concerned various purchase of Mandis for which the husband of the petitioner was alleged to be responsible for 20% share of total

amount of less gain. However, after the issuance of charge-sheet, even after the retirement of the husband of the petitioner the proceedings did not commence.

4. During the life time of the husband of the petitioner and after his retirement, he gave representations (Annexure P-5(Colly)) to the Managing Director of CONFED that his retiral benefits have been withheld and he is unwell and he is taking treatment from Fortis Hospital, Mohali and he needs money and the same may be released at the earliest but none of the retiral benefits was released to the husband of the petitioner. He also stated in the aforesaid representation dated 29.08.2016 that due to renal failure, he remains ill and is getting treatment from Fortis Hospital, Mohali and his retiral dues may be released. After the death of the husband of the petitioner on 22.03.2017, the present petitioner who is his widow again represented to the Managing Director on 06.04.2017 vide Annexure P-7 that her husband has expired after suffering from prolonged illness and his treatment was going on from Fortis Hospital, Mohali and about 20-25 lacs rupees have been spent on his treatment and retiral dues of her husband may be released. Thereafter, she again filed a representation vide Annexure P-8 to the Managing Director by elaborating that her husband was suffering from renal failure and she is in dire need of money and also stated in the representation that no enquiry was conducted during the life time of her husband and it was also requested not to conduct any further departmental proceeding as they are not able to defend themselves and the retiral benefits may be released with interest. The petitioner has two children, one son and one daughter and they also furnished their affidavit (Annexure P-9) that retiral benefits be given to the petitioner.

5. Since no action was taken by the Managing Director to whom the representations were addressed repeatedly not only by the husband of the petitioner during his life time but also by the petitioner, the petitioner filed a writ petition before this Court bearing CWP No.36058 of 2019 seeking a direction to release the retiral dues including Leave Encashment, Gratuity and EDLI (Employees' Deposit Linked Insurance Scheme, 1976) with a further prayer that although charge-sheets were issued against the husband of the petitioner but now no departmental proceedings can continue against a dead man as the proceedings stand abated. The aforesaid writ petition was disposed of by a Co-ordinate Bench of this Court vide Annexure P-10 on 12.12.2019 with a direction to decide the representation dated 06.07.2019 (Annexure P-8) by passing a speaking order within a period of three months. This representation dated 06.07.2019 is attached with the present petition as well as Annexure P-8 in which details were mentioned that on the aforesaid charge-sheets no Enquiry Officer has been appointed and no proceedings can be carried on against a dead man. The aforesaid representation is reproduced as under:-

"To

The Managing Director

CONFED, Head Office, Panchkula

Subject:- Release of retiral dues.

Sir,

It is respectfully submitted that I am Anjana wife of Sh. Anil Kumar Bhadu, resident of Matana, Tehsil & District Fatehabad and I respectfully submit that my husband who retired as Accountant who has expired after prolonged illness.

2. My husband was issued charge sheet dated 03.12.2012 and another charge sheet dated 09.01.2013 on account of which his retiral dues were withheld as he retired on 31.08.2015. Subsequently he was issued yet another charge sheet dated 21.03.2016 pertaining

to the allegations of crop year 2011-2012 alleging that since there was less gain therefore he is responsible for 20% of the share despite the fact that Accountant is neither involved in the purchase of the wheat nor in storage and is not even involved in its disposal therefore to charge sheet an Accountant on account of less gain or even damage is patently arbitrary and illegal. It is further relevant to mention that pursuant to these charge sheets no Enquiry Officer has been appointed till date and now no further proceedings can be carried out as he has expired on 22.03.2017.

3. *That my husband vide his representation dated 08.08.2016 and 29.08.2016 represented to the CONFED to release his retiral dues as he was suffering from renal failure and was undergoing treatment at Fortis Hospital at Mohali and was in dire need of money but to no avail and unfortunately he died on 22.03.2017. Since no enquiry was conducted during his life time therefore now you are requested not to conduct any departmental proceeding because we are not aware of any facts and as such cannot defend ourself.*

In view of the above you are requested to release his retiral dues with interest.

Yours faithfully,

Anjana wife of Sh. Anil Kumar Bhadu

VPO Matana, Teshil & Distt.

Fatehabad Mobile No.72320-00029

Dated: 06.07.2019”

6. After the directions issued by a Co-ordinate Bench of this Court vide Annexure P-10 on 12.12.2019, the Managing Director of CONFED issued a show-cause notice to the petitioner vide Annexure P-11 after 12 days i.e. on 24.12.2019. In the show-cause notice, reference was made to the aforesaid three charge-sheets wherein the total amount of loss of Rs. 5,96,101/- was stated and it was also stated that there was another loss caused by the husband of the petitioner for the wheat stock year of 2011-2012 which was

attributable to the husband of the petitioner to the tune of Rs. 1,11,85,976/- but the husband of the petitioner expired on 22.03.2017 and therefore, the total loss caused by the husband of the petitioner was Rs. 1,17,82,077/- (Rs.5,96,101/- +Rs. 1,11,85,976/-) because of dereliction of duties by the deceased Ex-employee during his service in the Federation. It was also mentioned in the aforesaid show-cause notice that an advice was sought from the Legal Remembrancer, Haryana and one paragraph of the aforesaid advice /recommendation was also reproduced in the show-cause notice and in this way, a show-cause notice was issued to the petitioner for recovery /adjustment of the aforesaid amount of Rs. 1,17,82,077/- caused by her late husband to the Federation to be adjusted from the retiral dues of the husband of the petitioner and with regard to the remaining amount as to why civil suit be not instituted against the legal heirs.

7. The petitioner filed reply to the aforesaid show-cause notice vide Annexure P-12 and again explained that all the retiral dues of her husband have been withheld on account of the charge-sheets where no Enquiry Officer was appointed and therefore, the truth of the allegation has not been established and the charge-sheets were never finalized at all and it was also stated in the reply that now no enquiry could have been conducted against a dead man because a finding of fact can be recorded only when there are regular departmental proceedings which have not been done in the present case. It was also stated in the reply by the petitioner that even otherwise also the husband of the petitioner was an Accountant and he had no role in purchase or storage of wheat which is the duty of a District Manager, Assistant Manager, Salesman and Store-Keeper and therefore, the husband of the petitioner being an

Accountant, the very initiation of the charge-sheet against an Accountant was bad in the eyes of law as he had nothing to do with the storage or non-storage of stocks. It was further stated in the reply that the issuance of show-cause notice is an afterthought because of the directions issued by a Co-ordinate Bench of this Court as aforesaid.

8. Not only this it was also stated by the petitioner in the reply that the show-cause notice has been issued on the basis of the advice of Legal Remembrancer which is completely misconceived and legally unsustainable since no penalty can be inflicted against a dead man unless it is established by holding a regular enquiry during the lifetime. It was therefore requested by the petitioner to release the retiral dues. The aforesaid reply Annexure P-12 filed by the petitioner is reproduced as under:-

“To

*The Managing Director
Haryana State Federation of Consumers Co-operative Wholesale
Stores Ltd. (Confed), Bays 19-20,
Sector 2, Panchkula.*

Reference to: No. 5898 dated 24.12.2019.

Subject: Reply to Show Cause Notice.

Respected Sir,

With due respect I am to write to you on the above stated subject. It is respectfully submitted that my late husband was appointed on 22.04.1980 as Accountant and during his service he was issued three charge sheet dated 03.12.2012 for less gain to the tune of Rs. 3,309/-, charge sheet dated 09.01.2013 for less gain to the tune of Rs. 3,154/- and subsequently my late husband retired on 31.08.2015, however another charge sheet dated 21.03.2016 was issued on account of less gain to the tune of Rs. 5,89,638/-

2. All the retiral dues were withheld on account of these charge sheets where no enquiry officer was even appointed and therefore the

truth of the allegations could not be established. Be that as it may my husband expired on 22.03.2017 and till that time none of the above charge sheets were finalized as no enquiry officer was appointed and if at all any enquiry officer was appointed then neither any intimation of the same was given to my husband nor any such enquiry was concluded during his lifetime.

3. *That the law is well settled that no enquiry can be conducted against a dead man, therefore, in all the three charge sheets the allegations were not established by holding a regular departmental enquiry during the lifetime of my husband and as such no recovery can be ordered against my late husband and his family members or against his property without having established the alleged loss during his life time because the allegations are personal in nature which were known only to my late husband as they relate to his service and known only to him.*

4. *That even otherwise also Accountant has no role in purchase or storage of wheat stock which the duty of District Manager, Assistant Manager, Salesman and Store-keeper, therefore, the very initiation of the charge sheet against an Accountant on account of less storage gain or shortage is completely illegally and bad in the eyes of law.*

5. *That the issuance of show cause notice under reply is a pure after thought because I had filed CWP No. 36058 of 2019 for claiming retiral benefits of my husband alongwith interest which was decided on 12.12.2019 with the following directions:-*

"In view of the request made, without expressing any opinion on the merits of the case or the claim being made by the petitioner, respondent no.1 is directed to decide the representation 06.07.2019 (Annexure P-8), by passing a speaking order within a period of three months from the date of receipt of a certified copy of this order. In case after the decision, it is found that the petitioner is entitled for any monetary benefit, the same shall also be released to her within a period of next three months."

6. *That whereas the show cause notice has been issued on the advise of L.R Haryana which is completely misconceived and legally unsustainable because no penalty can be inflicted against a dead man*

unless until it is established by holding a regular enquiry during his lifetime and as such the departmental proceedings after the death of an employee stands abated.

In view of the above you are requested to withdraw the show cause notice under reply and immediately release the retiral dues of my late husband alongwith interest @ 18% per annum failing which I will be forced to file a contempt petition against you because the Hon'ble Court had directed you to decide my representation dated 06.07.2019 whereas you have issued a show cause notice for recovery of Rs. 1,17,82,077/- which is highly contemptuous and illegal as well.

Thanking you.

Yours Faithfully

Dated 29.01.2020

Sd/-

Posta Receipt No.

EH800284732IN

IVR..6972800284732

Fatehabad

S.O. Fatehabad 125050

Counter No.2 30.01.2020, 10:54

To M.D. Confed, Panchkula 134109”

*Anjana wife of Late Sh. Anil Kumar Bhadu
(Ex. Accountant, CONFED, Fatehabad),
resident of House No. 135, Village Matana
Majra, Fatehabad, Tehsil & District GP
Fatehabad.*

9. Thereafter, impugned order Annexure P-13 was passed by the Managing Director on 18.03.2020 which is also reproduced as under:-

*“The Haryana State Federation of Consumers’
Co-operative Wholesale Stores, Limited
SCO 19-20, Sector 2,
Panchkula.*

Ref. No. Estt/EA-/7765

Dated: 18.03.2020

ORDER

Smt. Anjana Badhu widow of Sh. Anil Badhu, Ex-Acctt, Confed, was served a show cause notice Vide No. 5898 dated 24.12.2019 for proposed recovery of loss of Rs. 1,17,82,077/- from the retiral dues of her late husband besides filing a recovery suit against the legal heirs of the deceased, who, during his service had caused the said financial loss to the Federation.

Smt. Anjana Badhu submitted her reply through her letter dated 29.01.2020 in which she denied the proposed recovery mentioned in the show cause notice. She was called for a personal hearing on

06.03.2020 so that she could be provided opportunity to convince me as to why this action should not be taken, which she did not attend.

Meanwhile she had filed a petition (CWP No. 36058 of 2019) in the High Court and the Hon'ble High Court passed following orders in the case on 12.12.2019:-

"In view of the request made, without expressing any opinion on the merits of the case or the claim being made by the petitioner, respondent no.1 is directed to decide the representation 06.07.2019 (Annexure P-8), by passing a speaking order within a period of three months from the date of receipt of a certified copy of this order. In case after the decision, it is found that the petitioner is entitled for any monetary benefit, the same shall also be released to her within a period of next three months".

In compliance of the said orders dated 12.12.2019 of Hon'ble High Court the representation dated 06.07.2019 of the petitioner is hereby decided and keeping in view all pros & cons of the case and the advice dated 16.10.2019 of Ld. LR Haryana on the issue, I am hereby confirming the show cause notice issued to Smt. Anjana Badhu widow of Sh. Anil Badhu, Ex-Acctt. Confed vide No.5898 dated 24.12.2019 and order the recovery of Rs. 1,17,82,077/- to be made for the retiral dues of Late Sh. Anil Badhu, Ex-Acctt and file a civil suit against the legal heirs of the deceased for the balance recovery after adjustment of retiral dues.

Sd/-

Managing Director

Regd:

*Smt. Anjana Badhu w/o Late Sh. Anil Badhu,
Village Matana, Teshil & District Fatehabad.*

Ref.No.Estt/EA-1/7766-67

Dated 18.03.2020"

10. The present petition has been filed challenging the aforesaid order Annexure P-13 dated 18.03.2020 and also the charge-sheets issued to the husband of the petitioner vide Annexures P-1, P-2 and P-4.

Submissions by learned counsel for the petitioner:-

11. Mr. Dhiraj Chawla, learned counsel appearing on behalf of the petitioner submitted that it is a case where the petitioner who is a widow having two children, one son and one daughter after losing her husband had to run from pillar to post for seeking the retiral benefits of her husband who retired in the year 2015 and was not given the retiral benefits and died in the year 2017 and it became difficult for her to make her both ends meet and to feed her family. He submitted that not only the impugned order (Annexure P-13) is illegal, perverse and unconstitutional but the respondent-CONFED has been totally insensitive towards the petitioner wherein without any authority of law, the retiral benefits of the husband of the petitioner have been withheld because of which the petitioner and her two children had to face immense difficulties and had to approach this Court twice for redressal of her grievances and for enforcement of not only her Statutory Rights but also her Constitutional Rights.

12. He submitted that the basis of withholding /recovering of the retiral benefits of the husband of the petitioner was three charge-sheets and one allegation without charge-sheet, as per the show-cause notice. For the sake of convenience, he referred to all the four as follows:-

- (i) Charge-sheet dated 03.12.2012 (Annexure P-1)
- (ii) Charge-sheet dated 09.01.2013 (Annexure P-2)
- (iii) Charge-sheet dated 21.03.2016 (Annexure P-4)
- (iv) No charge-sheet but only allegation after the death of the husband of the petitioner.

13. He submitted that the aforesaid first two charge-sheets and the remaining two can be categorized differently being pre-retirement and post

retirement. While referring to first two charge-sheets Annexure P-1 and P-2, he submitted that it is an admitted case that both the aforesaid charge-sheets Annexure P-1 and P-2 dated 03.12.2012 and 09.01.2013 respectively were issued against the husband of the petitioner prior to his retirement with an allegation that while he was working as an Accountant, there was a shortfall in gain in the stock. He submitted that when a stock is stored in the Ware House, then some moisture is gained in the stock and in case there is a shortfall in the gain in the moisture, then some liability is fixed by the respondent-CONFED. He submitted that the husband of the petitioner was only an Accountant and not even Incharge of the Ware House and even otherwise also when the aforesaid two charge-sheets were issued against the husband of the petitioner when he was in service, then after the issuance of the charge-sheets no action was taken against the husband of the petitioner and no Enquiry Officer was appointed for holding a regular enquiry for the purpose of ascertainment of facts or for the purpose of proving the allegations and in this way, these charge-sheets remained as such on the paper and no action was taken by the CONFED at all qua the husband of the petitioner and eventually the husband of the petitioner retired in the year 2015 and he died in the year 2017 but till date neither any order has been passed nor any Enquiry Officer was appointed and in this way, now in case any recovery is to be effected from the retiral benefits of the husband of the petitioner without ascertainment of any loss or any liability at all, the same cannot be permitted. He submitted that even otherwise also as per affidavit filed by the General Manager of the CONFED dated 25.04.2023, the loss which has been so depicted pertaining to charge-sheet (Annexure P-1) was only Rs. 3,309/- and loss pertaining to the second charge-sheet was only Rs.

3,154/- and in the absence of any finding of any nature, the same could not have been recovered from the husband of the petitioner after his retirement and more so from the petitioner after the death of her husband.

14. While referring to third charge-sheet dated 21.03.2016 (Annexure P-4) as stated above, he submitted that this was issued to the husband of the petitioner after his retirement by alleging similar kind of allegations that there was a shortage in the gain in the moisture and in this charge-sheet, the allegations were pertaining to an amount of Rs. 5,89,638/- of the share of the husband of the petitioner. He submitted that even in this charge-sheet as well, although the same could not have been issued after the retirement of the husband of the petitioner, no Enquiry Officer was appointed and no order has been passed and nothing has been established on record with regard to the same and it remained as allegation itself. He submitted that apart from the above with regard to the third charge-sheet (Annexure P-4), the same otherwise could not have been issued because the same is without the authority of law. He submitted that in the allegations the event is of the year 2011-2012 and the charge-sheet was issued on 21.03.2016 which was more than four years preceding the issuance of the charge-sheet and therefore, even otherwise also under the Rules such charge-sheet could not have been issued against the husband of the petitioner after his retirement for an event which was more than four years preceding the issuance of the charge-sheet and in this regard, he referred to the Rules which have been reproduced in para No.17 of the writ petition. As per Rule 60 (2) of Staff Services Rules, 1975 of the Haryana State Federation of Consumer's Cooperative Wholesale Stores Limited, it has been so provided that if the departmental proceedings are not instituted while the

employee was on duty either before retirement or during re-employment, it shall not be instituted save with the sanction of the Competent Authority and it shall be in respect of an event which took place not more than four years before the institution of such proceedings Rule 60(2) is reproduced as under:-

“Rule 60(2) Such departmental proceedings, if not instituted while the employee was on duty either before retirement or during re-employment:

(i) Shall not be instituted save with the sanction of the Competent Authority.

(ii) Shall be in respect of an event which took place not more than four years before the institution of such proceedings.

15. Learned counsel for the petitioner submitted that in this way otherwise also the third charge-sheet was issued after the retirement of the husband of the petitioner which was barred by the aforesaid embargo created under the Statutory Rules and otherwise the same was not maintainable.

16. With regard to serial No.(iv) as aforesaid, the allegations were that an amount of Rs. 1,11,85,976/- is to be recovered from the husband of the petitioner. This amount and these allegations figured for the first time when the impugned show-cause notice (Annexure P-11) dated 24.12.2019 was issued and qua these allegations neither any notice was issued to the husband of the petitioner who otherwise had died nor any enquiry conducted nor any Enquiry Officer was appointed nor any charge-sheet was issued and qua these also, the allegations pertain to the year 2011-2012, as per the show-cause notice itself. Therefore, so far as the allegations of loss of aforesaid Rs. 1,11,85,976/- is concerned, the same has surfaced for the first time when the impugned show-cause notice was issued in the year 2019 after the death of husband of petitioner regarding which there had been no proceeding at all of any nature

against the husband of the petitioner and therefore, such kind of allegation against a dead person and seeking recovery from the retiral benefits of the husband of the petitioner is not only without the authority of law but is totally perverse and unconstitutional.

17. Learned counsel also submitted that the law with regard to as to whether any loss pertaining to the less moisture gain in the stock can be recovered from an employee or not is no longer *res integra*. He referred to a judgment of a Co-ordinate Bench of this Court Annexure P-14 dated 10.07.2019, titled ***Ram Sawrup Vs. State of Haryana and others*** which is a writ petition pertaining to the present Federation i.e. CONFED in which the reliance was also placed to various earlier judgments of this Court pertaining to ***Punjab Warehousing Fields Employees Union, Patiala and others Vs. State of Punjab, CWP No.3239 of 1993*** and also of CONFED in ***Devat Ram Vs. Managing Director, The Haryana State Federation of Consumer's Cooperative Wholesale Stores Ltd. and another, CWP No.4667 of 2016*** and a law has been laid down by a Co-ordinate Bench of this Court that no punishment can be imposed upon an employee without there being any norms fixed for showing any less gain in the moisture content and this law is already settled and therefore, the order of punishment was quashed in that case and therefore, even otherwise also qua any all the allegations (i) to (iv) as aforesaid against the husband of the petitioner no such charge-sheet even could have been issued with regard to the allegation of less moisture gain because no norm has been fixed and the law was already well established in this regard pertaining to respondent Federation. The relevant portion of the aforesaid judgment is also reproduced as under:-

“Learned Senior counsel appearing for the respondents is unable to dispute the arguments, raised by the counsel for the petitioner that the question of law that no punishment can be imposed upon the employees without there being any norms fixed for showing any less gain in the moisture content is already settled and, therefore, the order of punishment which has been passed against the petitioner on 05.10.2015 is contrary to the settled principle of law. Learned Advocate General, Haryana very fairly submits that the petitioner is also covered by the said decision, which relates to same respondent-Federation.”

18. Learned counsel appearing on behalf of the petitioner also raised arguments pertaining to the impugned order (Annexure P-13) which is purportedly passed in pursuance of the directions issued by this Court vide Annexure P-10. While referring to the aforesaid order, he raised two fold arguments. Firstly, that the Managing Director who passed the aforesaid order has referred and reproduced some part of the advice/recommendation tendered by the Legal Remembrancer, Haryana. He submitted that it was a clever attempt on the part of the Managing Director who had reproduced only a part of the recommendation and not the whole recommendation. He submitted that in pursuance of the orders passed by this Court on 18.05.2022 directing the respondent to file an affidavit giving details as to how the amount was calculated and an affidavit was filed by the General Manager (A) of the respondent-CONFED. In this affidavit, the entire legal advice/recommendation of the Legal Remembrancer was reproduced. The aforesaid is reproduced for sake of convenience as under:-

"Ld. LR Haryana opined on 16.10.2019 that, "It is clarified that keeping in view the fact of the matter that name of the disciplinary proceedings and arrived at its final conclusion before the death of the employee concerned and in some cases no charge-sheet was

*served upon the delinquent employee for causing loss to the Federation. Therefore, it would be appropriate that if the loss caused to the State Exchequer/Government **is attributed to the conduct of the deceased employee and there is sufficient evidence in the record to prove the same**, then in view of aforesaid legal position, the recovery of such loss can be made good from the pending retiral benefits of the deceased employee after issuing a show cause notice to the legal heirs upon whom the right of inheritance qua the retiral benefits of the deceased employee devolves upon. However, it is also advised that if the recovery cannot be sufficiently made good from his retiral benefits then the legal proceedings for affecting the same can be initiated by the Government by filing the civil suit for such recovery before the competent court of law while considering the fact that such recovery can be effected from the legal heirs only to the extent of inheritance of the property devolved upon them from the deceased employee. It is also clarified that according to Article 12 of the Limitation Act, 1963, the period of limitation to file such civil suit on behalf of Government is Thirty years".*

(emphasis supplied)

19. Learned counsel submitted that a perusal of the legal advice would show that it was so advised/recommended that it would be appropriate if the loss caused to the State Exchequer/Government is attributable to the conduct of the deceased employee and there is sufficient evidence on the record to prove the same and then in view of the legal position, the recovery can be made from the retiral benefits and it was based upon a fact so recorded in the advice that the disciplinary proceedings arrived at its final conclusion before the death of the employee concerned. He submitted that in the present case factually the position was that the disciplinary proceedings never attained its final conclusion at all at any stage before the death of the husband of the petitioner and even otherwise also, it was so advised by the LR that recovery **can be done only**

when there is sufficient evidence and record to prove the same. He submitted that when the show-cause notice was issued only a selective part of the aforesaid advice/recommendation has been reproduced but the aforesaid advice/recommendation of the LR that it can be recovered only when there is sufficient evidence on the record to prove the same was never reproduced in the show-cause notice and had this Court not directed the respondent-CONFED to file an affidavit, even this fact would not have come to the notice of the Court and in this way, the Managing Director while issuing show-cause notice by selectively choosing some portion of the LR advice has committed a misconduct.

20. He submitted that a perusal of the aforesaid show-cause notice would show that the Managing Director who so stated that following the advice of the LR, a notice is issued to the petitioner, whereas there is no application of mind by the Managing Director himself. He submitted that when the aforesaid impugned order (Annexure P-13) was passed, a bare perusal of the same would show that this order was *ex facie* unreasoned, perverse and cryptic order and on the face of it, it was only the *ipse dixit* of the officer without assigning even a single reason. While referring to the operative part of the aforesaid order, he submitted that only reason which has been mentioned in the order was that keeping in view the pros and cons of the case and the advice of the LR, he confirmed the show-cause notice. He submitted that such kind of orders are unknown to basic service jurisprudence. He further submitted that the perversity of the order has gone to such an extent whereby it was directed that not only the entire retiral benefits of the husband of the petitioner be adjusted but also with regard to remaining amount, a civil suit be filed against

the legal heirs for the balance recovery. He submitted that in view of the aforesaid facts and circumstances, the impugned order dated 18.03.2020 (Annexure P-13), charge-sheets dated 03.12.2012 (Annexure P-1), dated 09.01.2013 (Annexure P-2) and dated 21.03.2016 (Annexure P-4) are liable to be quashed.

21. Learned counsel for the petitioner also submitted that apart from the above, at the time of retirement there were only two charge-sheets against the husband of the petitioner regarding which even as per affidavit filed by the respondent-CONFED, the total amount comes out to be about Rs. 6,463/- and for the aforesaid amount of Rs. 6,463/- at the time of retirement of the husband of the petitioner in the year 2015, the entire retiral benefits were withheld, whereas it was the bounden duty of the respondent-CONFED to have released all the retiral benefits and at the most at that point of time assuming for the sake of arguments, if at all it was so permitted by the law, then an amount of Rs. 6,463/- could have been adjusted and remaining ought to have been paid to him.

Submissions by learned counsel for the respondent-CONFED:-

22. Mr. Hitesh Pandit, learned counsel appearing on behalf of the respondent-CONFED submitted that the impugned orders were passed on the basis of directions issued by this Court and on the basis of the advice of the LR since the husband of the petitioner while he was in service was accountable for the loss due to less moisture gain in the stock stored and since loss has been caused to the State Exchequer, the liability was to be fastened for the purpose of compensating the State Exchequer. He submitted that once an advice was obtained from the Legal Remembrancer, the impugned order by which it was so

directed that an amount of Rs. 1,17,82,077/- is to be recovered from the retiral benefits and for the remaining amount a civil suit be filed against the legal heirs cannot be termed to be arbitrary and perverse. He submitted that so far as the first two charge-sheets against the husband of the petitioner are concerned, the husband of the petitioner was asked to submit reply to the charge-sheets but he chose not to file reply to the charge-sheets and that was the reason the Enquiry Officer was not appointed. He further submitted that when there is a loss to the State Exchequer, the State has a right to recover the same from the legal heirs of the deceased as well to the extent of his liability.

Analysis of submissions:-

23. I have heard the learned counsel for the parties at length.

24. The present is a petition which has been filed by a widow having two children seeking retiral benefits of her husband who died in the year 2017 after his retirement. A perusal of first two charge-sheets Annexures P-1 and P-2 would show that both the aforesaid charge-sheets were pertaining to the time when the husband of the petitioner was in service but admittedly neither any Enquiry Officer was appointed nor the same was further continued nor any order was passed at all at any point of time. So far as the third charge-sheet (Annexure P-4) dated 21.03.2016 is concerned, the same was issued to the husband of the petitioner after his retirement i.e. on 21.03.2016 for an event which pertains to the year 2011-2012 and for this also neither any Enquiry Officer was appointed nor it further continued nor any order was passed nor there was any establishment of any fact or ascertainment of any liability by any authority at all. In this way, all the aforesaid three charge-sheets did not progress at all and no order at all was passed in any of the three charge-sheets

nor any Enquiry Officer was appointed nor was there any ascertainment of any liability or loss based upon any evidence or any finding by any authority whatsoever. In the absence of any enquiry or any finding or any order to that effect, no recovery could have been effected from the retiral benefits of the husband of the petitioner.

25. So far as the third charge-sheet (Annexure P-4) is concerned, the same was issued after the retirement of the husband of the petitioner and it pertains to an event which was more than four years preceding the issuance of charge-sheet since as per charge-sheet itself dated 21.03.2016 (Annexure P-4), it was pertaining to the crop year of 2011-2012. There is an express bar created under Rule 60 as reproduced above. As per the aforesaid Rule, no departmental proceedings could have been initiated in respect of an event which took place more than four years before the institution of such proceedings. Therefore, there was a clear cut violation of the provisions of the aforesaid Statutory Rules and there was an express bar for even instituting any disciplinary proceeding /charge-sheet against the petitioner after his retirement. It is a settled law that after retirement, the master and servant relationship ceases to exist and action can be taken only when there is a specific power under the Rules. Therefore, the issuance of charge-sheet (Annexure P-4) against the husband of the petitioner was unsustainable and violative of the aforesaid Statutory Rules.

26. Apart from the above, the allegations in all the aforesaid charge-sheets were pertaining to loss caused due to less moisture gain. This issue as to whether when the foodgrains are stored in a godown and whether an employee can be burdened with the aforesaid loss due to less moisture gain in the absence of any norms to that effect has been so well settled by this Court. Vide

Annexure P-14, a judgment passed by a Co-ordinate Bench of this Court in *Ram Sawrup's case (Supra)* while referring to earlier judgments in the case of *Punjab Warehousing Fields Employees Union, Patiala and others (Supra)* and *Dewat Ram's case (Supra)* pertaining to the present respondent-CONFED itself, the law has been clearly laid down that no such liability can be imposed with regard to loss pertaining to the less moisture content and less gain at the time when the foodgrains are stored. Therefore, even otherwise also the allegations on the face of it could not be sustained because of the well settled law as aforesaid.

27. So far as the fourth allegation which came for the first time in the show-cause notice issued to petitioner in the year 2020 with regard to an amount of Rs. 1,11,88,976/- is concerned, the same surfaced for the first time after the writ petition was disposed of by a Co-ordinate Bench of this Court vide Annexure P-10 on 12.12.2019 . Regarding these allegations there is not even a show-cause notice or any charge-sheet etc. against the husband of the petitioner at all at any point of time and therefore, it is not understandable and it is very strange as to how in the year 2020 for the first time such allegation has been made in the show-cause notice itself when the husband of the petitioner had died in the year 2017 and on the basis of the aforesaid allegation pertaining to Rs. 1,11,85,976/-, impugned order has been passed for the recovery of the same.

28. Now it would be most appropriate to dissect and analyse the impugned order itself. A perusal of the aforesaid impugned order would show that it has been issued on the basis of the advice/recommendation of the Legal Remembrancer, Haryana, whereas the entire advice itself was never reproduced

in the show-cause notice, whereas now in pursuance of the order passed by this Court dated 18.05.2022 the entire advice of the Legal Remembrancer was reproduced in the affidavit now filed. A perusal of the full text of the Legal Remembrancer advice would show that it has been so opined by the LR that loss can be recovered if it is attributable to the conduct of the deceased employee and there is sufficient evidence on the record to prove the same. However, the aforesaid portion of the advice of the Legal Remembrancer was never reproduced in the show-cause notice probably to mislead. The advice of the LR could not have been accepted by segregating the first part from the second part. It was an arbitrary action on the part of the Managing Director to have done so. In the present case, there was no evidence on the record to prove the allegations and it was only charge-sheet and there was no finding of fact by any authority of law and the Managing Director while issuing of show-cause notice and passing the impugned order did not refer to the aforesaid portion of the advice and passed the impugned order against a widow for recovery of an amount from the retiral dues of a dead person. Even otherwise also an advice of Legal Remembrancer is merely recommendary in nature and it was the duty of the Managing Director to have applied his own mind as well which was never done in the present case.

29. A further analysis of the impugned order passed by the Managing Director would show that the order of recovery from the retiral benefits of the husband of the petitioner with a further order to recover the remaining amount from the legal heirs by filing a civil suit was *ipse dixit* of the Managing Director. Not even a single reason has been given by the Managing Director as to how and by what authority of law recovery could have been made.

30. It is very strange to see and read the impugned order which actually shocks the conscience of this Court. It is so directed by the Managing Director that the representation of the petitioner dated 06.07.2019 is decided **keeping in view all the pros & cons of the case and advice of the LR, Haryana** and that is the only direction issued without being backed by any reason at all. The aforesaid representation dated 06.07.2019 which was directed to be considered by a Co-ordinate Bench of this Court while issuing direction vide Annexure P-10, in pursuance of which the present impugned order was passed is already on the record of the present case as Annexure P-8. A perusal of Annexure P-8 would show that a comprehensive representation was given to the Managing Director by taking up all the pleas including the pleas that an Accountant is neither involved in the purchase of wheat nor is involved in the disposal and an Accountant is not responsible for less gain. It was further stated in the representation as reproduced above that pursuant to the charge-sheets no Enquiry Officer was appointed till date and no further proceedings can be carried on as the husband of the petitioner expired on 22.03.2017. It was also stated in the representation that the husband of the petitioner died after suffering from renal failure and undergoing treatment at Fortis Hospital, Mohali. However, none of the issues raised in the representation were ever even noted by the Managing Director. He only stated that keeping in view the pros & cons of the case, he confirmed the show-cause notice to the petitioner who is a widow and not only the recovery of the retiral benefits was to be made but also a civil suit is to be filed against the legal heirs for recovery of the balance amount.

31. A further analysis of show-cause notice Annexure P-11 dated 24.12.2019 is more revealing and rather shocking. A perusal of first para shows that after referring to the three charge-sheets of 03.12.2012, 09.01.2013 and 21.03.2016 loss reported is depicted as Rs. 5,96,101. After this, another sum of Rs. 1,11,85,976/- has been stated to which husband of petitioner was stated to be answerable. Regarding this amount, it surfaced for the first time in this show-cause notice whereas husband of petitioner died in the year 2017. In this way, the aforesaid amount of Rs. 1,11,85,976/- was put on a dead man to be recovered from his widow without any notice, enquiry or any order of ascertainment of liability when the husband of petitioner was alive. The respondents crossed all the boundaries of illegality, perversity and arbitrariness when the aforesaid amount was directed to be recovered from the retiral benefits and for balance amount, civil suit against legal heirs was directed to be filed vide order Annexure P-13.

32. A Constitution Bench of Hon'ble Supreme Court in "**Deokinandan Prasad Vs. State of Bihar and others**", 1971(2) SCC 330, held that pension is not a bounty of the State and is rather a valuable right. The relevant portion of the aforesaid judgment is reproduced as under:-

*"31. The matter again came up before a Full Bench of the Punjab and Haryana High Court in **K.R. Erry v. The State of Punjab**, ILR (1967) Punj & Har 278. The High Court had to consider the nature of the right of an officer to get pension. The majority quoted with approval the principles laid down in the two earlier decisions of the same High Court, referred to above, and held that the pension is not to be treated as a bounty payable on the sweet-will and pleasure of the Government and the right to superannuation pension including its amount is a valuable right vesting in a Government servant.*

It was further held by the majority that even though an opportunity had already been afforded to the officer on an earlier occasion for showing cause against the imposition of penalty for lapse or misconduct on his part and he has been found guilty, nevertheless, when a cut is sought to be imposed in the quantum of pension payable to an officer on the basis of misconduct already proved against him, a further opportunity to show cause in that regard must be given to the officer. This view regarding the giving of further opportunity was expressed by the learned Judges on the basis of the relevant Punjab Civil Service Rules. But the learned Chief Justice in his dissenting judgment was not prepared to agree with the majority that under such circumstances a further opportunity should be given to an officer when a reduction in the amount of pension payable is made by the State. It is not necessary for us in the case on hand, to consider the question whether before taking action by way of reducing or denying the pension on the basis of disciplinary action already taken, a further notice to show cause should be given to an officer. That question does not arise for consideration before us. Nor are we concerned with the further question regarding the procedure, if any, to be adopted by the authorities before reducing or withholding the pension for the first time after the retirement of an officer. Hence we express no opinion regarding the views expressed by the majority and the minority Judges in the above Punjab High Court decision, on this aspect. But we agree with the view of the majority when it has approved its earlier decision that pension is not a bounty payable on the sweet-will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant.

32. This Court in State of Madhya Pradesh v. Ranojirao Shinde and another, AIR 1968 SC 1053 had to consider the question whether a "cash grant" is "property" within the meaning of that expression in Articles 19(1)(f) and 31(1) of the

Constitution. This Court held that it was property, observing "it is obvious that a right to sum of money is property".

33. Thereafter, in "State of Kerala Vs. M. Padmanabhan Nair", (1985) 1 SCC 429, the Hon'ble Supreme Court observed that pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but are valuable rights and property, in their hands. This authoritative law was thereafter again reiterated by the Hon'ble Supreme Court in "Dr. Uma Agrawal Vs. State of U.P. and another", 1999(3) SCC 438..

34. 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:

"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 matters 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.”

35. In **“Tukaram Kana Joshi and others through Power of Attorney Holder Vs. M.I.D.C. and others”**, 2013(1) SCC 353, it was held by the Hon’ble Supreme Court that right to property is now considered to be not only a Constitutional or a Statutory Right but also a human right. Para 9 of the aforesaid judgment is reproduced as under:-

*“9. The right to property is now considered to be not only a constitutional or a statutory right but also a human right. Though, it is not a basic feature of the Constitution or a fundamental right. Human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment etc. Now however, human rights are gaining an even greater multi faceted dimension. The right to property is considered very much to be a part of such new dimension. (Vide: **Lachhman Dass v. Jagat Ram**, (2007) 10 SCC 448; **Amarjit Singh v. State of Punjab**, (2010)10 SCC 43; **State of Madhya Pradesh v. Narmada Bachao Andolan**, (2011)7 SCC 639, **State of Haryana v.***

Mukesh Kumar, (2011)10 SCC 404 and Delhi Airtech Services (P) Ltd. v. State of U.P., (2011)9 SCC 354.

36. In the present case, it is *ex facie* clear that the respondent-CONFED while passing the impugned order (Annexure P-13) has not only violated the Statutory provisions but there has been a direct infraction of Articles 21 and 300-A of the Constitution of India. It is also a settled law that right to life guaranteed under Article 21 of the Constitution of India includes right to livelihood.

37. A Constitution Bench of Hon'ble Supreme Court in ***Olga Tellis and others Vs. Bombay Municipal Corporation and others, (1985) 3 SCC 545*** held that right to life includes right to livelihood. It was observed that an equally important facet of right to life is the right to livelihood because no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the Constitutional Right of life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation.

38. In the present case the petitioner is a widow having two children and the action of the respondent-CONFED was not only having an effect on the right to livelihood but also on the right to life itself wherein as per learned counsel for the petitioner, the petitioner being a widow after the death of her husband could not even make her both ends meet to feed her children. A perusal of the representations given by the husband of the petitioner vide Annexure P-5(Colly) and the representation given by the petitioner herself vide Annexure P-8 would show that before the death of the husband of the petitioner, he was suffering from renal failure and he was being treated at Fortis Hospital, Mohali

and about 20-25 lacs rupees have been spent on his treatment and in this state of emergency and expenditure, the action of the respondent-CONFED was not only arbitrary and perverse but it amounts to atrocity being committed upon a poor widow by snatching away her Fundamental Rights.

39. The impugned order has been passed by the Managing Director of an instrumentality of the State. A specific query was put to the learned counsel for the respondent-CONFED as to whether the aforesaid Managing Director is still in service or not to which he stated that he has retired and he was an IAS Officer. Such kind of order (Annexure P-13) passed by an IAS Officer which shakes the conscience of the Court on the face of it is highly deprecated. The Managing Director was supposed to know the law of the land. At the time when the impugned order was passed in the year 2020, the law with regard to whether there can be a fixation of liability on the basis of wheat gain or not already stood settled much prior to the aforesaid order which is clear from Annexure P-14 and all the earlier judgments passed by this Court. It appears that the aforesaid officer has ignored the settled law on the subject. Not only this, he also reproduced some of the portion of the advice/recommendation of LR, Haryana in the show-cause notice and ignored the relevant portion thereof and thereafter passed the impugned order based on the advice /recommendation of the LR, Haryana. Not even a single reason has been assigned by the Managing Director. A perusal of order Annexure P-10 passed by a Co-ordinate Bench of this Court shows that it was directed to pass a 'speaking order' whereas the impugned order Annexure P-13 contains no reason at all.

Conclusion:-

40. In view of the above, the present petition is allowed. The impugned

order dated 18.03.2020 (Annexure P-13), charge-sheets dated 03.12.2012 (Annexure P-1), dated 09.01.2013 (Annexure P-2) and dated 21.03.2016 (Annexure P-4) are hereby quashed. The respondent-CONFED is directed to pay the petitioner all the retiral benefits accrued to her husband from the date of retirement of her husband alongwith interest @ 6% per annum within a period of two months from today. In case, the aforesaid amount is not paid to the petitioner within a period of 2 months from today, then the petitioner shall be entitled for future interest @ 9% per annum instead of 6% per annum.

41. This Court has arrived at a conclusion that by way of the impugned order (Annexure P-13) it had not only infringed the Fundamental Rights under Article 21 of the Constitution of India and the Constitutional Rights under Article 300-A of the Constitution of India, besides the Statutory Rules but the action of the respondent-CONFED was also atrocious. A poor widow having two children got treated her husband for his renal failure and as per her representation, she spent Rs.20-25 lacs and thereafter, the husband of the petitioner died in the year 2017 but no retiral benefits of her husband were paid to the petitioner by failing to discharge their duties in accordance with law. In this way, this Court deems it fit and proper to impose exemplary costs upon the respondent-CONFED. The aforesaid costs are assessed as Rs.5 lacs (Five lacs) and would also be in the nature of compensation. This Court is conscious of the fact with regard to the quantum of costs but considering atrocious action on the part of the respondent-CONFED as aforesaid, this Court is of the considered view that the quantum of costs is well justified on the strength of authoritative judgment of Hon'ble Supreme Court in *D.K. Basu Vs. State of West Bengal, 1997 (1) SCC 416* wherein it was observed that grant of compensation in

proceedings under Article 32 or 226 of the Constitution of India for the established violation of the Fundamental Rights guaranteed under Article 21 is an exercise of the Courts under the public law jurisdiction for penalising the wrong-doer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the Fundamental Rights of the citizen. It was further observed that the Courts have the obligation to satisfy the social aspirations of the citizens because the Courts and the law are for the people and expected to respond to their aspirations and a Court of law cannot close its consciousness and aliveness to stark realities In the concluding part, it was further observed that it is a well accepted proposition in most of the jurisdictions that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the Fundamental Right to life of a citizen by the public servants and the State is vicariously liable for their acts. The respondent-CONFED is directed to pay the aforesaid costs to the petitioner within a period of 2 months from today.

42. The aforesaid costs shall be paid by the respondent-CONFED at the first instance. However, liberty is granted to the respondent-CONFED to recover the same from the Managing Director who passed the impugned order by instituting appropriate proceedings including filing of a civil suit.

(JASGURPREET SINGH PURI)
JUDGE

18.03.2024
Rakesh

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