

225 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-9909-2020

Date of Decision: 04.03.2024

SUMITRA DEVI

...Petitioner

Vs.

STATE OF HARYANA AND OTHERS

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Dr. Anand K. Bishnoi, Advocate for the petitioner.
Mr. Harish Rathee, Senior DAG, Haryana.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present petition, the grievance of the petitioner is that the husband of the petitioner went missing on 20.06.2005. At the time when the husband of the petitioner went missing, he was working with the Printing Stationary Department, Mini Secretariat, Sector-17, Chandigarh as Block Maker.

2. Keeping in view the fact that the husband of the petitioner was missing for a period of more than 07 years, the petitioner filed a suit against the General Public seeking decree that the husband of the petitioner is presumed to be dead and the petitioner is entitled to receive all the service benefits lying in the Department of Printing and Stationary Haryana. The said suit filed was decreed by the competent Court of law on 23.04.2019 (Annexure P-6) and as per the decree, the husband of the petitioner was declared dead from the date of dis-appearance i.e. 20.06.2005.

3. After getting the said decree, the petitioner claimed the benefit including the service benefit *qua* the service rendered by the late husband of the petitioner as well as the ex-gratia financial assistance. As the said benefit

was not been given to her, the present petition has been filed seeking the said relief.

4. In reply to the claim, the respondents have stated that vide order dated 22.02.2008, while the husband of the petitioner was missing, his services have been terminated w.e.f. 03.09.2003 hence, no service benefit *qua* the service performed by the late husband of the petitioner can be given to her.

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

6. The question which arise for determination in the present petition is whether, the petitioner is entitled for the service benefit in respect of the services rendered by her late husband including the gratuity, family pension etc. as well as the *ex-gratia* financial assistance or not.

7. As per the decree of the competent Court of law, the husband of the petitioner has been presumed to be dead on 20.06.2005. That being the relevant date, no action could have been taken against a person presumed to be dead by the respondent/Department as, concededly the services of the late husband of the petitioner had been terminated by the respondent/Department vide order dated 22.02.2008. No order against a dead person can be passed terminating his services. Hence, the order Annexure R-1 is null and void and the same cannot be made operational against the claim of the petitioner.

8. Once, the husband of the petitioner has been declared dead from a particular date i.e 20.06.2005 on which date, he was concededly in service and his services were terminated only in the year 2008 with retrospective effect, the petitioner will also be entitled for all the service benefits in respect

to the services rendered by her late husband. At the time of the death of her husband, the petitioner will be granted the benefits which the legal heirs of the deceased employee is entitled for including gratuity, leave encashment as well as other consequential benefits.

9. Not only this, under the instructions of the year 2005, the petitioner will also be entitled for the benefit of ex-gratia financial assistance admissible to the family of the deceased employee. Hence, the respondents are under obligation to consider the said claim of the petitioner qua grant of ex-gratia financial assistance by treating her husband to be dead as on 20.06.2005.

10. Let, the respondents consider the claim of the petitioner under the judgment of this Court wherein she has been held entitled for all the service benefits in respect of the services rendered by her late husband including the family pension, as well as the claim for the grant of ex-gratia financial assistance as admissible under 2005/06 Rules, which were applicable at the time of the death of her husband. Let the entitlement of the petitioner be computed by the competent authority within a period of eight weeks of the receipt of certified copy of this order by passing an appropriate speaking order and whatever amount the petitioner is found entitled for, the same will be extended to her within a further period of four weeks.

11. The present petition is disposed of.

(HARSIMRAN SINGH SETHI)
(JUDGE)

04.03.2024
kv

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