

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(209)

CWP-19498-2017 (O&M)
Date of Decision : April 25, 2024

Surender Lal Puri

.. Petitioner

Versus

State of Haryana and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Gaurav Mohunta, Advocate, and
Mr. Nishant Arora, Advocate, for the petitioner.

Mr. Pankaj Middha, Addl. Advocate General, Haryana with
Ms. Ashok Khemka, Addl. Chief Secretary, Printing and
Stationary Department, Government of Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-2043-CWP-2018

As prayed for, the application is allowed.

Annexures P-13 to P-15 are taken on record.

CWP-19498-2017

1. In the present writ petition, the challenge is to the order dated 11.04.2017 (Annexure P-2) by which, in an appeal filed by the petitioner, the order dated 15.01.2016 dismissing the petitioner from service, has been modified to that of compulsory retirement and recovery of Rs.7,54,350/-, which according to the respondents, is the loss caused, has been ordered to be recovered from the petitioner.

2. Further prayer of the petitioner is that the suspension period starting from 23.03.1999 to 22.02.2001 be treated as duty period for all

intents and purposes.

3. Certain facts needs to be mentioned for the correct appreciation of the issue in hand.

4. The petitioner was appointed as Compositor in the Department of Printing and Stationary, Government of Haryana on 30.07.1970. During the period between 1970 to 1986, the petitioner was promoted to the post of Computor and then to the post of Section Holder and then as General Foreman and again to the post of Assistant Controller. While working on the said post, the petitioner was suspended on 23.03.1999 in anticipation of the initiation of the disciplinary proceedings. It may be noticed that two FIRs were also registered against the petitioner being FIR No.61 dated 30.03.1999 and another FIR bearing No. 87 dated 06.05.1999.

5. Apart from the criminal proceedings initiated, three charge-sheets were issued to the petitioner, one on 19.05.1999, second on 15.10.1999 and third on 22.11.1999. After the disciplinary proceedings were initiated, another FIR was also registered against the petitioner on 07.04.2000 being FIR No.83 dated 07.04.2000. Keeping in view the service record of the petitioner as he was facing three criminal proceedings and three departmental proceedings, the Department decided to compulsory retire the petitioner w.e.f. 22.02.2001 by not giving him extension in service beyond the age of 55 years.

6. Despite the fact that the petitioner was compulsory retired, the respondents continued with the disciplinary proceedings which were pending against him at the time of compulsory retirement and in respect of the charge-sheet dated 15.10.1999, punishment order was passed by the competent authority on 15.07.2016 dismissing the petitioner from service.

7. The said order of dismissal was challenged by the petitioner by

filing CWP No.2198 of 2016 wherein, the operation of the impugned dismissal order dated 15.01.2016 was stayed.

8. In the meantime, as the order of dismissal dated 15.01.2016 was stayed, the competent authority withdrew the order dated 15.01.2016 and vide order dated 11.04.2017 held that as the petitioner has already been compulsory retired w.e.f. 22.02.2001, the order of dismissal dated 15.01.2016 becomes infructuous and with regard to the act and omissions, which had been proved during the pendency of the disciplinary proceedings, the excess payment made by the petitioner to the tune of Rs.7,54,350/- was ordered to be recovered from him. It was further mentioned in the order dated 11.04.2017 that the suspension period from 23.03.1999 to 22.02.2001 will be treated “as leave of kind due” and he will be paid nothing more than what has already received by him during the suspension period. The said order dated 11.04.2017 is under challenge in the present writ petition.

9. The respondents have appeared and filed the reply. In the reply, the respondents are defending the order dated 11.04.2017 (Annexure P-2) to mean that the loss caused by the petitioner to the tune of Rs.7,54,350/- is liable to be recovered from him and once, the petitioner has been found guilty in the departmental proceedings, he cannot be paid anything over and above the suspension allowance and the suspension period has rightly been treated as “leave of kind due.”

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

11. The question which arise in the present writ petition is that whether or not, the recovery of Rs.7,54,350/- as imposed vide impugned order dated 11.04.2017 (Annexure P-2) is valid or not keeping in view the facts and circumstances of the case.

12. It may be noticed that in the impugned order, the respondents have mentioned that there was a loss caused to the State exchequer on account of making extra payment to a particular firm to the tune of Rs.7,54,350/-. Further, it has been mentioned in the impugned order that the said amount has already been recovered by the State from the security amount which the firm had deposited.

13. Now, the question which arise is whether once the State has already recovered the loss caused from the security deposited by the firm concerned, can again the same loss can be recovered from the petitioner or not.

14. The State being a welfare State, cannot act in a manner so as to gain money beyond entitlement. The loss caused by the petitioner can only be recovered in case the money has not already been recovered by the State from the concerned firm. In case, the money has already been recovered by the State, the same cannot be recovered second time from the petitioner otherwise it will amount to undue enrichment, which is not permissible under law.

15. Learned counsel for the respondents conceded the fact that Rs.7,54,350/- has already been recovered from the security deposit of the firm, i.e. the amount of loss caused by the petitioner by paying excess amount to the said firm.

16. Once the loss caused by the petitioner has already been recovered, the same cannot be recovered from the petitioner once again hence, the order dated 11.04.2017 (Annexure P-2) by which, the loss was sought to be recovered again from the petitioner by making him liable, is incorrect and cannot be done in the facts and circumstances of this case.

17. At this stage, learned counsel for the respondents submits that

once, the disciplinary proceedings had started, State was within the power to impose punishment of recovery as penalty even if, the excess amount has already been recovered. No doubt, by way of punishment, an employee can be punished by way of recovery so as to recover the loss caused but it is to be seen as to whether recovery of amount is due to loss caused or penalty. It may be noticed that only punishment stated under rules can be imposed and nothing has been brought to the notice of this Court that any financial penalty is envisaged under Rule to be imposed. In the absence of any financial penalty envisaged under Rules, no financial penalty except for recovery of loss caused can be imposed.

18. Even otherwise, a bare perusal of the order impugned would show that Rs.7,54,350/- was only sought to be recovered keeping in view the loss caused by the petitioner to the State exchequer. Once, the amount is being recovered as a loss caused, even the authority concerned has not imposed the same as a financial penalty hence, the argument of the learned counsel for the respondents that the amount of Rs.7,54,350/- is being recovered as penalty cannot be accepted as, the respondent-State cannot go beyond the findings recorded in the impugned order or the Rules governing the service.

19. Learned counsel for the petitioner submits that the petitioner is entitled for the full salary for the period he remained under suspension.

20. It may be noticed that the petitioner is governed by the Haryana Punishment and Appeals Rules, 1987. As per the said Punishment and Appeals Rules, the suspension period is to be decided by the authorities concerned after the conclusion of the disciplinary proceedings. It is only in case, an employee has been found innocent, he is entitled for full salary of the suspension period but where an employee has been found guilty of the

allegations, the liberty/jurisdiction to decide as to how the suspension period will be treated, vests with the State. In the present case, the petitioner has been held guilty of the allegations alleged and as he has already been compulsory retired by the time the decision was taken, no other action was taken but once the petitioner has been held guilty in the departmental proceedings, he cannot claim anything over and above the suspension allowance hence, the order that the suspension period will only be restricted to be treated as “leave of kind due” and not to pay any other monetary benefit, is perfectly valid and legal and is in consonance with 1987 Rules.

21. Learned counsel for the petitioner has not been able to rebut that an employee who has been found guilty of the allegation, is not entitled for full salary for the period he/she remained under suspension.

22. Keeping in view the above, no infirmity is found in the impugned order with regard to the non-payment of any further financial benefits for the suspension period.

23. Keeping in view of the facts and circumstances of the present case, the respondents will not recover the amount of Rs.7,54,350/- from the dues which are yet to be paid to the petitioner and the remaining pensionary benefits are liable to be released to the petitioner.

24. At this stage, learned counsel for the petitioner submits that unfortunately, during the pendency of the present petition, the petitioner has died and his all pensionary benefits have not been released even after he was compulsory retired in the year 2001. Learned counsel for the petitioner further submits that even though the petitioner has already retired in 2001 but as departmental proceedings with regard to the two charge-sheets which were issued to him on 22.11.1999 and 19.05.1999 are still pending

consideration, pensionary benefits of the petitioner have been withheld but, once an employee dies, no proceedings can be allowed to continue against the said deceased employee hence, once on the death of an employee, the pending disciplinary proceedings abate, the disciplinary proceedings in respect of the charge-sheet dated 19.05.1999 and 22.11.1999 also stands abated hence, the respondents be directed to release the pensionary benefits for which the family of the petitioner becomes entitled for keeping in view the service rendered by the petitioner.

25. Learned counsel for the respondents, on the other hand, submits that once, the departmental proceedings are pending and have not been finalized and the enquiry report has already been received according to which, the petitioner has been found guilty of the allegations, merely that the petitioner has died before the passing of the actual order of punishment, the right of the department cannot be taken away so as to recover the alleged loss which has been proved in the departmental proceedings as arrived at in the enquiry report submitted qua the pending disciplinary proceedings.

26. It may be noticed that as per the settled principle of law, once an employee facing the charge-sheet dies, all the proceedings pending against him/her stands abated. It cannot be said that the Department has a right to proceed against a dead employee and to pass an order against dead employee. The said law has already been settled by this Court while passing order in ***CWP No.21917 of 2016 titled as Shiksha Devi vs. Haryana State Federation of Consumers Co-operative Wholesale Stores Ltd, decided on 02.08.2022***, wherein, it has been held that the disciplinary proceedings pending against an employee abates after his death as no master and servant relationship exist between the dead employee and the

State. The relevant paragraph of the said judgment is as under:-

“11. Even otherwise, even if it is assumed for the sake of argument that respondent had jurisdiction to issue the chargesheets to the late husband of the petitioner even after his retirement, then also the impugned order of recovery by way of punishment can not be sustained for the reason that no proceeding can continue against a dead employee. The husband of the petitioner unfortunately died on 16.05.2015. It is the conceded position that till the said date, none of the chargesheets had attained finality so as to give jurisdiction to the respondent to pass any orders on the chargesheet. After the death of employee, disciplinary proceedings abate, hence, as the husband of the petitioner had already passed away, proceeding initiated by the respondents in respect of three chargesheets could not have continued any further. Keeping in view the said factual position, the recovery of Rs.6,44,890/- which has been imposed upon late husband of the petitioner is held to be bad and accordingly quashed.”

27. Learned counsel for the respondents very fairly submits that though the departmental proceedings are pending and even the enquiry report has also been received but no formal order has been passed to conclude the said disciplinary proceedings by passing any final order till the date the petitioner was alive.

28. That being so, once no final order has been passed on those disciplinary proceedings which were pending against the petitioner upto to his death and as per the settled principle of law settled in ***Shiksha Devi's case (supra)***, the disciplinary proceedings abate upon the death of an employee, the department cannot pass any final order on those proceedings so as to cause prejudice a dead man, which is impermissible under law and those departmental proceedings have abated.

29. Learned counsel for the respondents concedes that apart from

those departmental proceedings, there is no other impediment in the release of the pensionary benefits of the petitioner.

30. In view of the above, as there is no impediment in the release of the pensionary benefits admissible to the petitioner after his compulsory retirement, the respondents are directed to release the same forthwith.

31. At this stage, learned counsel for the petitioner submits that the petitioner was compulsory retired in the year 2001 and upto the year 2024, the payment for which the petitioner was entitled for, have been withheld on one pretext or the other, hence once, the withholding of any amount belonging to the petitioner has been held to be bad, the amount which the respondents are liable to release after this order, should also carry interest so as to compensate the petitioner.

32. Learned counsel for the respondents objects to the same and submits that as the claim of the petitioner is being adjudicated now, and his entitlement is being established by this order, no interest should be paid to the petitioner.

33. It may be noticed that a Coordinate Bench of this Court in of ***J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355***, has held that where an amount belonging to an employee, has been retained and used by the respondents, upon the release of the said amount, on a later date, the interest has to be given. The relevant paragraph of ***J.S. Cheema's case (supra)*** is as under: -

“The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence

on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.”

34. In the present case, a sum of Rs.7,54,350/- which has been withheld by the respondents, which action of the respondents has already been held to be bad and has been set aside, in order to compensate the petitioner, the interest @ 6% per annum is liable to be paid on all the retiral benefits except gratuity from the date the amount became due to the petitioner upon retirement.

35. As the disciplinary proceedings were pending and those disciplinary proceedings only abated on the death and during the pendency of the disciplinary proceedings, the Department was within its jurisdiction to withhold the gratuity, the interest @ 6% per annum on the gratuity will only be admissible from the date of the death of the petitioner till the actual payment of the same.

36. Keeping in view the observations made hereinbefore, the present writ petition is disposed of in above terms.

April 25, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes