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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-181-2018
Date of decision: 24.09.2024

SUMITRA DEVI

...Petitioner(s)

VERSUS

STATE OF HARYANA AND OTHERS

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. D. S. Matya, Advocate and
Mr. Tarun Chawla, Advocate for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. C. S. Bakhshi, Advocate for the respondents No.2 and 3.

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JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the notice dated 29.09.2015 (Annexure P-1) directing the petitioner to deposit a sum of Rs.19,57,346/- with CONFED District Office, Fatehabad with a further prayer to direct the respondents to pay Rs.5,25,271/- due to the petitioner as an amount of gratuity of her husband and another amount of Rs.2,93,700/- due as an amount of leave encashment.

2. It is a case where the husband of the petitioner, namely, Dalbir Singh was working as a Store Keeper with the respondent-Haryana State Federation of Consumers Cooperative Wholesale Stores Limited (CONFED)

and he died on 28.04.2011. The present writ petition has been filed by the widow of aforesaid Dalbir Singh. After the death of aforesaid Dalbir Singh, who was the husband of the petitioner, his gratuity was calculated as Rs.5,25,271/- and leave encashment as Rs.2,93,700/- and the aforesaid two amounts were also sanctioned. However, the aforesaid two amounts were not paid to the petitioner in view of impugned notice dated 29.09.2015 (Annexure P-1), wherein it was so stated that after the death of the husband of the petitioner, a Committee was constituted to count the stocks of wheat and other stock articles and a shortfall was found which was calculated as Rs.27,76,317/- and the aforesaid two amounts i.e. of gratuity and leave encashment stand adjusted towards that amount and rather the petitioner, who is a widow, through the aforesaid notice Annexure P-1 was directed to deposit the balance amount of Rs.19,57,346/- with CONFED District Office, Fatehabad, otherwise legal proceedings will be initiated against her. The petitioner through her counsel repeatedly sought various information from the respondent-CONFED as to why and under what authority of law the aforesaid recovery from gratuity and leave encashment has been effected with regard to a Committee which was constituted after the death of the husband of the petitioner and recovery of Rs.19,57,346/- is sought to be effected from a dead person but no such information was so supplied to the petitioner by the respondent-CONFED in this regard.

3. Learned counsel for the petitioner submitted that the petitioner being a widow has been victimized by the respondent-CONFED and after the death of her husband, she had no means of livelihood and there was no

authority of law with the respondent-CONFED to have withheld the retiral benefits of the husband of the petitioner, to which the petitioner was entitled as the husband of the petitioner died in the year 2011, which is about 13 years ago. In this regard, he referred to the judgment passed by this Court in ***CWP-9088-2020***, titled as ***Anjana versus Haryana State Federation of Consumers Co-operative Wholesale Stores Ltd.***, decided on ***18.03.2024***. He also referred to another judgment passed by this Court in ***CWP-1781-2023***, titled as ***Kaushalya Devi alias Kushaliya Devi versus State of Punjab and others***, decided on ***11.04.2023*** in this regard to contend that against a dead person, no recovery could have been ordered to be effected. He further submitted that there is no charge-sheet or any kind of disciplinary proceedings or any punishment order against the husband of the petitioner and after the death of the husband of the petitioner, no enquiry could have been initiated. While again referring to notice Annexure P-1 dated 29.09.2015, he submitted that a perusal of the same would show that it has been specifically incorporated in aforesaid Annexure P-1, whereby recovery has been made that it was after the death of the husband of the petitioner that a Committee was constituted, whereas no such Committee could have been constituted after the death of the husband of the petitioner and in this way, the aforesaid two amounts i.e. of gratuity and leave encashment have been wrongfully recovered from the retiral benefits of the husband of the petitioner without the authority of law.

4. On the other hand, learned counsel for respondents No.2 and 3 submitted that now during the pendency of the present writ petition, the matter has been re-considered by the Managing Director of the respondent-CONFED

and an order has been passed today itself by observing that the family of the deceased, namely, Dalbir Singh could not have been punished for any misdemeanour that he may have been guilty of and therefore, it has been ordered that all the retiral benefits of the husband of the petitioner totaling Rs.8,18,971/- be released to the petitioner alongwith interest @ 6% per annum from the date of death of the husband of the petitioner. He has supplied a photocopy of the aforesaid order dated 24.09.2024 in the Court today and a copy of the same has also been supplied to learned counsel for the petitioner during the course of proceedings. The aforesaid order dated 24.09.2024 is hereby taken on record as Mark-'X'. He further submitted that he has specific instructions to state that in view of the aforesaid order which has been passed today and is taken on record as Mark-'X, the aforesaid amount of Rs.8,18,971/- will be paid to the petitioner within a period of two weeks from today.

5. Learned counsel for the petitioner submitted that so far as the aforesaid amount of Rs.8,18,971/- as reflected in the aforesaid order dated 24.09.2024 passed by the Managing Director of respondent-CONFED, which was recovered from the gratuity and leave encashment as aforesaid is concerned, he may be granted liberty to move a representation to respondent-CONFED in case there is wrong calculation of the same and direction may be issued to the respondent-CONFED to consider the same within a period of two months thereafter.

6. Learned counsel for respondents No.2 and 3 submitted that he has no objection with regard to the aforesaid prayer made by the learned counsel for the petitioner.

7. Learned counsel for the petitioner also submitted that the petitioner has also not been paid CPF/GPF of her husband till date.

8. Learned counsel for respondents No.2 and 3, on instructions from Mr. Kamal Kumar, Assistant, CONFED, submitted that the petitioner may file an application before the CPF/GPF authorities in this regard and so far as the respondent-CONFED is concerned, he assures this Court that all the necessary cooperation will be provided in this regard.

9. I have heard the learned counsels for the parties.

10. In view of the above, liberty is granted to the petitioner to move any comprehensive representation to the respondent-CONFED. In case the petitioner finds any fault in the calculation of gratuity or leave encashment and in case any such representation is filed by her, then the Managing Director of the respondent-CONFED will consider the same and pass a detailed speaking order within a period of two months thereafter. So far as the grant of CPF/GPF is concerned, the petitioner is at liberty to file any application to the CPF/GPF authorities and on the basis of assurance given by the learned counsel for respondents No.2 and 3 that full cooperation will be given, in case the petitioner is still aggrieved by the action of CPF/GPF authorities, then she may file a fresh writ petition in accordance with law pertaining to the same.

11. Consequently, the present writ petition is disposed of in the aforesaid terms.

12. Since it is a case where the petitioner is a widow and her husband died in the year 2011 and after the death of the husband of the petitioner, the respondent-CONFED constituted a Committee against a dead person and

recovered the retiral benefits of gratuity and leave encashment from the petitioner in a totally illegal manner and absolutely without the authority of law and now during the pendency of the present writ petition, the aforesaid order dated 24.09.2024, which has been taken on record as Mark-'X' has been passed by the incumbent Managing Director of respondent-CONFED by realizing that the family of the deceased, namely, Dalbir Singh could not have been punished for the wrongful action, if any, of the aforesaid Dalbir Singh but the fact remains that for about long 13 years, a widow had been running from pillar to post and she was only 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, therefore this Court deems it fit and proper to impose exemplary costs upon the respondent-CONFED in the nature of compensation, to which the petitioner is entitled. The costs are assessed as Rs.50,000/- (Fifty Thousand), which shall be paid to the petitioner by the respondent-CONFED, within a period of three months from today.

(JASGURPREET SINGH PURI)
JUDGE

24.09.2024
Chetan Thakur

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