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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.515 of 2016 (O&M)
Reserved on: 08.05.2024
Pronounced on: 18.05.2024

Meena Sharma

....Petitioner

Versus

Punjab State Power Corporation Limited and others

....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Madhav Pokhrel, Advocate
for the petitioner.

Mr. Parveen Goyal, Advocate
for the respondents.

NAMIT KUMAR J. (Oral)

1. The petitioner, who is widow of Sh. Anil Kumar Sharma, Assistant Store Keeper (Retd.) has approached this Court by filing the instant petition impugning the order dated 27.07.2015 (Annexure P-18), vide which the husband of the petitioner was dismissed from service, after his death. Further a writ of mandamus has been sought for directing the respondents to release the retiral dues of her husband i.e. gratuity, provident fund, leave encashment and family pension, to the petitioner in pursuance to the order dated 14.05.2009 (Annexure P-3), passed by the respondents – Department, whereby he was compulsorily retired from service. Further prayer has been made for grant of arrears of subsistence allowance for the period from 15.01.1990 to 17.11.1991, from 23.02.1996 to November, 1998 and 06.11.2003 to 06.10.2004,

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when the husband of the petitioner remained under suspension.

2. The brief facts of the case, as have been pleaded in the petition, are that the husband of the petitioner joined the respondent – Corporation as Lower Division Clerk on 12.01.1978 on ad hoc basis and thereafter, in the year 1980, he was appointed as Store Munshi on work charge basis and thereafter, in the month of August, 1984, he was appointed as Assistant Store Keeper on regular basis.

The husband of the petitioner was issued a charge-sheet dated 07.11.1996, alleging misappropriation of material worth Rs.12,53,522/-, while he was working as Assistant Store Keeper from 06.06.1993 to February, 1996 and FIR No.27 dated 14.03.2000, under Section 409 IPC, was also registered in Police Station City Kotakpura, in which the husband of the petitioner was found guilty and he was awarded sentence of 03 years rigorous imprisonment and fine of Rs.5,000/- by the learned Chief Judicial Magistrate, Faridkot, vide judgment dated 04.02.2009. Later on, the husband of the petitioner filed an appeal before the learned Sessions Judge, Faridkot, which was dismissed vide judgment dated 18.03.2009 and thereafter, he preferred a criminal revision i.e. CRR No.2167 of 2009, before this Court in which his sentence was reduced from 03 years RI to 1½ years RI, vide judgment dated 06.11.2009.

The disciplinary proceedings, initiated against the husband of the petitioner vide charge-sheet dated 03.01.2005, were culminated into his compulsorily retirement from service vide order dated

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14.05.2009 and it was further ordered to recover a sum of Rs.4,85,373/- from him. The said punishment order became final as no appeal was ever preferred by the husband of the petitioner. The respondent – Corporation filed a suit for recovery of Rs.11,63,806/- on 23.12.2014, on account of shortage of material in store against the husband of the petitioner.

During the pendency of the said suit, the husband of the petitioner unfortunately died on 14.06.2015 and his LRs were brought on record and finally, the said suit was dismissed by the learned Additional Civil Judge (Sr. Division), Faridkot, vide judgment and decree dated 06.05.2019 (Annexure P-21) and the same became final as no appeal has been preferred by the respondents – Department against the said judgment and decree.

In the meanwhile, the husband of the petitioner was dismissed from service vide order dated 27.07.2015 (Annexure P-18) w.e.f. 06.11.2009, despite the fact that he had already died on 14.06.2015. The said order of dismissal has been impugned in the present petition.

3. On issuance of notice of motion, written statement on behalf of the respondents has been filed wherein the respondents have justified the order of dismissal.

4. The instant petition was heard by the Coordinate Bench of this Court on 20.08.2019, and the following order was passed:-

“In the present writ petition, the grievance of the

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petitioner is that after the conviction of the husband of the petitioner on 04.02.2009, he was compulsorily retired on the basis of the said conviction, vide order dated 14.05.2009 (Annexure P-3). Thereafter, unfortunately the husband of the petitioner died and after the death, a fresh order was passed by the respondents on 27.07.2015 (Annexure P-18) dismissing him from service.

The sole argument raised by counsel for the petitioner to challenge the said order is that how can a dead employee be dismissed from service and that too when on the basis of conviction, already an order compulsorily retiring the husband of the petitioner had been passed.

Faced with this situation, counsel for the respondents prays for some time to seek instruction in this regard, as to whether, there was any jurisdiction with the respondent-Corporation to dismiss a dead employee or not. If yes, under what circumstances and under what rule. The same will be specified by filing an appropriate affidavit.

Adjourned to 30.10.2019.”

5. Thereafter, an affidavit of Engineer Rajinder Kaur Gill, Sr. XEN, Central Store, PSPCL, Ferozepur, has been filed wherein it has been stated that the criminal revision i.e. CRR No.2167 of 2009, filed by the husband of the petitioner was finally decided by this Court on 06.11.2009 and the quantum of sentence was reduced from 03 years RI to 1½ years RI and therefore, in view of the said order and in order to make necessary amendment and the order of compulsory retirement, an Agenda No.8 dated 27.03.2015, was sent to the Meeting Section Patiala

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for placing it before the Board of Directors after approval of the Director, Commerce and the Board of Directors in their 43rd Meeting held on 02.07.2015, approved the same. The decision of the Board of Directors, reads as under:-

“The Board after considering the details given in the agenda passed the following resolution:

RESOLVED that approval be and is hereby accorded to dismiss the services from PSEB now PSPCL of Sh. Anil Kumar Sharma, Assistant Store Keeper (compulsorily retired on 14.05.2009) (DOB 23.10.1959) s/o Sh. Raj Krishan Sharma, w.e.f. the date of order of Punjab and Haryana High Court i.e. 06.11.2009.”

6. It has further been submitted in the affidavit that the decision to dismiss the husband of the petitioner was made on 27.03.2015 vide Agenda No.8, which was approved on 02.07.2015 by the Board of Directors and during this period, the husband of the petitioner had died on 14.06.2015.

7. Learned counsel for the petitioner submits that how can a dead employee be dismissed from service and that too, when on the basis of conviction, an order of compulsorily retiring the husband of the petitioner had already been passed. In support of the above argument, learned counsel for the petitioner has relied upon the Office Memorandum issued by the Government of India, Ministry of Personnel Public Grievances & Pensions (Department of Personnel & Training) New Delhi, dated 20.10.1999, according to which, an employee against

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whom a disciplinary proceedings have been initiated and during the said proceedings, the concerned employee dies, the disciplinary proceedings should be closed immediately upon the death of the employee. The relevant instructions are reproduced herein as under:-

“F.No. 11012/7/99-Estt (A)

Government of India

Ministry of Personnel Public Grievances & Pensions

(Department of Personnel & Training)

New Delhi, dated the 20th October, 1999

Office Memorandum

Subject: CCS (CCA) Rules, 1965- procedure regarding closing of disciplinary cases in the event of death of the charged official.

“1. The undersigned is directed to say that this Department has been receiving references seeking clarification whether disciplinary cases initiated against the Government servant under CCS(CCA) Rules, 1965, could be closed in the event of death of the charged officer during pendency of the proceedings. After careful consideration of all the aspects, it has been decided that where a Government servant dies during the pendency of the inquiry i.e. without charges being proved against him, imposition of any of the penalties prescribed under the CCS (CCA) Rules, 1965, would not be justifiable. Therefore, disciplinary proceedings should be closed immediately on the death of the alleged Government servant.

2. In so far as the persons serving in the Indian Audit and Accounts Department are concerned, this issues with the

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concurrence of the C&AG.”

Learned counsel for the petitioner has also placed reliance upon the judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 4858 of 1998 decided on 17.09.1998 titled as “**Basudeo Tiwary vs. Sido Kanhu University**”, 1998 (8) SCC 194, wherein the Hon'ble Supreme Court of India, in case of the death of an employee during the inquiry, held that after the death, no further inquiry can be undertaken. The relevant para of the said judgment is reproduced as under:-

“12. The appellant has since demised during the pendency of these proceedings, no further direction either as to further inquiry or reinstatement can be given. We declare that the termination of the appellant by the respondent as per the notification referred to by us is invalid. Consequently, it would be deemed that the appellant had died in harness. Needless to say that the appellant would become entitled to the payment of arrears of salary from the date of termination of his services upto the date of his death on the basis of last pay drawn by him. Let Respondent take action within a period of three months from today to work out the arrears due to the appellant from the date of his termination till his death and pay the same to his legal representatives.”

8. Per contra, learned counsel for the respondents submits that the death of an employee will not abate the proceedings and the legal heirs can participate in the enquiry or any further proceedings and the same can be taken to its logical end. He further submits that the

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judgment cited by the learned counsel for the petitioner is on different facts and the Circular issued by the Government of India, cannot be made applicable to an autonomous Institution.

9. I have heard learned counsel for the parties and perused the record.

10. The only question, which arises for determination by this Court is as to whether a dead person can be dismissed from service and that too retrospectively.

11. Admittedly, the husband of the petitioner was issued charge-sheet dated 07.11.1996, alleging misappropriation of material worth Rs.12,53,522/- and after holding departmental enquiry, the punishment order dated 14.05.2009, was passed whereby the petitioner was compulsorily retired from service forthwith and it was also directed to recover a sum of Rs.4,85,373/-. The said order became final as no appeal was preferred by husband of the petitioner. The suit filed by the Corporation for recovery, was dismissed vide judgment and decree dated 06.05.2019. In the meanwhile, the husband of the petitioner unfortunately died on 14.06.2015 and on the basis of conviction, which has been upheld in CRR No.2167 of 2009, vide judgment dated 06.11.2009, while reducing the sentence from 03 years to 1½ years, the husband of the petitioner was ordered to be dismissed from service vide order dated 27.07.2015 w.e.f. 06.11.2009.

12. Once the disciplinary proceedings have already been concluded by awarding the punishment of compulsory retirement and

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recovery, the same cannot be reopened on the basis of conviction/sentence awarded by the criminal Court.

13. In the present case, when the order of dismissal has been passed, prior thereto the husband of the petitioner had already died. Firstly, a dead person cannot be punished, however, in the present case, the dismissal order has been passed with retrospective effect, which is not permissible in law.

14. As per the abovesaid Instructions issued by Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), where a government servant dies during the pendency of the enquiry i.e. without charges being proved against him, imposition of any of the penalty prescribed under the CCS (CCA) Rules, 1965, would not be justifiable and, therefore, the disciplinary proceedings should be closed immediately on the death of alleged government servant. Although these Instructions have been issued by Government of India for the Central Government Employees, however, still the same has a pervasive value to arrive at a decision. Once a government employee, who dies during the pendency of the disciplinary proceedings, he cannot be proceeded after his death and the same principle can be followed against the State Government/Corporation Employees. No Rule or Instructions have been brought to the notice of this Court by the respondent to pass any order of dismissal against a dead person and that too with retrospective effect.

15. Further, in some what similar circumstances, where an

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employee died during the pendency of the disciplinary proceedings, the Hon'ble Supreme Court in ***Basudeo Tiwary's case (supra)*** has categorically held that no inquiry proceedings can continue after the death of an employee. The Hon'ble Supreme Court issued directions to release the entitlement of the deceased employee in favour of the legal heirs.

16. Even this Court in ***“Bahadur Singh vs State of Punjab and others”***, 2013(4) S.C.T. 322, wherein it has been held that the competent authority is not entitled to pass an order of dismissal from service from a later date from the date of retirement of the delinquent official and passing of such order, after his retirement, would be a superfluous order. The operative part of the said judgment, reads as under:-

“7. In my considered view, the claim of the petitioner as has been asserted by him in the present writ petition is covered in his favour by the ratio of the judgment passed by the Hon'ble Supreme Court in the case of Amrik Singh (supra) wherein it has been held that the competent authority is not entitled to pass an order of dismissal from service with effect from a later date from the date of retirement of the delinquent employee. Such an order would be a superfluous order. However, the competent authority would be entitled to pass appropriate orders as per the statutory rules which could include withholding, forfeiture or recovery of amount of pension etc. if the rules so provide. The issue is also decided in favour of the petitioner by the Division Bench of this Court in Tarsem Singh's case (supra) which also supports his claim.

8. In view of the above, impugned orders dated 25.1.2010 (Annexure P-6) and 18.6.2012 (Annexure P12) are hereby quashed. Liberty is, however, granted to the respondents to pass appropriate orders in accordance with law as per the

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statutory rules.”

17. To the same effect are the judgments of this Court in **“Tarsem Singh vs The Punjab Scheduled Castes Land Development and Finance Corporation”**, 2013(2) S.C.T. 342 and **“Shiv Kumar Ratti vs State of Punjab”**, 2003(3) S.C.T. 259.

18. In view of what has been discussed hereinbefore, the present petition is allowed and the impugned order dated 27.07.2015 (Annexure P-18) whereby the husband of the petitioner has been dismissed from service w.e.f. 06.11.2009, is set-aside and the petitioner is held entitled for all the consequential benefits including gratuity, provident fund, leave encashment and family pension and the same shall be released to the petitioner within a period of 03 months from the date of receipt of certified copy of this order.

(NAMIT KUMAR)
JUDGE

18.05.2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No