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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Decision delivered on: 11.09.2024**

+ **W.P.(C) 11025/2023 & CM APPL. 42786/2023 (stay)**

GOVT OF NCT OF DELHI AND ORS

.....Petitioners

Through: Mr. Sahaj Garg, Senior Panel
Counsel with ASI Sanjay Kumar

versus

SMT SAVITA DEVI

.....Respondent

Through: Mr. Sachin Chauhan, Advocate

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T (O R A L)

W.P.(C) 11025/2023 & CM APPL. 42786/2023 (stay)

1. By way of the present writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioners have sought the following relief:

“(a) quash and set aside the per-se perverse judgment and order dated 06.02.2023 passed by Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 2269 of 2019.”

2. The husband of the respondent was appointed to the post of Constable in the year 1998. He died in a road accident on 25/26.08.2018.

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During the service, he remained unauthorisedly absent in two spells from first 03.08.2012 to 07.10.2014 (790 days). The said period was decided as leave without pay on the principle of “no work no pay” vide an office order no. 7138-41/SIP/East Distt. dated 15.06.2015 and second from 31.08.2015 to 20.06.2018 (1024 days).

3. The Competent Authority taking a lenient view had filed the second period of absence vide order dated 11.10.2018. Vide order dated 16.11.2018, the petitioners re-fixed the pay of husband of the respondent, on account of the unauthorised absence of the first spell i.e. from 03.08.2012 to 07.10.2014. Vide an order dated 13.12.2018, a recovery of Rs. 9,27,889/- was sought to be recovered from the gratuity amount of the deceased husband of the respondent. The said order further stated that after calculating the gratuity amount, which come to the tune of Rs. 6,84,520/- after adjusting the said gratuity Rs. 6,84,520/-, the remaining amount of Rs. 2,43,369/- was due from the husband of the respondent as a consequence the respondent, who is the widow of the deceased employee of the petitioners, all retiral dues including gratuity had been withheld by the petitioners.

4. Being aggrieved, the respondent approached the learned Central Administrative Tribunal (Tribunal) by filing O.A No. 2269/2019 and vide the impugned order dated 06.02.2023, the learned Tribunal has set aside the order dated 13.12.2018 passed by the petitioners.

5. The case of the respondent before the learned Tribunal was that in



the order dated 13.12.2018 passed by the petitioners, it was contended that the husband of the respondent absented himself for more than 5 years, was in fact, factually incorrect, as for the second spell of his alleged unauthorised absence from 31.08.2018 to 20.06.2018, the petitioners themselves had filed the period, by taking a lenient view.

6. Further, it was the case of the respondent before the learned Tribunal that for the first spell a period of 790 days i.e. from 03.08.2012 to 07.10.2014, since the deceased husband of the respondent at the appropriate time, the order of ‘no work no pay’ was passed by the petitioners authority on 15.06.2015, therefore, the petitioners did not choose to recover the said amount from him. At this stage, the husband of the respondent is no more, she being the wife of the deceased employee could not be made to suffer for the same.

7. Learned counsel for the petitioners submitted before the learned Tribunal that the O.A. filed by the respondent was nothing but misuse of process of law and the respondent had no *locus-standi* to file the original application. She tried to get advantage of her husband’s own wrong and therefore, was not entitled to get any relief.

8. Learned counsel appearing on behalf of the petitioners submitted, before the learned Tribunal, that an amount of Rs.9,27,889/- was to be recovered on the basis of “no work no pay” for the period of unauthorised absence and the gratuity was only to the tune of Rs.6,84,520/-, in fact the petitioners were duty bound to recover the said



amount, which had been received by the deceased employee, to which he was not entitled.

9. Counsel for the petitioners further submitted that since it was the duty of the petitioners, the said amount should reach to the exchequer accordingly had relied upon Rule 80C (Adjustment of Government Dues), wherein it was categorically mentioned that the Head of the Office shall, within one month of the receipt of the information regarding death of a Government servant, take steps to ascertain if any dues as referred to in Rule 71 excluding the dues pertaining to the allotment of Government accommodation were recoverable from the deceased Government servant and the said dues could be recovered from the death gratuity becoming payable to the family of the deceased.

10. Undisputed facts are that the husband of the respondent died in a road accident on 25/26.08.2018. He was unauthorisedly absent for two spells from 03.08.2012 to 07.10.2014 (790 days) and from 31.08.2015 to 20.06.2018 (1024 days). With respect to the second spell, there is no quarrel as this period has already been filed by the petitioners by taking a lenient view. With respect to the first spell, it is clear that at the appropriate time, the employee was in service and the petitioners chose not to take any steps for recovery of the said dues.

11. From the order dated 13.12.2018 passed by the petitioners, it is apparently clear that while passing the said order the petitioners have taken both the spells into account and thereby the period of more than 5



years has been imputed against the deceased employee.

12. In view of above, the learned Tribunal observed that in any case, since the second period i.e. 1024 days, has been filed by the petitioners themselves, therefore the amount of Rs. 9,27,889/- imputed to the five years cannot be recovered, in fact, for the second spell should have been excluded.

13. As per the simple arithmetic, it is clear that the petitioners have illegally and incorrectly included the period of 1024 days (31.08.2015 to 20.06.2018) which is almost $\frac{3}{4}$ of the amount so withheld by the petitioners, therefore to the amount, which is 6,84,520/-, the respondent is entitled interest on that amount.

14. Accordingly, the learned Tribunal has rightly set aside the order dated 13.12.2018 passed by the petitioners and the directed the petitioners to release the entire gratuity and other retrial dues including arrears of family pension, to the respondent and along with interest rate applicable at GPF rates.

15. In view of the above discussion and the settled position of law, we find no error or perversity in the impugned order dated 06.02.2023 passed by the learned Tribunal, consequently, we confirm the same.

16. Finding no merit in the present petition, the same stands dismissed. Pending application also stands disposed of.

17. The petitioners are directed to comply with the directions passed by the learned Tribunal vide order dated 06.02.2023 within four weeks



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from today, failing which the respondent shall be entitled to extra interest at the rate of 6% per annum on the delayed payment.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

SEPTEMBER 11, 2024/ry