

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(208)

CWP-1678-2018

Date of Decision : August 08, 2023

Bhagwati Devi

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Dheeraj Chawla, Advocate, for the petitioner.

Mr. Harish Rathee, Sr. Deputy Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

1. Present petition has been filed challenging the order dated 26.10.2017 (Annexure P-4) by which, the order imposing recovery has been passed by the Department against the late husband of the petitioner.

2. The facts which are necessary for the determination of the issue in hand are as cited below:-

3. The husband of petitioner namely Ramkishan was working as Forest Guard with the Department of Forest, Haryana. During the service career, certain disciplinary proceedings were initiated against him, which were pending consideration with the Department. The said proceedings started from the year 2009 onwards and total six disciplinary proceedings were being faced by the late husband of the petitioner.

4. Before the disciplinary proceedings could reach to its conclusion, the husband of the petitioner unfortunately died while in service on 25.09.2015. After the said date, the petitioner became entitled for the benefits in respect of the service rendered by her late husband but the benefits were not being released to her on the ground that her late husband was facing departmental enquiries, which departmental enquiries were still pending and till the said departmental proceedings reached its logical conclusion, no benefit in respect of the service rendered by the late husband of the petitioner, can be extended to the petitioner.

5. Ultimately, vide order dated 26.10.2017 (Annexure P-4), all the disciplinary proceedings pending against the late husband of the petitioner, were decided and after holding the husband of the petitioner guilty of the allegations, punishment of recovery of a sum of Rs.5,84,522/- was imposed upon the late husband of the petitioner. The leave encashment of the late husband of the petitioner was adjusted against the recovery order by the Department and remaining amount of Rs.2,700,62/- was waived off by the respondents. The said order dated 26.10.2017 (Annexure P-4) is under challenge in the present writ petition.

6. Learned counsel for the petitioner argues that in the present case, the moment, an employee against whom the disciplinary proceedings are pending, dies, the said proceedings cannot continue further and those proceedings abate hence, after the death of the husband of the petitioner, the disciplinary proceedings could not have been continued so as to hold him guilty of the allegations and to pass the impugned order directing the recovery of an amount of Rs.5,84,522/- from a deceased employee.

7. Learned counsel for the respondents submits that once on the date when the husband of the petitioner died, there were six disciplinary

proceedings pending against him, only those proceedings have been taken to the logical end after his death and the orders have been passed wherein, the husband of the petitioner was found guilty of the allegations and recovery of the loss suffered by the Department was ordered to be recovered.

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

9. The first question which arise in the present petition is whether, the proceedings which are pending against an employee during his service career, will remain intact after his/her death or the same will abate. The moment, an employee dies, the disciplinary proceedings cannot be allowed to continue as a dead person cannot defend himself/herself. Passing an order after the death of an employee so as to hold the said employee guilty, is not at all permissible. Furthermore, once after the death of an employee, there is no master and servant relationship exist, passing an order of recovery of an amount against a dead person and that too by proving the allegations, when there is no one to defend the alleged allegations, is totally arbitrary and illegal.

10. The said question of law already stands 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.*** In the said case also, the impugned order of recovery was passed after holding him guilty of allegations the death of employee, which act was held to be bad. The relevant paragraphs 10 and 11 of the said judgment are as under:-

“10. In the present case, no rule has been cited by the respondents to show their jurisdiction to issue a charge-sheet to a retired employee, hence, the charge-sheets which have

been issued to the late husband of the petitioner after his retirement, which have been taken to the logical end by way of impugned order so as to impose the recovery of Rs.6,44,890/-, is held to be without any jurisdiction and the same is accordingly quashed along with consequential proceeding including the impugned order.

11. Even otherwise, even if it is assumed for the sake of argument that respondent had jurisdiction to issue the charge-sheets 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 charge-sheets had attained finality so as to give jurisdiction to the respondent to pass any orders on the charge-sheet. 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 charge-sheets 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.”

11. Learned counsel for the respondents has not been able to rebut that the question of law settled in ***Shiksha Devi's case (supra)***, is not applicable upon the petitioner.

12. Keeping in view the above, the impugned order dated 26.10.2017 (Annexure P-4) which has been passed against a dead employee by continuing the disciplinary proceedings after his death so as to hold him guilty of the allegations and to pass an order of punishment so as to recover money, cannot be sustained and is accordingly set aside.

13. From the impugned order dated 26.10.2017 (Annexure P-4), it transpires that the petitioner was entitled for a sum of Rs.3,14,460/- as leave encashment in respect of the service rendered by her late husband, which amount was adjusted in view of the impugned order dated 26.10.2017. That being so, the said adjustment is already held to be illegal and the impugned order has already been set aside hence, the petitioner will be entitled for the amount of Rs.3,14,460/- which is admissible to her after the death of her husband on account of leave encashment.

14. Further, as the order has been passed against a dead employee, which is a void from the date the same was passed and rather, after the death of the husband of the petitioner in September 2015, the respondents were under an obligation to release all the benefits for which the petitioner was entitled for and as those have been retained by the respondents, the petitioner also becomes entitled for the interest.

15. 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.”

Keeping in view the above, the prayer of the petitioner is allowed and the respondents are directed to release the amount of Rs.3,14,460/- along with interest @ 6% per annum from the date the same became due till the actual payment of the same. Let the computation of interest be done by the respondents within a period of two months from the receipt of certified copy of this order and the amount so calculated shall be paid to the petitioner within a period of one month thereafter.

The writ petition is allowed in above terms.

August 08, 2023

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes