(2023-3)211 PLR 638

PUNJAB AND HARYANA HIGH COURT

Before: Justice Harsimran Singh Sethi.

RAJBALA – Petitioner

Versus

STATE OF HARYANA and others – Respondents.

CWP-1325 of 2021

Constitution of India, Article 14 – Withdrawal of technical pay scale after death of employee – It is a settled principle of law that no order can be passed against a dead person — Dead employee is not available to defend himself/herself — Even if any proceedings have been initiated against an employee and before the culmination of the said proceedings, the employee died, the said proceedings abate — Any show cause notice pending against the late husband of the petitioner for the withdrawal of the pay scale, abate upon his death – Service matter. [Para 13]

Cases referred:

1. CWP No.21917 of 2016 decided on 02.08.2022, Shiksha Devi v. Haryana State Federation of Consumers Co-operative Wholesale Stores Ltd.

Mr. Naveen Kumar, Advocate, for Mr. Vivek Khatri, for the petitioner. *Mr. Harish Rathee*, Sr. Deputy Advocate General, Haryana.

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Harsimran Singh Sethi, J. (ORAL) – *(25.09.23)* **–** Present writ petition has been filed challenging the order dated 13.02.2020 (Annexure P-15) by which, the benefit of technical pay scale granted to the husband of the petitioner has been withdrawn and that too after his death.

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

3. The husband of the petitioner was appointed on the post of Ploughman on 18.05.1981. Thereafter he was transferred from the post of Ploughman to the post of Machineman. While working on the post of Machineman, he was further promoted to the post of Turner. Keeping in view the instructions issued by the respondent-State by which, the technical pay scale was to be granted to the employees working on technical posts but said benefit was not being given to the employees concerned, large number of writ petitions were filed claiming the said benefit which writ petitions were allowed by this Court on 18.01.2010 one such writ petition being CWP No.18754 of 1991 was also allowed after which decision, the Department of Finance, Government of Haryana generalized the release of the technical pay scale to its employees working on various technical posts. The said direction was issued by the Department of Finance on 09.08.2010.

4. After generalization of the instructions by the Department of Finance, the husband of the petitioner was also granted the benefit of technical pay scale in April, 2012. While working on the post of Turner, late husband of the petitioner completed 16 years of service and became entitled for the grant of 2nd ACP but as the same was not given to him, representations were filed by the late husband of the petitioner to grant him the 2nd ACP. Rather than granting the benefit of 2nd ACP, the husband of the petitioner was issued show cause notice as to why the benefit of technical pay scale be not withdrawn from him and ultimately, in pursuance to the show cause notice dated 25.05.2017, the order was passed on 07.07.2017 (Annexure P-13) withdrawing from him the benefit of technical pay scale.

6. The said order dated 07.07.2017 (Annexure P-13) was challenged by the petitioner by filing CWP No.16048 of 2017, which writ petition was decided by this Court on 08.11.2019. The order dated 07.07.2017 withdrawing the technical pay scale was set aside.

7. It may be noticed that the husband of the petitioner unfortunately died on 12.07.2018 and after the death of the husband of the petitioner, the respondents passed an

order on 13.02.2020 again withdrawing the benefit of technical pay scale and that too with retrospective effect and also revising his salary retrospectively, which order is under challenge in the present writ petition.

8. Before any order could be passed withdrawing the technical pay scale, unfortunately, the husband of the petitioner died on 12.07.2018.

9. On 13.02.2020 (Annexure P-15), the respondents passed an order against the late husband of the petitioner withdrawing the benefit of technical pay scale with retrospective effect and revising his pay retrospectively. The said order is under challenged in the present petition.

10. Learned counsel for the petitioner argues that the order which has been passed on 13.02.2020 is bad in law as the same has been passed after the death of an employee and once an employee concerned has already died and there is no master and servant relationship between the employee and the employer, no order can be passed by the employer against a dead employee causing prejudice to him/her, hence, the order dated 13.02.2020 is liable to be set aside on this ground itself.

11. Learned counsel for the respondents, on the other hand, submits that the initial order has been passed in the year 2017 withdrawing the benefit of technical pay scale though the same was set aside by this Court but with liberty to pass a fresh order, hence, even if, the husband of the petitioner has died before passing of the impugned order dated 13.02.2020, keeping in view the liberty granted, the Department is entitled to withdraw the benefit of technical pay scale from the late husband of the petitioner and refix his salary.

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

13. It is a settled principle of law that no order can be passed against a dead person. Even if any proceedings have been initiated against an employee and before the culmination of the said proceedings, the employee died, the said proceedings abate. The dead employee is not available to defend himself/herself, hence, immediately upon the death of an employee, all the proceedings pending against the said employee abates and no further order can be passed causing prejudice to the dead employee or to legal representative of the dead employee.

14. In the present case, the husband of the petitioner died on 12.01.2018 whereas, the impugned order has been passed on 13.02.2020 (Annexure P-15). That being so, withdrawing the benefit of pay scale from a dead employee vide impugned order dated 13.02.2020 (Annexure P-15) is not at all permissible.

15. Further, as per the settled principle of law settled by this Court in *CWP No.21917 of 2016 titled as Shiksha Devi vs. Haryana State Federation of Consumers Co-operative Wholesale Stores Ltd,*[1] *decided on 02.08.2022*, this Court has already held that even if the disciplinary proceedings were pending against an employee, the same abate upon his/her death. 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 chargesheet to a retired employee, hence, the chargesheets 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.
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> 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."

16. Similarly, any show cause notice pending against the late husband of the petitioner for the withdrawal of the pay scale, abate upon the death of the husband of the petitioner hence, after the death of the husband of the petitioner, no further proceedings could have been undertaken by the respondents in pursuance to the said show cause notice and the impugned order dated 13.02.2020 (Annexure P-15) passed is contrary to the settled principle of law.

17. Keeping in view the above, the impugned order dated 13.02.2020 (Annexure P-15) is set aside being totally arbitrary and illegal.

18. The present writ petition is allowed in above terms.

19. Any civil miscellaneous application pending if any, also stands disposed of.

SS **-** *Petition allowed.*