

(2018) 11 P&H CK 0063

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No.15534-CWP of 2018 in Civil Writ Petition
No.2665 of 2015

Dhanpati And Ors

APPELLANT

Vs

State Of Haryana And Ors

RESPONDENT

Date of Decision : 13-11-2018

Acts Referred:

Indian Penal Code, 1860 — Section 279, 304A
Punjab Civil Service Rule — Rule 2.2(a)(ii), 5.16
Constitution of India, 1950 — Article 311

Citation : (2018) 11 P&H CK 0063

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : Ravinder Malik, Harish Nain

Final Decision : Partly Allowed

Judgement

1. Notice of the application.
2. Mr. Harish Nain, AAG, Haryana accepts notice.
3. The application is allowed and amended writ petition is taken on record.

MAIN CASE

4. In view of the order proposed to be passed limited to set right a violation of the principle of audi alteram partem, there is no need to call for a reply

from the State.

5. During the pendency of this petition, the Haryana Roadways has passed an order withdrawing family pension from the petitioning widow of the late driver and denying to her release of gratuity and other pensionary dues.

6. The husband of the petitioner Hari Ram was retired from service invoking Rule 5.16 of Punjab Civil Service Rules, Vol. 1 Part II on medical

grounds on October 29, 2010. The petitioner's husband died on November 11, 2014. After his death she was allowed family pension. Family pension

has been stopped by the impugned order for which this petition has been amended to lay challenge to that order. The order not only denies family

pension but also gratuity etc. in the account of the deceased employee. It may be noticed that when Hari Ram was retired from Government service

after being declared medically unfit by office order dated October 29, 2010 it was made subject to the condition of final outcome of a criminal revision

pending against him. The petitioner was convicted by the Court of the Additional Chief Judicial Magistrate, Panipat and sentenced to one year

imprisonment and was imposed fine of ₹1000/-for committing offences under Sections 279 and 304-A IPC. Appeal filed by late Hari Ram was

dismissed by the Sessions Court, Panipat by order dated July 09, 2005. Criminal Revision No.1251 of 2005 was also dismissed by this Court on March

28, 2011. Against the orders of this Court, Special Leave to Appeal (Crl) No.(s) 5563/2011 was filed in the Supreme Court which was dismissed on

August 23, 2011. The conviction and sentence was upheld till the Final Court.

7. The General Manager, Haryana Roadways, Karnal while passing the impugned order on September 21, 2018, seven years after the dismissal of the

revision has not heard the petitioner and has, therefore, breached the principles of natural justice. A reasonable opportunity should have been given to

the widow to state her case against any order contemplated that would be adverse to her interest. Assuming that late Hari Ram was dismissed soon

after the orders were passed by the Supreme Court while he was still alive then he could have urged that he had the protection of Article 311 of the

Constitution of India that guaranteed that dismissal could only be upon conduct which led to the conviction. In this exercise, if it had been carried out,

the General Manager, Haryana Roadways, Karnal would have had to examine not only the judgments but the evidence upon which the conviction was

based and then to have formed opinion as to whether the petitioner's husband was guilty of manslaughter or there were any mitigating circumstances

not from the standpoint of criminal law but from the standpoint of service law where the choice of punishment is among several, both major and minor.

The General Manager, Haryana Roadways, Karnal has recorded that the claim through Hari Ram for entitlement to pension and gratuity would be

admissible only on the basis of entire satisfactory service career and because of the conviction it cannot be said that the entire service career was

satisfactory as per Rule 2.2 (a) (ii) of the Punjab Civil Service, Rules, Vol-II. One of the reasons given in the order is that the allegations levelled

against Hari Ram were based upon a charge connected with his position as Government servant. Hari Ram has been held not entitled to pensionary

benefits with consequential fall-out on the widow.

8. Without expressing any opinion on the merits of the case, the impugned order deserves to be re-visited by the General Manager, Haryana

Roadways, Karnal by passing an order after putting the petitioner to notice and offering her an opportunity of hearing so that she can make her

defence in writing that such an order deserves not to be passed depriving her of gratuity and withdrawal of family pension which has been paid to her

for a sufficiently long time till it was discontinued.

9. As a result, the petition is partly allowed, the impugned order dated September 21, 2018 is quashed with a direction to the competent authority to

pass a fresh order in accordance with law. Payment of gratuity will await the final outcome of the remand proceedings. However, family pension will

be restored to the petitioner and shall continued to be paid till the conclusion of the fresh proceedings and till one month thereafter to enable the

petitioner to approach Court seeking judicial review, in case, the final order is still adverse to her interest. The reason which persuades me to pass

such an order is that the innocent widow cannot be punished for the deeds of her husband in a fatal motor accident on a charge of rash and negligent

driving of a Punjab Roadways bus. She was not on the steering wheel of the ill fated bus.