

(2016) 08 P&H CK 0329
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 11196 of 2009 (O&M).

**Krishna Shanwal - Petitioner @HASH Choudhary Charan Singh Haryana
Agricultural University, Hisar and Another**

Date of Decision : 19-08-2016

Acts Referred:

Citation : (2017) 1 SCT 226

Hon'ble Judges : Kuldeep Singh, J.

Bench : Single Bench

Advocate : R.K. Malik, Senior Advocate with Bhupinder Malik, Advocates, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Kuldeep Singh, J. (Oral)—None has put in appearance on behalf of the respondents despite second call and the notice being displayed on the display board of this Court. Therefore, I proceed to decide the petition on merit.

2. I have heard learned counsel for the petitioner, considered the case of the respondents and have also carefully gone through the file.

3. Dr. Azad Vir Shanwal, late husband of the petitioner was working as a Professor in the Department of Soil Sciences in College of Agriculture, Chaudhary Charan Singh Haryana Agricultural University, Hisar. He was stated to be suffering from some serious disease since the year 2002, for which he was getting medical claims. It comes out that an anonymous complaint was received against Dr. Azad Vir Shanwal regarding making fake claims on the basis of fake medical bills. On the basis of the said anonymous complaint, a fact finding inquiry was ordered. After thorough inquiry, a Committee consisting of Dr. R.P. Bansal, Director (Store and Purchase) and Sh. P.C. Marwal, Deputy Registrar (Academic and Faculty Affairs) came to the conclusion that Dr. Azad Vir Shanwal has produced fake medical bills and withdrawn public money amounting to Rs. 74,04,766/-, fraudulently. Accordingly, it was recommended that a criminal case be registered against him under Sections 420, 218, 409 467 468, 470, 471, 472,

473 and 474 of the Indian Penal Code. Accordingly, FIR No.642 dated 23.12.2008 under Sections 419, 420, 465, 468 and 471 of the Indian Penal Code was registered against Dr. Azad Vir Shanwal at Police Station Civil Lines, Hisar. However, Dr. Azad Vir Shanwal died next day of registration of FIR i.e. on 24.12.2008. After his death, petitioner made several representations dated 19.01.2009 (Annexure-P-3), 04.02.2009 (Annexure-P-4) and dated 20.2.2009 (Annexure-P-5), seeking the release of retiral benefits of late Dr. Azad Vir Shanwal. Ultimately, the reply Annexure P6 came on 30.03.2009, in which the respondents stated about the inquiry and that the findings that fake medical bills were submitted and got reimbursed. She was informed that the dues have not been released for the said reason. The matter rested there.

4. Thereafter the petitioner approached this Court by filing the present writ petition, seeking writ of mandamus, directing the respondents to release Gratuity, family pension and other retiral benefits of Late Dr. Azad Vir Shanwal.

5. The short affidavit filed by the respondents shows that they have taken the stand that fake medical bills were submitted and medical reimbursement to the tune of Rs. 74,04,766/- was claimed by Dr. Azad Vir Shanwal. Reference is also made to the inquiry report, as referred above. It is claimed that the University has got a legitimate right to adjust the aforesaid amount from the retiral dues of Late Dr. Azad Vir Shanwal. However, reply does not show that any adverse order was passed or show cause notice was issued or any regular inquiry was initiated against Dr. Azad Vir Shanwal during his lifetime. Apparently, it appears from the written statement of the respondents that no show cause notice was issued to Dr. Azad Vir Shanwal nor any regular inquiry was initiated, apparently, for the reason that immediately on the next day of the registration of FIR, he expired. Now, the position is that no departmental proceedings were initiated against the Dr. Azad Vir Shanwal during his lifetime and his widow claimed the retiral benefits. Now, the question would arise whether the department can adjust the amount of Rs. 74,04,766/- from the retiral benefits of Dr. Azad Vir Shanwal, in the manner, in which, it is sought to be claimed in the written statement? I find the reply in negative. Once, the employee has expired, no departmental proceedings could be initiated against him. The matter was considered by a Division Bench of this court in *Balwant Kaur v. State of Punjab* and another, Recent Services Judgements (1950-1988) Volume I Page 627, wherein while taking note of the facts of the case, this Court observed as under:-

"3. Both the respondents have filed returns. They do not deny that the petitioner is entitled to family pension but claim that since the Government dues are outstanding against the petitioner's husband those have to be adjusted against the claims of pension, gratuity and provident fund etc. The said dues, they claim, are on account of an embezzlement case initiated by the department against the petitioner's husband. The said sum is said to be to the tune of Rs. 1,13,135.70. Death of the husband of the petitioner obviously has scuttled the proceedings against him in the embezzlement case.

4. We have heard the learned counsel for the parties. We are of the view that the petition must succeed. Family pension scheme embodied in rule 6.17 of the Punjab Civil Services Rules, Volume II, is meant to benefit persons specifically designated, though connected with the Government employee by relationship. But the benefit is personal in nature. Sub-rule (4) of rule 6.17 specifically says that the pension will be admissible in the case of a widow upto the date of her death or remarriage, whichever is earlier. The benefit conferred is not qualified or capable of exceptions. Pension due to the widow cannot be confused with pension which would have been due to the husband had he been alive. Her pension being personal in character cannot be withheld by the respondents on the supposition that if something was due from the husband of the petitioner she should be held responsible for the same as if a liability inherited by her. The idea is totally misconceived. Her right to his estate as an heir cannot be confused with her personal right to pension. We have no hesitation to hold accordingly."

6. The matter was also considered by the Hon"ble Supreme Court in State of Jharkhand and others v. Uma Parasad (Civil Appeal No. 600 of 2007) decided on 20.05.2009, wherein it is observed as under.

"However, on consideration of the records, we find that late Birendra Prasad, the deceased was put under suspension on 26.9.1998 on the order of the Commissioner, Chhotanagar Division, Ranchi, and by another order dated 16.6.2000, his suspension was revoked. Thereafter, he died on 08.10.2004 in harness while working as Assistant in the Secretariat, Dept. of Art. Culture, Sports and Youth Affairs, Jharkhand. That being the position and since the learned counsel for the respondent is unable to show us any order passed by the competent authority issuing any charge-sheet against the said deceased, there could be no recovery of any amount from the retiral benefits of the deceased Birendra Prasad. There is no record to show that any departmental proceeding was drawn up by the department against the deceased before his death."

7. Therefore, since no departmental proceedings were initiated against Dr. Azad Vir Shanwal, the family pension and other retiral benefits to the legal heirs cannot be withheld as was done by the respondents. Therefore, in these circumstances, the retiral benefits of the husband of the petitioner are to be released to his legal heirs.

8. As a result of the foregoing discussion, the present writ petition is allowed. The respondents are directed to release the gratuity, family pension and other retiral benefits of late Dr. Azad Vir Shanwal to his legal heirs within a period of two months from the date of receipt of a certified copy of the order along with interest at the rate of 9 % per annum.