
(2007) 05 P&H CK 0134
In the Punjab And Haryana At Chandigarh

Mrs. Usha Kundra

APPELLANT

Vs

The Punjab State Cooperative Milk Producers Federation
Limited (Milkfed) and Another

RESPONDENT

Date of Decision : 21-05-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 147 PLR 768

Hon'ble Judges : Rajesh Bindal, J;M.M. Kumar, J

Bench : Division Bench

Judgement

M.M. Kumar, J.—This petition filed under Article 226 of the Constitution prays for quashing order dated 31.8.2004 (P-7) whereby respondent No. 2 has held that the petitioner has caused financial loss amounting to Rs. 1,71,277/- to the Punjab State Cooperative Milk Producers Federation Limited (for brevity, "the Milkfed") on account of wrongful withdrawal of House Rent Allowance during her posting at Milkfed Sales Office, Delhi. As a consequence recovery of Rs. 63,226/- was ordered to be effected out of the encashment of unavailed leave payable to her on retirement. In order to recover the remaining amount of Rs. 1,08,051/- from her, respondent No. 2 has proposed to initiate arbitration proceedings against her u/s 55 of the Punjab Cooperative Societies Act, 1961. However, before initiation of proceedings an opportunity to deposit the remaining amount of Rs. 1,03,051/- in respect of alleged over withdrawal of House Rent Allowance has been given to her. The petitioner has sought directions to the respondents commanding them to release her retiral benefits alongwith interest @ 18% per annum from the date of retirement i.e. 31.8.2003.

2. Brief facts of the case are that from 1985 to 2003 the petitioner had worked as Area Sales Manager with the Milkfed and retired from service on attaining the age of superannuation on 31.8.2003. She was not paid her retiral benefits, which forced her to make a representation on 23.10.2003 (P-I). On 2.3.2004, a show cause notice was issued to her mentioning that she had wrongly claimed House

Rent Allowance amounting to Rs. 1,73,535/-, for the period 1985-86 to 2003-04 as per the calculations contained in Annexure -A attached with the show cause notice. It was alleged that House Rent Allowance withdrawn by the petitioner was in contravention of instructions contained in letter No. 956-FCW-65/I 548, dated 20.2.1965 and No. 3023-FICW (5)-71/14416, dated 20.7.1971, inasmuch as, she was residing with her husband in a Government accommodation bearing House No. 22, West Avenue, I.T.I., Campus, New Delhi, and thereafter shifted to house No. 1 in the same campus. The aforementioned accommodations were allotted in the name of her husband. The petitioner was, thus, asked to show cause as to why the aforementioned amount be not recovered out of her payable dues (P-2). On 12.3.2004, the petitioner gave reply to the show cause notice (P-3). On 29.3.2004, she gave another reply on the basis of record made available to her by the Delhi Sales Office of the Milkfed (P-4). On 5.7.2004, after lapse of about one year, when her retiral dues were not released to her, she again made a representation to respondent No. 2 (P-5). On 21.8.2004, respondent No. 2 accorded the sanction for payment of gratuity payable to the petitioner, however, no sanction was given for payment of the amount of leave encashment (P-6). On 31.8.2004, the impugned order as noticed in the opening para was passed by respondent No. 2, which is subject matter of challenge in the instant petition.

3. Mr. R.K. Sharma, learned Counsel for the petitioner has argued that no recovery after the retirement of the petitioner on 31.8.2003 could be effected on the allegation that the petitioner has withdrawn excess amount of House Rent Allowance. He has referred to the impugned order dated 31.8.2004 (P-7) and argued that the aforementioned order has been passed after one year of the retirement of the petitioner, which is impermissible, In support of his submission, learned Counsel has placed reliance on the judgment of Hon"ble the Supreme Court in the case of Sahib Ram v. State of Haryana (supra), higher pay scale was granted to an employee erroneously 1995(1) S.C.T. 668. He has submitted that in Sahib Ram's case y without any misrepresentation on the part of the employee. Hon"ble the Supreme Court has directed that in such circumstances no recovery be made from such an employee.

4. Mr. D.S. Patwalia, learned Counsel for the respondents, however, has argued that House Rent allowance was admissible only to one of the spouses and as the husband of the petitioner was availing the House Rent Allowance, no House Rent Allowance could have been availed by her. In support of his submission, learned Counsel has placed reliance on two single Bench Judgments of this Court in the cases of Shrimati Krishna Kumari Vs. State of Punjab and Others, and Chander Prabha v. State of Punjab 1997(3) R.S.J. 738. He has maintained that once the House Rent Allowance was not permissible to the petitioner then any wrongful payment made to her could be recovered from her retiral benefits like leave encashment.

5. After hearing learned Counsel and perusing the record with their able assistance, we are of the considered view that this petition deserves to be

allowed. There is no material placed on record to substantiate the allegation that the petitioner has misrepresented or played fraud for the payment of House Rent Allowance. The allegation in the order is not based on any document or any other material, which may constitute the basis to conclude that there was fraud or misrepresentation made by the petitioner for claiming House Rent Allowance. It appears that House Rent Allowance was paid to her like other employees and the same is sought to be recovered from her by the impugned order. Therefore, we find that the view of Hon''ble the Supreme Court, expressed in the case of Sahib Ram (Supra), would be fully applicable and no recovery could be effected from her.

6. It is true that House Rent Allowance is admissible only to one of the two spouses and if the petitioner was living with her husband she was not entitled to the same. The judgment of this Court in the cases of Krishna Kumari (supra) and Chander Prabha (supra), on which reliance has been placed by the learned Counsel for the respondents, deal with the entitlement and continuous withdrawal of the House Rent Allowance. These judgments do not relate to recovery of House Rent Allowance already paid erroneously. Therefore, the question in the instant petition is whether having erroneously paid such an allowance, could the recovery be effected from the retiral benefits. Therefore, the judgments in the cases of Krishna Kumari (supra) and Chander Prabha (supra) are not applicable and, therefore, the argument raised on that basis is hereby rejected.

7. For the reasons stated above, this petition succeeds. The impugned order dated 31.8.2004 (P-7) is set aside. The respondents are directed to release all the retiral benefits of the petitioner without effecting any recovery of the House Rent Allowance. The needful shall be done within a period of two months from the date of receipt of a certified copy of the order.

The writ petition stands disposed of in the above terms.