

(2024) 03 CHH CK 0043
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 3783 Of 2017

Upma Singh Bhadoria

APPELLANT

Vs

Chhattisgarh State Warehousing Corporation

RESPONDENT

Date of Decision : 13-03-2024

Acts Referred:

Constitution of India, 1950 — Article 226
Indian Penal Code, 1860 — Section 409

Citation : (2024) 03 CHH CK 0043

Hon'ble Judges : Rajani Dubey, J

Bench : Single Bench

Advocate : Awadh Tripathi, Anuroop Panda, B.D. Guru

Final Decision : Allowed

Judgement

1. This petition has been filed by the petitioner under Article 226 of the Constitution of India challenging the order dated 21.6.2017 (Annexure P/1) passed by respondent No.2 whereby the representation of the petitioner's husband dated 30.8.2016 for payment of provident fund, gratuity and other outstanding dues has been rejected on the ground of there being certain recovery orders against him.

2. Brief facts of the case, as mentioned in the writ petition, are that the petitioner's husband while working as Senior Branch Manager in the Branch Office of Warehousing Corporation at Bilaigarh (CG), was suspended on 25.5.2005 on the charges of carelessness and irregularity in 3318 sacks of rice of civil supplies corporation which was found low in stock during the period of his tenure i.e. 27.5.2000 to 26.4.2005. Accordingly, on 2.10.2005 an FIR was registered against him for the said offence under Section 409 of IPC and challan was filed on 31.8.2006 before the concerned Court. In the departmental enquiry, he was found guilty and proceedings for recovery of the amount equivalent to the amount of the said rice from his salary were initiated. Though the petitioner's husband made representations from time to time against the said recovery

proceedings but the same were not considered.

On 7.6.2007 with regard to recommendation for acceptance of setup of the Corporation, a meeting was held by the Board of Directors of the Corporation wherein the State decided to abolish the post of Junior Technical Assistant in the set up and accepted 140 posts of Junior Technical of CG State Warehousing Corporation at the pay scale of Rs.4500-7000 vide letter dated 17.1.2008 and further, under the aforesaid terms, respondent No.1 re-designated the post of Junior Technical Assistant to the post of Technical Assistant and name of the petitioner's husband was placed at Sl.No.30 vide order dated 7.8.2010 (Annexure P/5). However, meanwhile on 19.2.2010 an interim order of recovery of Rs.21,58,394.90 was passed against him vide Annexure P/3. Against the said order, the petitioner's husband made a representation to the Chief Secretary of Food and Supplies Corporation as also to President of CG Warehousing Corporation, Raipur vide Annexure P/4. He also made a representation dated 24.11.2010 to the concerned authority for determining his pay scale pursuant to order dated 7.8.2010, but no decision was taken thereon. Hence he again made representations on 17.1.2011 and 25.1.2011 regarding the benefit of seniority which was withheld due to departmental enquiry but the same were not considered.

3. After trial of the petitioner's husband, he was convicted and sentenced by learned trial Court vide judgment dated 31.7.2015 for the offence under Section 409 of IPC. The said judgment was challenged by him in appeal, however, during pendency of the appeal he died and it was contested on his behalf by the petitioner. Learned First Additional Sessions Judge, Balodabazar after proper appreciation of the oral and documentary evidence on record vide judgment dated 7th June, 2016 in Criminal Appeal No.55/2015 (Annexure P/7) acquitted him of the said charge. In these circumstances, the impugned order/letter dated 21.6.2017 (Annexure P/1) issued by respondent No.2 is bad in law and liable to be set aside and the petitioner be granted the reliefs claimed for which are as under:

¶10.1 It is prayed that this Hon'ble Court may kindly be pleased to call for the entire records concerning the case of the petitioner from the possession of the respondents for its kind perusal.

10.2 This Hon'ble Court may kindly be pleased to issue a writ in the nature of certiorari by quashing the impugned letter dated 21.06.2017 (Annexure-P1) issued by the Respondent No.2 and order of recovery vide order dated 19/02/2010 (Annexure-P/3) issued by the competent authority.

10.3 That, this Hon'ble Court may kindly be pleased to issue writ in the nature of mandamus commanding the Respondent Authorities to release the provident fund, gratuity and outstanding fund of the petitioner's husband after considering the seniority and recalculating the same with 9% annual interest.

10.4 Any other relief/reliefs, which this Hon'ble Court may think fit and proper in

the facts & circumstances of the case, may also please be granted to the petitioner.?

4. Learned counsel for the petitioner submits that the impugned order/letter dated 21.6.2017 is arbitrary, illegal and contrary to the principle of natural justice. The petitioner's husband never admitted his guilt and consented for recovery. The imputation upon him about acceptance of his guilt and mistake is ridiculous and contrary to the material available on records. Learned appellate Court recorded a categorical finding in its judgment dated 7.6.2016 with regard to unfair enquiry conducted by the enquiry committee against the petitioner's husband and after due appreciation of the oral and documentary evidence on record, came to the conclusion that the witnesses examined on behalf of the enquiry committee failed to conduct proper and fair enquiry about shortage of sacks of rice, they neither prepared any panchanama at the time of enquiry nor produced any stock register which are required for physical verification of the material of the stock as well as at the time of enquiry the concerned Branch Manager was not present. Further, the statements of all the witnesses on behalf of the prosecution were contradictory and not supported the case of the prosecution case, hence the learned appellate Court acquitted him of the charge under Section 409 of IPC. As per the judgment of the appellate Court, the enquiry report submitted by the members of the enquiry committee is totally unfair and vitiated, therefore, the impugned recovery order issued on the basis of said enquiry report is liable to be set aside. The respondent authorities never considered the representations made by the petitioner's husband from time to time for determination of his pay scale and giving him benefit of seniority and after his death, they stopped payment of provident fund, gratuity and other outstanding due of him, which is per se illegal and arbitrary.

5. On the other hand, learned counsel for the respondents vehemently opposing the prayer of the petitioner submits that under Regulation 27 of CG State Warehousing Corporation Staff Regulations 1962 there is an alternative remedy of appeal available to the petitioner, so the present petition is not maintainable. This apart, the impugned order has been issued on the ground that vide order dated 19.2.2010 an amount of Rs.21,58,394.90 is directed to be recovered from the petitioner's husband by the disciplinary authority as well as by the then Managing Director of the Corporation on the basis of departmental enquiry conducted against him where he admitted his guilt and consented for recovery of the said amount from his GPF and other retiral dues. As there is recovery order against the deceased employee, the petitioner cannot claim the retiral dues as the said recovery is to be made from the retiral dues of the deceased employee. In this view of the matter, there is no substance in the present petition and it is liable to be dismissed.

6. Heard learned counsel for the parties and perused the material available on record.

7. It is an admitted position in this case that the petitioner's husband was

working as Senior Branch Manager in the Branch Office of Warehousing Corporation, Bilaigarh and was suspended on 25.5.2005 on the charges of alleged irregularity in the stock of rice of civil supplied corporation. After registration of FIR on 2.10.2005 under Section 409 of IPC, charge sheet was filed against him. Thereafter, a departmental enquiry was initiated against the petitioner's husband wherein a recovery order was passed vide Annexure P/2 against him. Again on 19.2.2010 an interim order of recovery of Rs.21,58,394.90 was issued against him by the disciplinary authority and Managing Director of Warehousing Corporation. The petitioner's husband filed representation before the Chief Secretary of Food and Civil Supplies Corporation (Annexure P/4) which was dismissed by the competent authority.

8. The main contention of learned counsel for the petitioner is that before passing the recovery order, no opportunity of hearing was afforded to the husband of the petitioner and it was passed by the Managing Director without any proper enquiry.

9. This Court directed the respondents to make available the records of the departmental enquiry proceedings initiated against the petitioner's husband but the respondents failed to file any such record or enquiry report of the departmental proceedings held against him. The petitioner has also filed copy of the judgment dated 7th June, 2016 of First Additional Sessions Judge, Balodabazar whereby the learned appellate Court allowed the appeal of the petitioner's husband and acquitted him of the charge under Section 409 of IPC.

10. Learned counsel for the respondents have strongly objected on the ground that the petitioner's husband was found guilty in the disciplinary proceedings and he also confessed his guilt in the enquiry, therefore, the respondents are absolutely justified in issuing the recovery orders against him. They further submitted that under Regulation 27 of CG State Warehousing Corporation Staff Regulations 1962 there being an alternative remedy of appeal available to the petitioner, the present petition is not maintainable. However, from perusal of the documents including statements of both the parties it is evident that the respondents did not file any single document of the so-called departmental enquiry conducted against the petitioner's husband in respect of the charge leveled against him. Annexure P/3 is the interim order dated 19.2.2010 which reads as under:

11. It is clear from the above order that the Administrative Officer and Managing Director on admission of the delinquent employee passed order of recovery and it is also clear that this order was passed on 19.2.2010 whereas delinquent employee was acquitted by the learned appellate Court on 7.6.2016. The respondents have failed to produce any documentary evidence of departmental enquiry said to have been conducted against the petitioner's husband and also failed to prove as to on what basis, except the so-called admission of guilt by the petitioner's husband, they arrived at the conclusion of his guilt. From the document of Annexure P/4 it is also clear that the delinquent employee filed his

detailed representation against this interim order wherein he categorically denied any admission of guilt on his part.

It is a well settled principle of law of service jurisprudence that every employee has a right of defence against the charges leveled and before imposing any punishment or penalty on such employee, the principles of natural justice must be followed. However, in the present case, as observed above, the respondent authorities have failed to comply with the principle of natural justice while taking disciplinary action against the petitioner's husband.

12. Thus, regard being had to the facts and circumstances of the case, the manner in which the interim recovery order was passed against the petitioner's husband and his representation was dismissed by the impugned order dated 21.6.2017, this Court is of the opinion that the same being not legally sustainable are liable to be set aside. Accordingly, the impugned orders dated 21.6.2017 (Annexure P/1) and 19.2.2010 (Annexure P/3) are hereby set aside. Consequently, the respondents are directed to pay all the arrears of provident fund, pension, gratuity etc. of the petitioner's husband to her within a period of three months from the date of receipt of copy of this order. The writ petition stands allowed to the above extent.