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(2013) 07 P&H CK 0519

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 16487 of 2013 (O and M)

Smt. Hema Rani — APPELLANT

Vs

State of Punjab and Others — RESPONDENT

Date of Decision: July 31, 2013

Acts Referred:

- Evidence Act, 1872 - Section 108

Hon'ble Judges: Tejinder Singh Dhindsa, J

Bench: Single Bench

Advocate: P.C. Arora, for the Appellant;

Final Decision: Disposed Off

Judgement

Tejinder Singh Dhindsa, J.

The husband of the petitioner namely Sh. Nand Lal was working as a Telephone Attendant under the Department of Irrigation, State of Punjab. It is pleaded that he disappeared on 18.12.2011 and has not been traceable thereafter. Even a report from the police has been submitted in such regard. The petitioner was given appointment as Beldar on compassionate basis vide letter dated 13.3.2013 (Annexure P-3). The present writ petition has been filed raising a two fold grievance. In the first instance challenge has been raised to a notice dated 26.6.2013 (Annexure P-1), whereby her appointment on compassionate basis is sought to be withdrawn and her services are contemplated to be dispensed with. Basis of issuance of such notice would be apparent from a reading of the same, wherein it has been recited that she was given compassionate appointment after the expiry of one year of the date of disappearance of her husband, whereas she was entitled to be given such appointment only after the expiry of seven years. The petitioner has been granted 15 days time for submitting a reply to the notice. The second grievance raised in the present writ petition is with regard to release of pensionary/retiral benefits as per letter dated 27.3.2009 (Annexure P-6) issued by the Punjab State Finance Department on the subject of payment of pensionary benefits in the case of

disappearance of govt. employees.

2. Learned counsel for the petitioner has strenuously argued that the compassionate appointment had been granted to the petitioner by the competent authority and in the light of instructions dated 21.11.2002 place on record at Annexure P-4. Counsel would argue that the competent authority having taken a decision to grant appointment on compassionate basis in the light of the peculiar and hard circumstances of the petitioner, cannot now resile and take a different view on the matter merely on account of a mischievous complaint having been filed.

3. In this regard the petitioner as of date has been served a show cause notice. Time has been granted to the petitioner to respond to such notice. Learned counsel for the petitioner concedes that a reply has been furnished by the petitioner in response to Annexure P-1 on 15.7.2013 (Annexure P-5). Counsel further states that in such reply to the show cause notice it has also been brought to the notice of the competent authority that inspite of having worked on the post of Beldar even the salary of the post has not been released.

4. In the light of such factual position, it would be for the competent authority to consider the reply dated 15.7.2013 (Annexure P-5) and thereafter to take a final view in the matter and to pass a speaking order thereupon. To such extent no interference in the claim of the petitioner as regards compassionate appointment is made out, at this stage.

5. However, in so far as the claim for release of pensionary benefits under letter dated 27.3.2009 (Annexure P-6) is concerned, the same deserves consideration. A perusal of such letter would reveal that even though, the presumption u/s 108 of the Indian Evidence Act is of a person being presumed dead only after 7 years of having been missing/untraceable, yet, the State Govt. has taken a view that it is a very long period and which results in undue hardship to the family members of the employee. Accordingly, guidelines have been issued that after completion of one year of the disappearance of the employee concerned certain benefits in the nature of gratuity/family pension may be released subject to conditions enumerated in the letter dated 27.3.2009 itself.

6. Accordingly, the present writ petition is disposed of in terms of granting liberty to the petitioner to apply to the competent/respondent authority for claim of admissible pensionary benefits as envisaged under letter dated 27.3.2009 (Annexure P-6). In the case of any such representation being preferred, it shall be obligatory upon the competent/respondent authority to consider the same and to take a final decision thereupon by passing a speaking order within a period of six weeks from the date of submission of the same. Petition disposed of.