

(2014) 05 P&H CK 0698

High Court Of Punjab And Haryana At Chandigarh**Case No:** C.W.P. No. 15210 of 2006 (O&M)

Kulwant Kaur

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: May 26, 2014**Citation:** (2014) 176 PLR 5 : (2014) 3 SCT 822**Hon'ble Judges:** Rajesh Bindal, J**Bench:** Single Bench**Advocate:** Abhinash Jain, Advocate for B.R. Mahajan, Advocate for the Appellant; Anshul Gupta, Assistant Advocate General, Advocate for the Respondent

Judgement

Rajesh Bindal, J.

The legal heirs of deceased-Dalbair Singh, who was working as Conductor, have filed the present petition impugning the order dated 24.11.2005 (Annexure P-1), vide which services of deceased-Dalbair Singh were terminated and order dated 26.7.2006 (Annexure P-3), vide which the appeal filed by the legal heirs of deceased-Dalbair Singh was dismissed merely on the ground that the appeal could be filed only by the concerned employee in his own name. Learned counsel for the petitioners submitted that deceased-Dalbair Singh was working as Conductor with Punjab Roadways since 1974. On 4.2.2000, he was issued a charge-sheet with the allegation that while he was on duty on bus No. 9936 plying from Delhi to Tarn Taran, at Rayya when the checking took place, 15 passengers were travelling in the bus, out of which one passenger, who was travelling from Rajpura to Amritsar sitting on the front seat, was found without ticket though money had been charged from her, as a result of which, deceased-Dalbair Singh misappropriated Rs. 95/-. The explanation given by deceased-Dalbair Singh that she was relative of the driver was not accepted. His services were terminated on 24.11.2005. As deceased-Dalbair Singh could not suffer the shock, he was taken to Mental Hospital, Amritsar on 16.12.2005 and ultimately died on 20.12.2005. As per Punjab Civil Services (Punishment and Appeal) Rules, 1970 (for short, "the Rules"), an appeal against the order of dismissal could be

filed within 45 days from the date of receipt of copy of the order. As in the present case, the employee died just within a week of the date of receipt of copy of the order terminating his services, he could not prefer the appeal himself. The appeal was preferred by his legal heirs. The same was dismissed merely on the ground that the appeal could be preferred by an employee concerned in his own name. The order is totally illegal as the right to sue survives on the legal heir(s), if an employee had died before even the time for filing the appeal had expired. Even if during the pendency of appeal, an employee dies, his legal heirs can very well pursue the appeal.

2. Learned counsel for the State submitted that Rule 18 of the Rules provides that any person preferring an appeal has to do the same in his own name. As the employee had died, the appeal could not be preferred in his name, hence, the same was dismissed as not maintainable.

Heard learned counsel for the parties and perused the paper book.

3. Rule 15 of the Rules provides the orders against which appeal lies. Explanation (i) to the aforesaid Rule provides that a Government employee shall include a person who has ceased to be in Government service. Rule 18 of the Rules provides that every person preferring appeal shall do so separately and in his own name.

4. The issue under consideration in the present petition is that as-to whether an appeal filed by legal heirs of a deceased employee could be dismissed as not maintainable.

5. The facts, which are not in dispute, are that deceased-Dalbir Singh was employed as Conductor with Punjab Roadways in the year 1974. In pursuance to a charge-sheet, his services were terminated on 24.11.2005. Appeal could be preferred within 45 days. The order of termination was served upon him on 14.12.2005. He expired on 20.12.2005. After his death, the appeal was preferred by his legal heirs, which was dismissed as not maintainable vide communication dated 26.7.2006 (Annexure P-3) on the ground that as per Rule 18 of the Rules, the appeal had to be preferred by an employee in his own name. The reason assigned by the appellate authority is totally erroneous. Such an absurd meaning cannot be given to the Rules, which will make it unworkable in certain circumstances and keep the legal heirs of the employee remediless. The appeal had been preferred by the legal heirs of the deceased employee in their name. Further, if an employee, who had been dismissed from service, had died before even the time for filing the appeal had expired, his legal heirs could very well prefer and pursue the appeal as the right to sue survives on them, as the effect of the order of dismissal was that the employee was not entitled to any benefits. In case the appeal is accepted in toto or in part, the employee may be entitled to some service benefits which are ultimately to be paid to the family of the deceased employee. For the reasons mentioned above, the present petition is allowed. The order dated 26.7.2006 (Annexure-P3), vide which the appeal filed by the petitioners was dismissed as not maintainable is set aside. The

appellate authority is directed to hear and dispose of the appeal filed by the petitioners on merits. As the case is already quite old, the appellate authority is directed to decide the appeal within a period of four months from the date of receipt of a copy of the order.