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CWP-21033-2015 (O&amp;M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

2024:PHHC:002546

CWP-21033-2015 (O&amp;M)

Date of Decision: 10.01.2024

Davinder Kaur

...Petitioner

Vs.

State of Punjab and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA**

Present Mr. K.G. Chaudhary, Advocate and  
Ms. Sakshi Singh, Advocate for the petitioner.

Mr. Vishnav Gandhi, DAG, Punjab.

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**SANJEEV PRAKASH SHARMA, J.(Oral)**

1. The petitioner, who is a widow of constable namely Gurnam Singh, has prayed to direct the respondents to release pensionary, death-cum-retiral benefits along with interest on account of death of her husband while on duty.

2. The petitioner's husband was appointed as a Constable on 17.04.1992 and while on duty he met with a road side accident and remained under treatment. For a long period of time, he was unable to talk and move properly and ultimately he expired on 30.12.2012. The respondents have withheld the death-cum-retiral benefits on the ground that the salary was released to the deceased husband of the petitioner while he was under treatment and the same is recoverable as directed by the Accountant General,

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Punjab and since the petitioner has refused to make the said payments, the death-cum-retiral benefits and other retiral benefits have been withheld.

3. Learned counsel for the petitioner submit that the petitioner's husband met with an accident and expired while on duty, therefore, the petitioner is nettled for all the benefits which are available to a constable who expires while on duty. Learned counsel submits that as the petitioner's husband become disabled and could not perform his duties, therefore, he was entitled to regular salary in terms of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as 'the Act, 1995), which has been again reiterated in the Act of 2016. Learned counsel submits that even otherwise no recovery could have been asked to be made from the petitioner, who is a widow relating to the deceased constable as the payment was made by the respondents without there being any intervention on the part of the petitioner or her deceased husband.

4. The respondents in their reply filed by the Senior Superintendent of Police, Batala, have admitted that while on duty the petitioner's husband met with an accident with an unknown vehicle. He was taken to the hospital in unconscious condition and later on Madaan Hospital and Neuro Trauma Centre, Amritsar. He remained on bed rest and later on expired on 13.12.2012. It is stated that generally if an official sends communication regarding his medical rest, his salary is not stopped and on joining duty, the medical rest availed by the concerned employee is treated as leave kind due and the period of medical rest is adjusted against leave on full pay, half pay and without pay due at the credit of the individual concerned. It is stated that the medical rest period of the petitioner's husband was required to be

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regularized against leave due from 15.07.2008 to 03.07.2009 and the same was adjusted as full pay for '101' days, half day for '240' days and without pay for '13' days. The period from 04.07.2009 to 12.09.2012, was regularized and adjusted against leave without pay but the constable has availed full salary during his medical rest, therefore, recovery of Rs.9,59,709/- after adjustment of medical period, is required to be effected and to be made from the wife of late constable, Gurnam Singh. The recovery statement has also been reflected in the reply. On account of the said recovery statement, the office of the Senior Superintendent of Police, is unable to process the pension case. It is also stated that nothing else is outstanding except the aforesaid amount. The respondents had also denied that if a person meets with an accident, he would be legally entitled to his salary.

5. A separate affidavit has also been filed on behalf of Senior Superintendent of Police, stating that legal opinion was obtained from the District Attorney (Legal), Gurdaspur, wherein, it is stated that a person with disability is required to be protected but since there is no disability certificate of deceased, Gurnam Singh nor there is any medical record relating to the accident or treatment given to him, the claim of the petitioner in the light of the provisions of the Disability Act, 1995, cannot be examined. It is further stated in the affidavit that the petitioner was asked to produce the disability certificate, medical record of the deceased and post mortem report in order to examine the claim. To the said effect the petitioner has placed on record all the certificates regarding the treatment of the petitioner's husband, whereafter, a speaking order was directed to be passed by this Court and the Senior Superintendent of Police, after looking into the entire record has sent

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the matter to the Board of Doctors for their opinion, who have stated that they have not examined the patient and, therefore, they cannot comment about the disability asked for in the application. On the said basis, it is claimed that the claim of the petitioner ought to have been rejected as the petitioner has not been able to produce the disability certificate issued by the competent authority.

6. Having noticed the pleadings as above, this Court is saddened to notice the manner in which the officers of the State Government have approached the present case which was directed to be decided by them in terms of the order passed by this Court on 12.12.2019. It is an admitted position from the record that the petitioner's husband was a constable and died due to an accident while on duty. The entire period of service is, therefore, liable to be treated as duty period. To treat the petitioner to be on medical rest and delete his leave regularly as well as leave without pay, for so called regularizing the said period, is nothing but an illegality committed in the light of provisions of Section 47 of the Act, 1995, whereby a person who is disabled to perform his duties will have to be protected by the government. It would be apposite to quote Section 47 of the Act, 1995 as under:-

47. Non-discrimination in Government employment.

(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a

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suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

7. From the perusal of the above, it is apparent that the word 'disability' would not be only with regard to the certificates issued but would mean a person who is disabled to perform his duties on account of illness. A larger interpretation is to be given to the said definition. Considering that the concerned person who met with an accident remained under treatment and was not available for performing his duties and accordingly he was entitled to receive regular salary for the said period. As per Rule 2.7 of the Punjab Civil Services Rules (Volume II), a constable, who dies while on duty, would be entitled to *ex gratia* grant other than what is available to the employee who dies while in service. Thus, apart from death-cum-retiral benefits, the petitioner, who is a widow of a deceased constable who died while in service, would also be entitled to *ex gratia* grant also. It is to be noticed that Senior Superintendent of Police, who is required to know the rules relating to making of payment under *ex gratia* head of the employees of the department, has rather filed an affidavit denying the said benefit to the petitioner. The interest on the account of *ex gratia* shall be, therefore, paid to the petitioner.

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The recovery as suggested by the Accountant General is thus found to be not made out. The same is quashed.

8. The writ petition is allowed. The petitioner would also be entitled to death-cum-retiral benefits including payment of *ex gratia* on account of death of her husband while on duty. Encashment of leave shall also be paid and the period spent while under treatment shall be treated as period spent on duty. Considering the fact that the petitioner has been denied even family pension to which she was entitled to immediately upon the death of her husband, a cost of Rs.1 Lakh is imposed upon the State Government for adopting lackadaisical approach.

9. All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)  
JUDGE

10.01.2024

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1. Whether speaking/reasoned? : Yes/No  
2. Whether reportable? : Yes/No