

**CWP-10423-2023 (O&M)****1****IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****(219)****CWP-10423-2023 (O&M)****Date of Decision : August 02, 2024****Kashmir Singh and others****.. Petitioners****Versus****State of Punjab and others****.. Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI****Present: Mr. A.K. Walia, Advocate, for the petitioners.****Mr. Amarpreet Singh Bains, Assistant Advocate General,
Punjab.****HARSIMRAN SINGH SETHI J. (ORAL)**

1. In the present writ petition, the grievance being raised by the petitioners is that though they have retired from service but their pensionary benefits are being withheld by the respondents, which is arbitrary and illegal.

2. Learned counsel for the petitioners argues that though, there was a charge-sheet pending against the petitioners at the time of their retirement but the said charge-sheet has already been dropped by the respondents and as of now, there are no departmental proceedings pending against the petitioners, which will give jurisdiction to the respondent-State to withhold the pensionary benefits of the petitioners, hence, the respondents are liable to be directed to release the pensionary benefits of

the petitioners.



3. Learned counsel for the respondents, on the other hand, submits that though the departmental proceedings have already been dropped but the petitioners are also facing the criminal proceedings, which have been initiated against the petitioners hence, the State is well within its jurisdiction to withhold the 10% of pensionary benefits as well as gratuity of the petitioners, however, all other benefits have already been released to the petitioners.

4. I have heard learned counsel for the parties and have gone through the record with their able assistance.

5. As per the Rules governing the service, in case there are any criminal proceedings or the departmental proceedings pending against an employee during the service career, after the retirement, certain pensionary benefits can be withheld by the State so as to await the decision of the said disciplinary proceedings or the criminal proceedings as the case may be but in case, no such proceeding is pending against the employee then the Department is under an obligation to release all the pensionary benefits of an employee after his/her retirement.

6. As per the respondents, the disciplinary proceedings initiated against the petitioners have already been dropped but certain benefits have been withheld on account of the criminal proceedings pending against the petitioners.

7. The question which arises is whether, in the facts and circumstances of the present case, can it be said that there is any criminal proceeding pending against the petitioners. It may be noticed that the law as to when, the criminal proceedings can be treated to be pending, has



already been settled by the Hon'ble Supreme Court of India in ***Union of India Vs. K.V. Jankiraman, (1991) 4 SCC 109***. The relevant paragraph of the said judgment is as under:-

“16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a chargesheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many-cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/chargesheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not



without a ,remedy. It was then contended on behalf of the authorities that conclusions nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows:

"(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or crimi-nal proceedings against an official;

(2)

(3)

(4) the sealed cover procedure can be resorted only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before."

8. A bare perusal of the above reproduction would show that it is only when a charge-sheet is issued in the departmental proceedings and charges are framed in the criminal proceedings, it can be said that the criminal proceedings/disciplinary proceedings are pending against an employee.

9. By applying the said ratio in ***K. V. Jankiraman’s case (supra)***, the claim of the petitioners is to be decided.

10. Learned State counsel conceded that no charges have been framed against the petitioners in criminal proceedings which are pending against the petitioners even as of now.

11. That being the factual position, it cannot be said that there is any criminal proceeding pending against the petitioners so as to give jurisdiction to the State to withhold the pensionary benefits of the petitioners. Hence, respondents are directed to release all withheld pensionary benefits forthwith.



12. At this stage, learned counsel for the petitioners submits that the petitioners are also entitled for interest on the delayed release of the pensionary benefits.

13. Though, at the time of the retirement, there was disciplinary proceeding pending against the petitioners and the respondents were within their jurisdiction to withhold some of the pensionary benefits but it has been conceded before this Court that the said charge-sheet has already been dropped. Once the charge-sheet against the petitioners has been dropped and the allegations alleged in the departmental proceedings have not been proved against the petitioners, the petitioners cannot be caused prejudice. Once, the respondents failed to substantiate the allegations alleged against an employee, the employee cannot be caused prejudice and in the present case, the petitioners have not been able to use their entitled benefits which were retained by the respondents on the ground of the pendency of the disciplinary proceedings.

14. Further, even on the date when the petitioners retired from service, keeping in view the facts and circumstances of the present case, there was no criminal proceeding pending against the petitioners so as to give jurisdiction to the respondents to withhold their pensionary benefits hence, in the facts and circumstances of the present case as well as the settled principle of law, the petitioners will also be entitled for interest on the withheld pensionary benefits @ 6% per annum from the date the pensionary benefits became due till the actual release of the same.

15. Keeping in view the above, the respondents are directed to release all the pensionary benefits of the petitioners, which have been



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withheld by them. Let the said order be complied with within a period of eight weeks of the receipt of copy of this order.

- 16. The present writ petition is allowed in above terms.
- 17. Any civil miscellaneous application pending if any, also stands disposed of.

August 02, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No