IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No.16716 of 2010
Date of Decision: 08.05.2015

R.D. Singh ....Petitioner

Versus

Punjab Scheduled Castes Land Development and Finance Corporation, Chandigarh through its Managing Director ....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)
2. To be referred to reporters or not ? (Yes/No)
3. Whether the judgment should be reported in the Digest ? (Yes/No)

Present:- Mr. K.L. Arora, Advocate
for the petitioner.

Mr. Bhuvan Luthra, Advocate
for the respondent.

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DAYA CHAUDHARY, J.

The prayer made in the present petition is for issuance of a writ in the nature of *certiorari* quashing the impugned orders dated 27.09.2005 (Annexure P-3) and 11.11.2005 (Annexure P-17), whereby, the charge sheet has been issued to the petitioner and his retiral benefits i.e gratuity and leave encashment have been withheld, whereas, no such enquiry was conducted and retiral benefits cannot be withheld only on the basis of charge sheet issued after the date of his retirement.

Briefly, the facts of the case as made out in the petition, are that the petitioner joined the respondent-Corporation on 21.06.1977 as Assistant and thereafter, he was promoted to the post of District Manager

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on 17.11.2006. Ultimately, the petitioner got retired from service on attaining the age of superannuation on 31.03.2008. The petitioner rendered about 31 years of service in the Corporation. After retirement, charge sheet was issued to the petitioner and because of that, his retiral benefits were withheld.

Learned counsel for the petitioner submits that after retirement of the petitioner, the departmental proceedings cannot be initiated against him as there is no provision or rule in the Punishment Rules of the Corporation for initiation of departmental proceedings after retirement.

Learned counsel also submits that the case of present petitioner is squarely covered by decision in ***Civil Writ Petition No.9401 of 2010*** titled as ***Sucha Ram vs The Punjab Scheduled Castes Land Development and Finance Corporation through its Executive Director*** decided on ***22.09.2011*** which has further been upheld in ***LPA No.2375 of 2011*** decided on ***10.07.2014*** and LPA filed by the respondent-Corporation was dismissed.

Learned counsel for the petitioner also submits that as per ratio of said judgment, the gratuity can only be withheld, if an employee resigns but in the present case, the petitioner got retired from service on attaining the age of superannuation. Learned counsel also submits that no opportunity of hearing, whatsoever, was afforded to the petitioner before withholding the retiral benefits of gratuity and leave encashment and till date, no inquiry has been conducted and even the Inquiry Officer has not been appointed.

Learned counsel appearing on behalf of the respondents submits that the petitioner has not given clarification with regard to cases, which are still pending. A great financial loss has been caused because of conduct of the petitioner. As per provisions of Rule 8.21(aa) of Punjab Civil

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Services Volume-I Part-I and provisions of Rule 2.2(b), Rule 6.16(AA) (6) and 9.14(c) of the Punjab Civil Services Rules Volume II, the proceedings can be initiated even after retirement and the department has right to effect recovery from the amount of gratuity. Learned counsel for the respondent-State further submits that the pension is being paid to the petitioner and the amount of provident fund has also been released.

Heard the arguments of learned counsel for the parties and have also perused the documents available on the file.

The claim of the petitioner in the present petition is that the charge sheet has been issued to him after his retirement and the retiral benefits i.e gratuity and leave encashment have been withheld. The issue in the present petition is similar to the one raised in ***CWP No.9401 of 2010*** as to whether the Corporation can initiate proceedings after the date of retirement or not. Hon'ble the Apex Court in ***U.P State Sugar Corporation Limited and others vs Kamal Swaroop Tondon 2008(2) RSJ 107*** has held that the relationship between the employer-employee continues till all the retirement benefits are paid. Similar issue was also decided vide another judgment titled as ***UCO Bank and others vs Sanwar Mal 2004(4) SCC 412***.

Admittedly, the petitioner has been in service for years together and gratuity was to be released to him on his retirement on attaining the age of superannuation. The gratuity can be withheld, in case, the employee resigns from service but in the present case, the petitioner got retired from service on attaining the age of superannuation. Even after retirement, no notice was issued to him and no complaint, whatsoever, was conveyed to him. It is also not disputed that till date, no inquiry officer has been appointed and as such, the petitioner cannot be held liable and the amount of gratuity and leave encashment cannot be withheld unless some

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regular inquiry is conducted.

Similar view has been held in ***State of Jharkhand and others vs Jitendra Kumar Srivastava and another 2014(1) RSJ 177.***

In view of the facts and law position as discussed above, the present petition is allowed and the respondents are directed to release the amount of gratuity and leave encashment or any other retiral benefits, which have not been released to the petitioner, within a period of three months from the date of receipt of certified copy of this order. The petitioner is also held entitled for interest @ 9% p.a from the date of expiry of three months from the date of retirement till the payment is released.

(DAYA CHAUDHARY)
JUDGE

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