

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

Civil Writ Petition No.13471 of 2014

Date of decision: 9.10.2015

Nahar Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.R.K.Arora, Advocate,
for the petitioner.

Mr.Nikhil K. Chopra, DAG, Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J. (Oral)

The petitioner took premature retirement on 10th October, 2002 which was granted by Punjab Roadways where he worked as a Bus Driver. By that time, he had put in service qualifying for pension. However, long before he applied for premature retirement, he was involved in two motor accidents which led to claims being filed before the Motor Accident Claims Tribunal for compensation by the respective families of the victims. The facts in the first case were that the bus which was being driven by the petitioner was stationary when an offending vehicle hit the bus which caused the death of the driver of the offending vehicle. The defence of the

Department before the learned Tribunal was that the driver of the bus was

not at fault. The learned Tribunal returned a finding that the petitioner was not at fault and the fault lay in the driver of the offending vehicle which caused the fatal accident. In the first incident, the department paid ₹ 50,000/- as compensation on the theory of no fault. This was on 19th January, 1996 i.e. years before he took premature retirement.

2. The second accident which involved the petitioner led to the award of ₹ 1,27,150/- as compensation by the Motor Accident Claims Tribunal, Ambala vide award dated 18th April, 2001. The claimants are in appeal for enhancement of the award before this Court.

3. The petitioner was not served a charge sheet for either of the two occurrences. An FIR was not registered in either of the two accident cases. The dispute presently is with the second accident. The Department issued show cause notice dated 20th July, 2009 to the workman to explain why a sum of ₹ 42,384/- be not recovered from him for causing loss to the State Exchequer due to the accident by way of contributory negligence. The petitioner replied to the show cause notice which was not found unsatisfactory and recovery was ordered against the petitioner in the aforesaid amount. The principal amount has been paid by the Government to the family of the victim as awarded by the learned Tribunal.

4. The first case involved an accident which had occurred in 1994 while in the second case, the accident had occurred shortly before the petitioner took premature retirement. The award in the first case was passed on 26th February, 1997 while in the second case, it was passed on 18th April, 2001.

5. Learned State counsel Mr. Chopra submits that in the second case, the claimants have not approached this Court for enhancement of compensation and the award has attained finality. Despite both the incidents, the Punjab Roadways though accepted the request for the petitioner for voluntary retirement but withheld the retrial benefits towards DCRG, leave encashment, regular pension and GIS etc. and put the petitioner on provisional pension by imposing a cut of 25%. The petitioner is presently in receipt of 75% of the pension. He has approached this Court for a direction to the respondents to release these amounts with interest. The petitioner has also prayed that the benefit of proficiency step up be granted to him as falling on the due date which has still was not been granted to him and he must lawfully have them.

6. On the other hand Mr.Arora appearing for the petitioner submits that for an amount of ₹ 42,384/-, his aforesaid pensionary benefits have been held up for no rhyme or reason. These benefits cannot be linked to the award of compensation, however, without joining the issue, Mr.Arora in all fairness and to resolve the dispute is prepared to surrender his right to reclaim ₹ 42,384/- provided that the amounts due to him are released to him without delay. As he says this he pleads for an adjournment to take instructions from his client before his statement is recorded.

7. It is his further contention that recovery of ₹ 42,384/- from his client would be barred in case the State brought a suit for recovery of the amount against the petitioner.

8. He may be correct in his submission that after all, what the State asserts is only a right of recovery of a part of compensation to the extent of ₹ 42,384/- which has not so far been deducted or paid by the

petitioner. While right to full pension and pensionary dues crystallized on the date when the request for premature retirement was accepted by the Government on 9th October, 2002 with effect from 10th October, 2002 [P-1] he has still not got them. In any case, DCRG/gratuity could not have been withheld because it was a one-time settlement and had accrued on the date of premature retirement and cannot be withheld since there was no order passed by the Department during service withholding the amount representing part of the compensation awarded and the pending dues while both the awards came into existence prior to the petitioner being prematurely retired from service. Therefore, the claim of the State on part of the awarded amount is held to be stale and barred by Article 113 of the Limitation Act, 1963 and therefore the action of the respondent State in ordering recovery in 2010 is held to be illegal.

9. Consequently, the writ petition is allowed. The second contention of Mr.Arora is accepted as there is legal bar against the recovery and is not liable to be deducted. The impugned order P-6 is quashed. The amount be released within two months from the date of receipt of a certified copy of this order.

10. It is pointed by the learned State counsel that the order of recovery was not specifically challenged in the writ petition, a copy of which has been placed at Annexure R-1 and, therefore, no relief can be granted on this ground.

11. Though the argument may seem to be attractive at first blush but on a deeper consideration of the matter, I would not accept the argument on the ground that it would lead to multiplicity of proceedings which may further burden the Court with an unwanted litigation. If cure is possible

today, then the Court must accept that rule which provides full relief to the petitioner so that he does not have come back again and knock at the door of this Court only to declare that the order was illegal to start with. Therefore, the prayer of Mr.Arora would fall in the general and residuary prayer where the petitioner seeks appropriate writ, order or directions as the Court deems fit. This Court, therefore, deems it fit to grant the relief admissible to the petitioner as per law. The petitioner is also held entitled to interest on withheld amounts of arrears of pension and gratuity which were withheld without just cause or legal justification. The interest is assessed at 9% simple to run from the date of premature retirement till realization.

12. So far as the prayer for proficiency step up is concerned, the petitioner would remain at liberty to make a representation to the Department which would be considered and decided by the competent authority within two months from the date the application is made. Needless to say after hearing the petitioner and passing a speaking order. If the dues are found admissible, then the same be given within next two months thereafter.

13. The petition stands disposed of as above.

(RAJIV NARAIN RAINA)
JUDGE

October 9, 2015

Paritosh Kumar