

**LPA-905-2013(O&M)**

**-1-**

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

**LPA-905-2013 (O&M)**

**Date of Decision: March 09, 2015**

Sarup Singh

.....Appellant

Versus

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT  
HON'BLE MR. JUSTICE NARESH KUMAR SANGHI**

Present: Mr.Vivek K.Thakur, Advocate  
for the appellant.

Mr.Aman Bahri, Additional Advocate General, Punjab.

.....

- 1. Whether Reporters of local papers may be allowed to see the judgment ? yes**
- 2. To be referred to the Reporters or not ? yes**
- 3. Whether the judgment should be reported in the Digest?**

**SURYA KANT, J.(ORAL)**

(1) This Letters Patent Appeal assails the order dated 28.01.2013 vide which learned Single Judge has dismissed the appellant's writ petition wherein a writ of mandamus to direct the State of Punjab and its authorities to release the retiral benefits including gratuity, commutation of pension and regular pension along with interest, was sought.

(2) Learned Single Judge has rejected the appellant's claim on the ground that on the date of his retirement, i.e. 31.10.2010, there were "judicial proceedings" pending against him within the meaning of "Explanation (2)" to Rule 2.2 (b) of the Punjab Civil Services Rules, Volume -II Part -I.

(3) The appellant joined the police Department as a Constable on 16.04.1975. He was in due course of time promoted in different ranks and the last one held by him was of Inspector. He retired on October 31, 2010 on attaining the age of superannuation.

(4) While the appellant was working as a Sub Inspector, FIR No.294, dated 15.10.2007, under Sections 120-B, 211, 420, 465, 468 and 506, IPC, was registered at Police Station Phillaur, District Jalandhar, at the instance of one Harminder Singh Johal. The complainant was an NRI, residing in Canada, and he alleged that his agricultural land was fraudulently sold through two registered sale deeds executed on 23.10.2003 on the basis of a fabricated power of attorney. The appellant was also named as one of the accused alleging that he along with other police officials falsely implicated the complainant and his family members in a case registered on 10.11.2003 and while he was in

custody, the alleged power of attorney was fabricated.

(5) It is an admitted fact that investigation in the FIR was carried out by a Special Investigation Team comprising Superintendent of Police, Headquarter, Hoshiarpur, and Deputy Superintendent of Police, Phagwara, who submitted an untraced report in the trial Court on 05.04.2008 and then a cancellation report on 24.04.2010.

(6) The complainant protested against the cancellation report and appears to have filed his objections on 23.09.2010.

(7) Before the Magistrate could take cognizance, the appellant stood retired from the service on 31.10.2010.

(8) It is also an admitted fact that learned Judicial Magistrate has vide subsequent order dated 04.07.2012 converted the objections filed by the complainant as a private 'Criminal Complaint' and fixed the same for preliminary evidence of complainant. No order summoning the appellant is stated to have been passed so far.

(9) The respondent-authorities have on account of pendency of the above stated complaint, with-held the payment of gratuity and have further denied the commutation of the pension to the appellant though 100% pension has been released

on provisional basis. The other retiral dues are also said to have been released.

(10) The short question that arises for consideration is whether on account of pendency of the above stated criminal complaint, the appellant can be denied the release of gratuity and commutation of pension?

(11) The Rule which the learned Single Judge has construed against the appellant reads as follows:-

“Explanation.- For the purpose of this rule- (1) departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him or, if the officer has been placed under suspension from an earlier date, on such date; and

(2) judicial proceedings shall be deemed to have been instituted-

(i) in the case of criminal proceedings, on the date on which the complaint is made or a challan is submitted to a criminal court; and

(ii) in the case of civil proceeding, on the date on which the plaint is presented or, as the case

may be, an application is made to civil Court.

Note 1.- As soon as proceedings of the nature referred to in the above rule are instituted, the authority which institutes such proceedings should without delay intimate the fact to the Accountant General.

Note 2- In a case in which a pension as such is not withheld or withdrawn, but the amount of any pecuniary loss caused to Government is ordered to be recovered from the pension, the recovery should not ordinarily be made at a rate exceeding one third of the gross pension originally sanctioned including any amount which may have been commuted.”

(Emphasis supplied)

(12) It may be seen that if the charges have been formulated against an employee, the pendency of such departmental proceedings would deprive him from claiming the retiral benefits. Similarly “judicial proceedings” shall be treated to be pending against an employee on the date on which the complaint is made or a challan is submitted to a criminal Court.

(13) We have considered Clause (2 ) above in the context of denial of retiral benefits to an employee, who ordinarily is entitled to such benefits as a matter of right. We are of the considered view that mere filing of a private complaint before the Judicial Magistrate or after submission of a cancellation report in a police case, are not the stages to be treated as if judicial proceedings are still pending. It is only when the Magistrate takes 'cognizance' after application of mind that the 'judicial proceedings' shall be deemed to be pending or instituted. Here is a case where the Investigating Team has exonerated the appellant and submitted a cancellation report. Learned Judicial Magistrate is yet to take cognizance of the private complaint and the complaint is only at the stage of preliminary evidence.

(14) It is equally pertinent to mention that the objections filed by the complainant have been treated as a 'private criminal complaint' by the learned Judicial Magistrate on 04.07.2012, i.e. much after the retirement of appellant.

(15) In these peculiar facts and circumstances, we find no justification either in law or in equity to with-hold the retiral benefits admissible to the appellant. At best, he can be asked to

execute an indemnity bond to indemnify any consequence that might fall upon him if he is found guilty by learned Judicial Magistrate.

(16) Consequently and for the reasons above stated, we allow this appeal, set aside the order passed by learned Single Judge and while accepting the writ petition, the respondents are directed to release the gratuity as well as commutation of pension, if so applied by the appellant, in accordance with rules on his furnishing an indemnity bond to the satisfaction of the competent authority.

(17) Needful shall be done within a period of three months from the date of receipt of a copy of this order. The appellant shall also be paid interest on the gratuity amount as per Government instructions.

**( SURYA KANT )  
JUDGE**

**March 09, 2015**  
meenu

**(NARESH KUMAR SANGHI)  
JUDGE**