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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 10313 of 2014 (O/M)

Date of decision : 10.8.2016

Balbir Singh Matoo

..... Petitioner (s)

Versus

State of Punjab and others

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. G.S. Lalli, Advocate, for the petitioner.

Mr. R.S. Pathania, Deputy A.G. Punjab.

None for respondents No. 2 and 3.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J. (ORAL)

The petitioner, who is an Assistant Engineer, retired from Punjab Water Resources Management and Development Corporation on 31.5.2010. After his retirement, the payment of leave encashment was not released to him and consequently, he approached this Court by way of filing CWP No. 25341 of 2013, titled as Balbir Singh Matoo Versus State of Punjab and another. This Court, vide order dated 19.11.2013 (Annexure-P-1), directed the respondents to take a decision on the legal notice (Annexure-P-6) by passing a speaking order. The respondents failed to pass a speaking order, as a result of which, the petitioner again approached this Court by way of filing the contempt petition i.e. COCP No. 527 of 2014. Now, the speaking order dated 3.3.2014 (Annexure-P-2) has been passed by the respondents, whereby it is stated that on account of pendency of FIR No. 107, dated 15.8.2007, registered under Sections 409, 420, 465, 468 and 471

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IPC at Police Station Rupnagar, the payment cannot be released till the decision of the said case.

I have heard the learned counsel for the petitioner, the learned State counsel and have also carefully gone through the file.

Since none has put in appearance on behalf of respondents No. 2 and 3, therefore, this Court has considered the case on their behalf.

It comes out that the only ground to withhold the payment of leave encashment is pendency of FIR No. 107, dated 15.8.2007, registered under Sections 409, 420, 465, 468 and 471 IPC at Police Station Rupnagar.

I am of the view that the pendency of FIR itself is no ground to stop the payment of leave encashment, unless the departmental proceedings are also initiated. However, in case of conviction in the said FIR, the department could always initiate disciplinary proceedings and pass appropriate orders in accordance with the rules. Neither any disciplinary proceedings nor any departmental proceedings were initiated against the petitioner and simply on the basis of the pendency of the FIR, the payment of leave encashment was stopped. However, the learned counsel for the petitioner has placed on file the copy of judgment dated 9.3.2016, passed by the learned Additional Sessions Judge, Rupnagar, which shows that appeal filed by the present petitioner against the judgment dated 17.12.2015, passed by the learned Chief Judicial Magistrate, Rupnagar, was allowed and the present petitioner was acquitted of the charges framed against him. It being so, even now the said case is not pending. Earlier, he was convicted and sentenced by the lower Court, vide judgment of conviction and order of sentence dated 17.12.2015.

I am of the view that if the petitioner was earlier convicted by

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the trial Court, there is no reason for the the respondents not to initiate the departmental proceeding, but they decided not to do so. It being so, the withholding of the leave encashment is wholly illegal. Accordingly, the impugned order dated 3.3.2014 (Annexure-P-2) is hereby quashed. The respondents are directed to release the leave encashment to the petitioner with interest at the rate of 9% per annum, starting three months from the date of retirement, which is 31.5.2010.

The learned counsel for the petitioner has informed the Court that the gratuity has also not been released. The same be also released in the abovenoted terms alongwith interest. The said leave encashment and gratuity shall be released with interest within three months from the date of receipt of copy of this order.

The present writ petition is allowed.

(KULDIP SINGH)
JUDGE

10.8.2016
sjks

Whether speaking / reasoned : Yes

Whether Reportable : No