

CWP No. 10089 of 2015 (O/M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 10089 of 2015 (O/M)

Date of decision : 28.11.2016

Kishor Chand

..... Petitioner (s)

Versus

State of Punjab and others

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. A.K. Walia, Advocate, for the petitioner.

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

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.

The petitioner-Kishor Chand was working as a Excise and Taxation Inspector with respondent-department at Information Collection Centre, Shambhu (imports). His retirement was due on 30.4.2015, after the completion of extended period of service. The pension case of the petitioner was already cleared by the Accountant General, Punjab and pension payment order, the sanction for retirement gratuity and commuted value of pension was also granted on 4.3.2015 (Annexures-P-1 to P-3). The case of the petitioner for promotion to the post of Excise and Taxation Officer was already moved, in that regard the meeting of departmental promotion committee was scheduled to be held in March, 2015, which was postponed to 22.4.2015 and further to 29.4.2015. The petitioner claims that

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due to some vested interest, who wanted to harm him, some material was cooked up against him. He was placed under suspension on 29.4.2015, vide order Annexure-P-5/T, just one day before his retirement. On 29.4.2015, vide order Annexure-P-4/T, the petitioner was ordered to be retired with effect from 30.4.2015 without prejudice to the result of the pending inquiry pending against him. It is stated that under Rule 2.2 (c) of the Punjab Civil Services Rules, Volume-II, the pension and retirement gratuity can be withheld only if chargesheet or inquiry is pending against the petitioner on the date of retirement. The departmental proceeding is deemed to be instituted when the chargesheet is issued to the officer. In the present case, no chargesheet was issued on the date of retirement. Hence, the retiral benefits cannot be withheld and his pension, gratuity, leave encashment and commuted value of pension is liable to be released.

In the reply, respondents No. 1 to 3 took the plea that on completion of 58 years, the petitioner was granted extension for one year from 1.5.2014 to 30.4.2015. Since his further extension was not sought, therefore, his retirement was due on 30.4.2015. It is stated that it was noticed by the Assistant Excise and Taxation Commissioner, Shambhu (Imports) that the goods worth Rs. 3,91,99,594/-, belonging to M/s Dhiman P.K. Associates, Railway Station, Mandi Gobindgarh, laid in 37 vehicles were cleared from his log-in against bogus entry tax receipts without depositing the entry tax amounting to Rs. 9,79,990/- causing loss to the State exchequer. The matter was reported by the AETC, Shambhu (Imports), vide memo dated 31.3.2015. It was admitted that the petitioner was placed under suspension on 29.4.2015. The respondents relied upon Rule 2.2 (c) (1) of the Punjab Civil Services Rules, Volume-II, under which where a

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departmental proceeding is continued under clause (1) of the proviso thereto, the pension is to be released and the gratuity or death-cum-retirement gratuity (DCRG) shall not be paid until the conclusion of the said departmental proceeding comes to an end. It was further disclosed that the provisional pension in the present case has been sanctioned. Only the DCRG has been withheld. The case for release of leave encashment has been sent to the Treasury Officer, Patiala. The GPF amounting to Rs. 14,92,110/- has already been disbursed to the petitioner. The process for release is underway as the verification has been sought from different stations. No other retiral benefit has been withheld.

I have heard the learned counsels for the parties and have also carefully gone through the file.

The learned counsel for the petitioner has argued that the admitted facts are that the petitioner was placed under suspension on 29.4.2015 i.e. just one day before his retirement. It is contended that when the petitioner retired on 30.4.2015 though in the retirement order it is stated that the retirement is without prejudice to the result of the pending inquiry against the petitioner, however, no chargesheet was actually served upon him. It is further argued that the departmental proceedings are deemed to commence when the chargesheet is served. Therefore, it is argued that even the DCRG could not be withheld.

The learned counsel for the petitioner has relied upon the Single Bench authority of this Court in L.R. Dhawan Versus State of Haryana and others, 1996 (3) SCT 11 and Division Bench authorities of this Court in K.C. Gupta Versus State of Haryana, 1995 (1) PLR 237 and Subhash Chand Singla Versus The Punjab State Cooperative Supply and

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Marketing Federation Limited and another, 2008 (1) SLR 312.

The perusal of the authority in L.R. Dhawan's case (supra) shows that in the said case, it was observed that the payment of gratuity can be deferred in case where the employee is under cloud at the time of his retirement, namely, in a case where he is facing departmental inquiry or judicial proceedings. However, the proceedings initiated against an employee under proviso to Rule 2.2 (b) of the PCS Rules cannot be made ground to withhold the DCRG and pension payable to the employee at the time of his retirement. In the said case, the proceedings were initiated against the employee after more than three years and nine months of his retirement.

The case of Subhash Chander Singla (supra) pertains to criminal prosecution and in K.C. Gupta's case (supra), the Division Bench of this Court had noticed that after serving the chargesheet, the matter was kept pending for two years and was withdrawn. Thereafter, after waiting for a long period, a show cause notice of holding inquiry for the same charge was served upon the employee and the Government dropped the disciplinary proceedings.

However, the circumstances in the present case are entirely different. In the present case, the Assistant Excise and Taxation Commissioner had made the report on 31.3.2015 i.e. one month before the retirement of the petitioner regarding the bogus entry by the petitioner and causing loss to the State exchequer to the tune of Rs. 9,79,990/-. The matter regarding making bogus entries and allowing 37 vehicles belonging to M/s Dhiman P.K. Associates, Railway Station, Mandi Gobindgarh, to be cleared by creating bogus entry tax receipts is a serious matter. Therefore, it is

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apparent that the petitioner was under cloud when he was about to retire. He was suspended one day before his retirement and he retired while under suspension. Rule 2.2. (b) of Punjab Civil Services Rules, Volume-II, is reproduced as under :-

“2.2 (b)- Explanation.

- a) a departmental proceeding shall be deemed to be instituted on the date of which the statement of charges is issued to the officer or pensioner, or if the officer has been placed under suspension from an earlier date, on such date; and
- b) a judicial proceeding shall be deemed to be instituted -
 - i) in the case of a criminal proceeding, on the date on which the complaint or report of the police officer on which the Magistrate takes cognizance, is made ; and
 - ii) in the case of a civil proceedings, on the date of presentation of the plaint in the Court.”

Rule 9.14 (c) of Punjab Civil Services Rules, Volume-II, is reproduced as under :-

“Rule 9.14 (c) – No gratuity shall be paid to the Government employee until the conclusion of the departmental or judicial proceedings and issue of final order thereon.”

The perusal of the aforesaid rule shows that under the said rule, the Government is competent to withhold the DCRG. A Division Bench of this Court in Narinder Singh Dhulka Versus State of Punjab and others, 2005 (1) SCT 23 in similar circumstances refused to quash the order of withholding of gratuity. However, the respondents were directed to finalize the inquiry within a period of four months.

I am of the view that keeping in view the seriousness of the matter and the financial loss of little less than Rs. 10 lakhs to the State exchequer, it cannot be said that the petitioner was not under cloud at the

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time of his retirement. It being so, it is not appropriate to direct the respondents to release the DCRG from which the loss caused to the State exchequer may be ultimately recovered in case the petitioner is held guilty. As such, the present writ petition is dismissed. The respondents are, however, directed to complete the departmental inquiry within six months from the date of receipt of certified copy of this judgment.

(KULDIP SINGH)
JUDGE

28.11.2016
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes