

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

Date of decision: 27.05.2016

CWP No.10809 of 2016

Chunni Lal & another

...Petitioners

Vs.

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

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

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 petitioners are twins who superannuated on 31.10.2014 after serving the State. The petitioners retired as Beldar and Store Attendant. Unfortunately, they have been proceeded departmentally by serving them a charge-sheet after their retirement for possessing land, which the respondent - Irrigation Department, Punjab says is not owned by them. They are accused after retirement of squatting on land they do not own. Neither is the land owned by the respondent department. To the contrary, it is asserted by the petitioners that the land was wakf land settled on the petitioners in the scheme of rehabilitation promulgated after the partition of India for landless members of the scheduled castes, a caste to which they belong.

Mr. Arora appearing for the brothers, who are twins, submits that the charge-sheets are patently beyond jurisdiction and have been issued

against all canons of law only to deny them their remaining unpaid terminal benefits. The action taken is illegal and ab initio void.

Notice of motion.

On the asking of the Court, Mr. Harkesh Manuja, Addl. AG, Punjab, accepts notice on behalf of the respondents and waives service on them.

The prayer in this petition on the facts stated is ex facie conclusive that such action is wholly excessive, oppressive, arbitrary and unconstitutional. Matters relating to pension, gratuity, leave encashment, GIS and other pensionary dues, as the case may be, can never brook delay and cannot be denied except by authority of law as the rights are protected by Article 300A of our Constitution. Any transgression of constitutional boundaries by the agents and servants of the State and its organs may result in commission of constitutional tort in a case of the present kind and give rise to a claim for damages against erring officers/tortfeasors either personally or with the State holding it vicariously liable, to obtain a decree for damages from a court of law. The functionaries of the department have committed breach of trust in withholding movable property owned by the petitioners.

The matter goes to the root of jurisdiction in the Department of Irrigation, Punjab of having acted without sanction of law to injure the petitioners when it had no business to question property rights of the petitioners when the land did not belong to them and make it subject matter of the charge-sheets only to stop their pending dues towards pensionary benefits, other than what was paid on or after the date of retirement. The kind of mind set of persons occupying high office which reflects from the adverse action taken needs to be further explored to prevent recurrences,

therefore, certain directions are issued which will take effect after the disposal of this petition qua the petitioners as next top next below.

For these reasons recorded above, the petition is allowed as it eminently deserves to be at the first hearing itself. The illegal charge-sheets cannot be left to stand even for a minute and are hereby quashed. A mandamus is issued to the respondents to release the remaining pensionary benefits to the petitioners within a period of one month of receipt of certified copy of this order. The amounts will earn interest at the rate of 12% from the date illegally withheld without sanction of law till actual payment. The same be paid within the same period. The petitioners will take costs of forced litigation and harassment caused which is assessed at Rs.25,000/-.

However, separate notice be issued by the office to the author/s of the charge-sheets, after the office of the Advocate General, Punjab furnishes the names of those officials who were involved in the misadventure of issuing the charge-sheets to the petitioners. Mr. Manuja learned Additional Advocate General, Punjab to bring this order to the notice of the quarters concerned for compliance. In case, disciplinary proceedings are contemplated or are initiated by the Secretary of the respondent department against the erring officers who took the absurd and outlandish decision/s to charge-sheet the petitioners without there being any legal foundation, the Court intervening to remedy a grave injury inflicted upon the petitioners to prevent continued miscarriage of justice; then the notices issued in terms of the present paragraph will be treated as recalled. The court be apprised of action taken by 27.07.2016 on an application presented by the respondents, the Court then would consider if it should be treated as a writ petition to hear the stakeholders and persons likely to be affected by court process.

The amounts withheld illegally will earn interest at the higher rate of 12% per annum to be paid by the State in the first instance within one month as above but recoverable from the erring officers who thought of this ingenious and novel scheme, but that will be after inquiry is held and findings recorded against those held responsible for taking unconstitutional action against the innocent petitioners who retired from menial low salaried jobs.

27.05.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE