IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.14692 of 2015 (O&M)
Date of decision: 20.07.2016

Parveen Gupta

...........Petitioner

Versus

State of Haryana and another

...........Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. J.S. Ahluwalia, Advocate,
for the petitioner.

Mr. Ravi Partap Singh, AAG, Haryana.

Mr. Padamkant Dwivedi, Advocate,
for respondent No.2.

Ritu Bahri, J.

The petitioner is seeking direction to the respondents to release his retiral benefits.

Mr. Parveen Gupta-petitioner joined Haryana Tourism Corporation Ltd. as Company Secretary on 11.08.1982. After attaining the age of superannuation, he ultimately, retired from service w.e.f. 30.11.2013. He was facing a charge-sheet dated 03.01.2013 under Rule 7 of the Haryana Civil Services (Punishment & Appeal) Rules, 1987. Vigilance enquiry No.2 dated 11.07.2013 was also pending against him. There was a condition in the retirement order (Annexure P-1) that his retirement will not absolve him of the responsibility of any loss sustained by the respondent-corporation on account of negligence or fraud on his part, which may come to notice at any later stage. After his superannuation, payment of gratuity amounting to Rs.10 lacs has been released in favour of the petitioner on 04.06.2015 under the Payment of Gratuity Act, 1972. In the present case, the petitioner is claiming the benefit of Leave Encashment of 300 days.

The respondents are resisting the claim of the petitioner on the ground that he is facing a charge-sheet dated 03.01.2013 (Annexure R-2/1, collectively). After considering the reply of the petitioner, Mr. R.R. Banswal, IAS (Retd.) was appointed as the Enquiry Officer vide order dated 03.04.2013 (Annexure R-2/2). As per enquiry report dated 23.10.2013 (Annexure R-2/3), charges have been partially proved against the petitioner. After giving the opportunity of personal hearing, a show cause notice for imposing the punishment has been issued, which is pending consideration.

In Vigilance Enqiry No.2, preliminary investigation was done by Sh. Krishan Kumar, DSP, State Vigilance Bureau, whereupon it was found that on account of conduct of the petitioner, a total loss of Rs.19,85,237/- was caused to the respondent-corporation, which is recoverable from him along with interest. Accordingly, FIR No.7 dated 12.08.2015, under Sections 201 IPC and 13 (1) (d) of the Prevention of Corruption Act (Annexure R-2/4) has been registered against the petitioner on the basis of aforesaid enquiry dated 11.07.2013. In view of the aforesaid disciplinary proceedings, leave encashment of the petitioner has been withheld. It has been further stated that the leave encashment has been withheld as per Government instructions dated 04.07.1984 (Annexure R-2/5). A perusal of these instructions shows that the authority competent to grant leave, may withhold whole or part of cash equivalent of earned leave in case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him and if, in the view of such authority there is a possibility of some money becoming recoverable from him on the conclusion of the proceedings against him.

The petitioner filed replication to the written statement. Along with the same, he has placed on record a judgment passed by this Court in ***Sh. Ram Dev Goel Vs. Haryana Tourism Corporation through its Managing Director and others,*** CWP No.9104 of 2002, decided on 18.12.2014 (Annexure P-5). The petitioner has taken a stand that pursuant to the charge-sheet, no financial loss has been attributed to the petitioner.

As per the report of the Enquiry Officer (Annexure R-2/4), no ulterior motive/malafide intention to favour the shopkeepers has been proved against the petitioner. Hence, keeping in view the opinion of the Enquiry Officer, no financial loss has been attributed to the petitioner. A perusal of the decision given in ***Sh. Ram Dev Goel's*** case (supra) (Annexure P-5) shows that on 18.12.2014, eviction of all the shopkeepers have been ordered. However, till date, they have not been evicted. Hence, the petitioner, who had retired in the year 2013, could not be deprived of the benefit of leave encashment for 300 days.

After going through the enquiry report (Annexure R-2/4), it is apparent that the petitioner, who was dealing with the case as an Officer Incharge had contacted Sh. Sanjiv Kaushik, Advocate, time and again for early hearing of the case in the Punjab and Haryana High Court, but the said Advocate had informed him that the case would be taken up as and when the main writ petitions were listed for hearing. This fact was further admitted by the witnesses that the petitioner had visited the office and residence of the Advocate frequently. As per enquiry report, the petitioner had not taken sufficient steps for early hearing of these petitions. In the enquiry report, no financial loss has been attributed against the petitioner. As per instructions dated 04.07.1984 (Annexure R-2/5), payment of leave encashment can only be withheld, if there is possibility of some money becoming recoverable from him on the conclusion of the proceedings against him. In view of the enquiry report (Annexure R-2/4), no financial loss has been attributed to the petitioner nor any malafide intention to favour the shopkeepers has been proved against him. Hence, he is entitled for payment of leave encashment. Moreover, after the dismissal of the petition(s) on 18.12.2014 (Annexure P-5), the respondents, till date, have not got the shops vacated.

As per report of the Vigilance, a loss of Rs.19,85,237/- has been shown and thereafter, FIR has been registered. On account of the proceedings in the criminal trial, payment of leave encashment cannot be detained. Moreover, this Court in ***Daya Singh Vs. State of Haryana,*** CWP No.22392 of 2010 (decided on 02.05.2014), has held that the retiral benefits could not be withheld on account of registration of criminal proceedings. The said petition was allowed and the respondents were directed to make payment of retiral benefits along with interest at the rate of 9% per annum. Similar view has been taken in another judgment passed by this Court in ***Dayal Singh Vs. UHBVN, Panchkula and others,*** CWP No.7947 of 2008 (decided on 28.04.2009).

In view of the above discussion and the law laid down in the aforesaid authorities, this petition is allowed and the respondents are directed to make payment of leave encashment/retiral benefits to the petitioner along with interest at the rate of 9% per annum from the date of his retirement till actual payment.

(RITU BAHRI)
JUDGE

20.07.2016
ajp