

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

**CWP No.15842 of 2014 (O&M)
Date of decision: 20.01.2016**

Natha Singh

Versus

State of Haryana and others

.....Petitioner

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Naveen Daryal, Advocate,
for the petitioner.

Mr. Keshav Gupta, AAG, Haryana,
for the respondents.

Ritu Bahri, J.

The petitioner is seeking a writ of certiorari for quashing the recovery order dated 25.01.2012 (Annexure P-2) which was issued by respondent Nos. 2 and 3 after his retirement.

Natha Singh-petitioner was appointed in the Forest Department. After attaining the age of 55 years, he retired from the post of Deputy Ranger on 25.11.2004. He had served his department for more than 30 years. After his retirement, he made several requests to the department to release his retiral benefits. Ultimately, the department released following retiral dues of the petitioner:-

Retiral Dues	Amount	Date of Release
Gratuity	187000/-	25.12.2004
	168638/-	05.06.2006
	19000/-	28.06.2007
GIS	13054/-	30.07.2009
Leave Encashment	113720/-	07.08.2012
Recovery Amount	62332/-	Recovery has been effected in Leave Encashment.

Grievance of the petitioner is that vide recovery order dated 25.01.2012 (Annexure P-2), amount of Rs.62,332/- has been recovered from his leave encashment after his retirement and that too without giving any show cause notice. Actually, the petitioner was entitled to Rs.1,13,720/- towards his leave encashment, however, after making recovery of Rs.62,332/-, only a sum of Rs.51,386/- has been released in his favour. The petitioner made a representation dated 08.09.2008 to the respondents to fix his pay after giving yearly increment for the years 2001-2003. due to wrong fixation of pay, his pension has not been correctly fixed.

Learned counsel for the petitioner has referred to the Full Bench judgment of this Court in **Punjab State Civil Supplies Corporation Ltd. & others Vs. Pyare Lal**, 2013 (1) PLR 36, to contend that the entire leave encashment is payable to the retiring employee notwithstanding the pendency of any departmental enquiry or criminal proceedings. Only gratuity or death-cum-retirement gratuity can be withheld.

Upon notice, written statement has been filed by respondent Nos. 2 and 3, wherein it has been stated that as per the rules framed by the Principal Chief Conservator of Forests vide Standing Order No.1/1998-99 (Annexure R-3), the Deputy Ranger is responsible to supervise the job work allotted by the department and in case there is any loss, he was liable to pay 25% of the total loss caused. Following the above said rules, various recovery orders have been passed against the petitioner by the Competent Authority of Forest Department, which have been annexed as Annexure R-1 (Collectively). As per respondents, all the retiral dues have already been paid to the petitioner, which are detailed as under:-

Retiral dues	Amount	Date of release
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Gratuity	1,87,638	Due Total
	1,68,638	12.05.2006
	19,000	28.06.2007
GIS	13,054	30.07.2009
Leave Encashment	1,13,720	Due Total
Recovery Amount	62,332	
	51,388	07.08.2012.

The delay in payment of retiral benefits was due to the fact that the case of the petitioner was not cleared due to recovery orders which have finally been passed and all retiral dues admissible to the petitioner have been paid. In the written statement, it has been further stated that show cause notices were issued to the petitioner by the competent authority vide letter Nos.3183-84 dated 04.08.2006, 1103-04 dated 17.05.2006, 2869-70 dated 14.12.2005, 2852-54 dated 14.12.2005, 2517-18 dated 30.06.2006, 3664-66 dated 15.12.2005, 3710-12 dated 19.12.2005, 3656-58 dated 15.12.2005, 3608-10 dated 15.12.2005 and 2537-39 dated 12.10.2004.

In compliance with the order dated 30.03.2015 passed by this Court, a supplementary written statement has been filed on behalf of respondent Nos.2 and 3, wherein details of the total area year-wise to be covered under planation has been given.

Charge against the petitioner was that he had planted excess number of saplings within a specified area. In supplementary written statement, it is stated that no excess saplings were planted by the department. Reference has been made to the instructions dated 28.01.2010 (Annexure A-3), which have been issued regarding success rate of plantation for first three years of plantation of circle wise as per prevailing atmosphere/climate.

petitioner since he had retired way back in the year 2004. The respondents has given a specific reply that there was no excess plantation by the department. Hence, charge of planting excess number of saplings was not made out against the petitioner. Hence, show cause notice and recovery order should not have been passed after the retirement of the petitioner. In the written statement, the respondents have admitted that there was some delay in making payment of gratuity, GIS and Leave Encashment. The date of retirement of the petitioner being 25.11.2004, the aforesaid payment should have been released in his favour within 3 months of the retirement, i.e. 01.03.2005. The first payment has been made on 12.05.2006. Therefore, the petitioner is entitled to get interest on the delayed payments. Since, the respondents themselves have admitted in supplementary statement that no excess saplings were planted by the department, there was no reason to issue show cause notice and pass recovery order against the petitioner. Hence, the recovery order is required to be set aside.

In view of the above, the impugned order dated 25.01.2012 (Annexure P-2) is set aside and the respondents are directed to repay the amount of recovery to the tune of Rs.62,332/- to the petitioner along with interest at the rate of 9% per annum. Apart from this, the respondents are further directed to pay interest at the same rate on the remaining delayed payments (detailed in para No.5 of the written statement) w.e.f. 01.03.2005 till actual realization.

Allowed accordingly.

20.01.2016
ajp

(RITU BAHRI)
JUDGE