

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

**CWP No.20564 of 2013 (O&M)
Date of decision : October 18, 2016**

Ram Pat

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Sanjiv Gupta, Advocate for the petitioner.

Mr. Gaurav Goyal, AAG, Haryana.

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 ?

KULDIP SINGH J. (ORAL)

Impugned in the present petition is the order dated 16.08.2013 (Annexure P-12) passed by Engineer-in-Chief, Irrigation and W.R. Department, Haryana, Panchkula, vide which the claim of the petitioner for grant of gratuity, pension and other retiral dues was rejected.

The undisputed facts of the case are that petitioner Ram Pat had joined as work-charged Beldar on 01.01.1985. His services were regularized w.e.f. 01.04.1993. He retired from service on 31.03.2008. During his service, he was involved in a criminal case bearing FIR No.220, dated 11.06.1997 for the commission of offences punishable under Section 307 read with Section 34 IPC, registered at Police Station Sadar Rohtak. The petitioner remained in custody from 21.12.1999 to 18.02.2000. Ultimately, on 24.12.1999 i.e. during his service period, he was convicted by the

learned Sessions Judge, Rohtak for the commission of offence punishable under Section 307 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of ₹2,000/-. The petitioner preferred an appeal before this Court, which was decided on 09.09.2009. This Court while disposing of the appeal on the basis of compromise effected between the parties, maintained the conviction of the petitioner but reduced the sentence to the period already undergone by him and sentence of fine was made absolute. It is only after the decision of the appeal in the year 2009, the petitioner was not paid his gratuity and retiral benefits. Therefore, he approached this Court by way of filing CWP No.6858 of 2012, wherein this Court directed the respondent-Engineer-in-Chief to pass a speaking order on the representation of the petitioner dated 10.01.2012 (Annexure P10) within a period of two months from the date of receipt of certified copy of the order. Accordingly, the impugned order dated 16.08.2013 (Annexure P-12) has been passed. The operative part of the same reads as under:

“It is pertinent to mention here that in view of his conviction Sh. Rampat, Beldar was liable to be dismissed from service, however, perusal of the record reveals that he remained on duty till his retirement up to dated 31.3.2008 except the period from 22.12.1999 to 16.2.2000 when he was in jail. Concerned Executive Engineer has regularized the period of absence from 21.12.1999 to 18.02.2000 and no departmental proceedings were initiated against petitioner, therefore, he retired from Govt. Service after attaining the age of superannuation.

Sh. Ram Pat, Beldar (No Retd.) remained in jail and

Hon'ble High Court upheld the conviction but no timely departmental action was taken against him and he was allowed to retire on superannuation.

Thus, it is a clear irregularity on part of the concerned authorities as they flouted the constitutional provisions as well as provisions of service rules, hence they are liable for strict disciplinary action for this irregularity and violation. So, far as Sh. Ram Pat is concerned, inadvertently he remained in service till the date of his retirement.

However, since the conviction under section 307 I.P.C. was upheld the preview of moral turpitude as mentioned in instructions issued by Chief Secretary vide letter No.1449-5GSI-75/6324 dated the 17/26th March, 1975, thus he is not entitled for gratuity and pensionary benefits as that would amount to paying benefits for his wrongdoing. Hence, his claim for gratuity pensionary benefits and retiral dues is rejected.”

The State in the reply has not disputed the factual position as detailed above. However, the plea has been taken that the departmental action is liable to be initiated against the petitioner, in view of his conviction by the trial court and he was liable to be dismissed from service in view of Article 311 of the Constitution of India. However, due to lapse on the part of concerned Executive Engineer, neither departmental action was taken against him nor his services were terminated. Rather, the period he remained in custody was regularized and he was also allowed to retire from service on attaining the age of superannuation on 31.03.2008.

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

The undisputed facts as discussed above show that during his service period, the petitioner was involved in a criminal case registered under Section 307 read with Section 34 IPC. He was convicted and sentenced on 24.12.1999, when he was still in service. During the trial, he was arrested. After his conviction, he remained in custody. The said period of confinement was admittedly regularized. The petitioner preferred an appeal before this Court, which was disposed of on 09.09.2009 i.e. after the retirement of the petitioner, in which his conviction was upheld, however, the sentence was reduced to the period already undergone by him.

I am of the view that if the department is of the view that the act of the petitioner amounts to grave misconduct or a criminal act, then it is competent to initiate the departmental proceedings by invoking the Rules 2.2 (b) of the Civil Services Rules, Volume-II as applicable to the petitioner. However, without initiating any departmental proceedings/inquiry, the amount of gratuity and other pensionary benefits could not be withheld. There is a lapse on the part of the punishing authority, which did not adhere to the instructions of the Government invoking the powers under Article 311 of the Constitution of India when the petitioner was convicted in the year 1999 and was accordingly sentenced. The period of custody was also regularized. He was also allowed to retire. However, when the matter has been decided by this Court after his retirement, the retiral benefits could not be withheld without initiating any departmental proceedings/inquiry after giving an opportunity to the petitioner.

It being so, the impugned order 16.08.2013 (Annexure P-12) is quashed. The amount of gratuity and all the other retiral benefits are ordered

to be released to the petitioner within two months from the date of receipt of copy of this judgment. The petitioner is also entitled to interest @ 8% per annum starting from three months from the date of his retirement till its actual payment.

However, the respondents shall always be at liberty to initiate departmental action under Civil Services Rules as applicable to the petitioner.

(KULDIP SINGH)
JUDGE

October 18, 2016

sarita

Whether speaking / reasoned Yes

Whether Reportable: No