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

CWP No.17383 of 2015
Dated of decision: 19.05.2016

Charanjit Singh Chawla .... Petitioner

versus

Punjab School Education Board & anr. .... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARIAN RAINA

Present: Mr. Vijay Sharma, Advocate
for the petitioner.

Mr. Rohan Mittal, Advocate
for the respondents.

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1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J. (ORAL)

1. The Audit objection which has been taken in defence of the petition is found to be an “oral” direction to the Board while returning the pension file of the petitioner advising that pensionary benefits be not paid to the petitioner on the plea of alleged involvement of many employees on an imputation of misconduct. The Audit objection is not recorded in writing by way of a report and is thus of no consequence on the rights of the petitioner to claim gratuity etc. and, therefore, it cannot be regarded as a legal ground to withhold his legitimate dues arising on superannuation.

2. The petitioner retired from service as Superintendent in April, 2015. He has approached this Court praying for directions to the respondent to release his pension as well as other retiral benefits along with interest. During the pendency of the petition, a sum of

Rs.4,51,425/- has been released in favour of the petitioner on account leave encashment on 05.01.2016 and a sum of Rs.2,71,496/- stands released on account of General Provident Fund dues on 15.02.2016. What remains due and payable is Gratuity in a sum of Rs.9,71,249/- besides commutation of pension in sum of Rs.5 lacs(approximately).

3. In the written statement filed by the respondents to contest the case, it has been mentioned that a fact finding inquiry was conducted against one Tarun Kumar, Sr. Assistant, Accounts Branch and his services were placed under suspension vide office order dated 15.07.2014. The preliminary investigation reveals involvement of one Smt. Savinder Kaur, Sr. Assistant and she too was placed under suspension on 11.11.2014. In para. 4 of the reply, the Board mentions that the name of petitioner was also shown in the list of persons found involved in the embezzlement. However, the role of the petitioner has not been specified or disclosed to the Court except for making unsubstantiated sweeping statement that the petitioner is involved in the episode.

4. Learned counsel for the petitioner points to the order dated 14.07.2015 (Annex P-2) passed by the Chairperson, Punjab School Education Board which lists the names persons suspected of involvement in embezzlement of funds. The list of 10 persons does not contain the name of the petitioner. In the last paragraph of the order, the Chairperson has ordered that in view of the fact finding done in the matter, the name of five more persons have surfaced who have retired from service and will be proceeded against as per Rule 2.2(b) of the Punjab Civil Service Rules, Vol.II, Part I and the petitioner's name is mentioned at serial No.3 of Annex P-2. It is common ground that a

charge-sheet has not been issued to the petitioner, either before or after retirement.

5. In view of this, the action of the Board withholding gratuity and commutation of pension is found improper and without sanction of law. In absence of charge-sheet issued before retirement, gratuity is not open to be held back. It is also not the case in the written statement that a specific amount of loss has been caused by the petitioner or is found prima facie recoverable from him to off-set financial loss caused to the Board by acts of commission and omission in the alleged involvement.

6. In the absence of a finding of fact recorded of financial loss caused to Board or an apprehended likelihood of financial loss having been caused by specific acts, the amounts cannot be withheld. The provisions of Rule 8.21(aa) of Punjab Civil Services Rules Vol.II too cannot be invoked by the Board to withhold the amount of gratuity and terminal benefits or for the Board to take undue advantage of its own wrongs in acting against the petitioner without due legal sanction of law. Every executive action must be supported by legislative sanction. The petitioner's valuable right is to property which is protected by Article 300A of the Constitution which provision guarantees that persons would not be deprived of property save by authority of law. No law has been cited to defend the impugned action.

7. For the reasons recorded above, the writ petition is allowed. A writ of mandamus is issued to the respondents to release the unpaid amount of gratuity and commutation of pension. Gratuity will be paid with interest at the rate of 9% till realization. The delay in payment of other dues [as above] will also earn interest @ 9% per

annum from the date of superannuation till they were actually paid. The petitioner is also held entitled to personal costs assessed at Rs.25,000/- towards litigation expenses. The aforesaid amounts be paid together with interest within 6 weeks from the date of receipt of a certified copy of this order.

(RAJIV NARAIN RAINA)
JUDGE

19.05.2016
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