

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.17958 of 2015 (O&M)
Decided on : 29.04.2016

Manjit Singh

... Petitioner

Versus

State of Punjab & others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr.Hem Raj Kapil, Advocate, for the petitioner.

Mr.Avinit Avasthi, AAG, Punjab.

G.S. Sandhawalia, J. (Oral)

CM-5011-2016

Application for placing on record reply, by way of affidavit, on behalf of respondents No.1 to 3, is allowed. Same is taken on record. Office to tag the same at appropriate place.

Main case

Prayer in the present writ petition is for quashing the order dated 24.07.2015 (Annexure P1) whereby the office of respondent No.2 returned the pension case of the petitioner to respondent No.3 for rectification of the discrepancies as to the entitlement of the petitioner, for pension, who had retired on 30.06.2015, as a Sub-Divisional Engineer. Direction is sought to issue a writ of mandamus directing the respondents to release the full pension and gratuity without deducting/withholding the amount from the pension and gratuity.

The defence taken in the written statement, filed by respondents No.1 to 3, is that there is a recovery on account of excess payment made due to withdrawal of 24 years proficiency step up. An effort has been made to justify the action that the petitioner was not entitled for some benefits and reliance has been placed upon judgment of the Apex Court in **Chandi Prasad Uniyal & others Vs. State of Uttarakhand & others (2012) 8 SCC 417** that the department is entitled to recover the excess amount.

Unfortunately, the written statement does not redress the issue in the prospective it is supposed to. Nothing has been shown that the petitioner was, at any point of time, put to notice, even after the order dated 24.07.2015 that he was not entitled for his retiral dues. No show cause notice has been issued to the petitioner for the period of almost 8 months since the impugned order was passed as to what was the discrepancy/difficulty in completing his pension papers. The petitioner had approached this Court, immediately thereafter, in August, 2015. If there was any amount which had been withdrawn in excess, the least the respondents could have done is to release the provisional pension, at least. Not a word has been mentioned in the written statement to this effect and the respondents had fallen back on the ground that they are entitled to deny the petitioner his legal rights, without any justification. The said stand taken, in the reply, is absolutely indefensible. It has been time and again held that the retiral

benefits are not a bounty, as such, and the Government employee is entitled for the same at the time of retirement.

The Full Bench of this Court in **A.S.Randhawa Vs. State of Punjab & others 1997 (3) SCT 468**, specifically held that the employee is entitled for interest on the delayed payment of the retiral dues which are not cleared within 2 months from the date of retirement. Nothing has been brought on record to show that anything was addressed to the petitioner as to why his pension papers were not being processed. The same has unnecessarily been shuffled with respondents No.2 & 3, without any effort to get the same sanctioned.

Resultantly, the present writ petition is allowed, the order dated 24.07.2015 (Annexure P1) is quashed and a direction is issued to respondent No.2 to sanction the provisional pension, initially, immediately, within a period of one month. The said respondent shall also direct that the other retiral dues like gratuity, leave encashment & D.G.R.G. are paid to the petitioner along with interest @ 10% per annum from 01.09.2015. A show cause notice, thereafter, can be issued to the petitioner regarding the additional amount which he has allegedly withdrawn, so that he is in a position to answer the same and then a speaking order be passed, within 2 months, so that the petitioner is at liberty to challenge the same. However, after quantifying the interest element, on the issue of delay of payment of retiral benefits, the respondents will

be entitled to withhold the same, in order to protect their interest, which would be subject matter of the final order, which is likely to be passed against the petitioner, who will be at liberty to challenge the same.

APRIL 29, 2016
sailesh

(G.S. SANDHAWALIA)
JUDGE