IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 20.05.2016

CWP No.20756 of 2015

Joginder Singh ...Petitioner

Vs.

State of Punjab & others ...Respondents

CWP No.20764 of 2015

Gulzari Lal ...Petitioner

Vs.

State of Punjab & others ...Respondents

CWP No.20765 of 2015

Amar Nath ...Petitioner

Vs.

State of Punjab & others ...Respondents

CWP No.20772 of 2015

Kamal Singh ...Petitioner

Vs.

State of Punjab & others ...Respondents

CWP No.20775 of 2015

Charanjit ...Petitioner

Vs.

State of Punjab & others ...Respondents

CWP No.20777 of 2015

Kuldeep Chand ...Petitioner

Vs.

State of Punjab & others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. M.K.Dogra, Advocate, for the petitioner(s).

Mr. Harkesh Manuja, Addl. AG, Punjab.

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

RAJIV NARAIN RAINA, J. (ORAL)

This order will dispose of the above mentioned six writ petitions, as common questions of law and fact are involved in them, which can conveniently be decided by a common order.

Challenge in these petitions is limited against recovery of money. Orders of recovery have been passed after the petitioners retired from service. The amounts have been deducted from gratuity and the balance amounts paid accordingly to each of the petitioners

Mr. Manuja submits that the claim is stale and belated. Recoveries have already been made and in some of the cases three years have gone by before these petitions were filed.

The question is, whether the delay is sufficient to defeat the claims. The orders were passed and recoveries made without hearing the petitioners and without written orders. Therefore, the recoveries are legally bad and unsustainable. In any case, claim to money is a recurring cause of action and the petitioners lose money by the passing day. In the circumstances, delay, if any, does not appear to suffer from laches and is liable to be ignored to award a just claim. The State should normally desist from taking pleas of limitation as against genuine and bona fide causes brought to court only to defeat relief.

I would remind the State functionaries of the words of Krishna Iyer, J., when his Lordship was on the Bench of the Kerala High Court, pertinently recorded in P.P.Abu Backer Vs. The Union of India, A.I.R. 1972 Ker. 103, at p.107- para. 5.

> ”*"The State, under our Constitution, undertakes economic activities in a vast and widening public sector and inevitably gets involved in disputes with private individuals. But it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook; for, the State's interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity. The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move, private parties to fight in court. The lay-out on litigation costs and executive*

time by the State and its agencies is so staggering these days because of the large amount of litigation in which it is involved that a positive and wholesome policy of cutting back on the volume of law suits by the twin methods of not being tempted into forensic show-downs where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms, giving the legal mentors of government some initiative and authority in this behalf. I am not indulging in any judicial homily but only echoing the dynamic national policy on State litigation evolved at a Conference of Law Ministers of India way back in 1957. This second appeal strikes me as an instance of disregard of that policy."

The Supreme Court in Trustees of Port of Bombay Vs. Premier Automobiles Ltd., AIR 1974 SC 923 observed in respect of a plea of limitation raised by public authorities as follows:

"We are of the view, in reiteration of earlier expression on the same lines, that public bodies should resist the temptation to take technical pleas, or defeat honest claims by legally permissible but marginally unjust contentions, including narrow limitation."

As a result, the recoveries made are held illegal and those would have to be returned to the retired pensioners. The cases are also covered by the decision of the Supreme Court in State of Punjab & others Vs. Rafiq Masih & others, AIR 2015 SC 696 and Chandi Prasad Uniyal & others Vs. State of Uttarakhand & others, (2012) 8 SCC 417. The State is directed to refund money in cases in which the recoveries have been made and to remit the amounts to the pension account of the petitioners. Since the declaration has been made after arguments and debate in favour of the petitioners, interest is not awarded on the recoveries made. The exercise be completed and the money be refunded/deposited in the pension accounts of the petitioners not beyond three months of the date of receipt of certified copy of this order.

It may be recorded that Mr. Dogra has not pressed at the hearing, and rightly so, reduction in pension due to mistaken overpayments, which have already been reduced by the respondents, as a result of the recoveries already effected reducing the last pays drawn. To this extent the petitions are rejected. However, recoveries are held impermissible when over payments were not induced by fraud or deceit practiced by the petitioner(s).

Consequently, the present petitions are partly allowed save to the above extent.

20.05.2016 **[RAJIV NARAIN RAINA]**
Vimal **JUDGE**