

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No. 24534 of 2014

Date of decision : 12.04.2016

Dr. Naresh Kumar Sharma

...Petitioner

versus

State of Haryana & ors.

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Harish Nain, Advocate
for the petitioner.

Mr. Rajesh Gaur, Addl. A.G. Haryana

RITU BAHRI , J. (Oral)

Petitioner has approached this Court by way of instant writ petition filed under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari for quashing impugned order dated 05.03.2012 (P-6) and further prayer is for issuance of direction to the respondents to release pension and gratuity of the petitioner.

The precise grievance of the petitioner is that he was appointed as Ayurvedic Medical Officer on 10.09.1975 and stood retired on 30.09.2008 after attaining the age of superannuation. However, one F.I.R No. 15 dated 21.03.2006 under Section 7/13 of Prevention of Corruption Act was registered against him when he was in service and

subsequently he was placed under suspension on 28.03.2006 w.e.f 21.03.2006. After he retired on 30.09.2008, petitioner was not paid retiral benefits and he made representation and then legal notice but no action was taken. Subsequently, he approached this Court by filing CWP No. 14715 of 2010 for releasing of pensionary benefits and writ petition was disposed of on 08.12.2011 directing the respondents to decide legal notice of the petitioner within three months.

In the meantime, petitioner was convicted vide order dated 26.08.2011 under Section 7/13 of Prevention of Corruption Act and he filed appeal against this judgment, vide CRA-S-2639-SB of 2011 which was admitted and the sentence of the petitioner was suspended.

Thereafter, respondent No. 2 in compliance of order dated 08.12.2011, decided the legal notice of the petitioner, vide impugned order dated 05.03.2012 and withhold the claim of the pensionary benefits on the ground that the petitioner was convicted vide order dated 26.08.2011.

Learned counsel for the petitioner submits that the petitioner retired from service on 30.09.2008 and at that time a criminal case under the Prevention of Corruption Act was pending against him, in which he was eventually convicted on 26.08.2011. However, during the pendency of the criminal proceedings, the petitioner was paid leave encashment, GIS and GPF but not given any other retiral benefits,

including provisional pension under Rule 9.14 of the Punjab Civil Service Rules (Vol.II), as applicable to Haryana

Learned State counsel on the other hand while referring to Rule 2.2 (b) of the Punjab Civil Services Rule (Haryana) Vol II contends that this rule authorises the government to withhold pension, as criminal case was pending against the petitioner at the time of his retirement, in which he was convicted on 26.08.2011.

Heard learned counsel for the parties.

This issue has come up for consideration before Full Bench of this Court in a case of ***Dr. Ishar Singh vs. State of Punjab and anr, 1994 (3) RSJ 543*** whereby it has been held that the Government has no right to withhold or postpone pension or the payment on account of commutation of pension. The State was held to be bound to release 100% pension at the time of superannuation may be provisionally.

Reference at this stage can further be made to **Rule 2.2(b)** of the **Punjab Civil Services Rules** Volume II Part I, which reads as under: -

"2.2(b) The Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings, to have been guilty of grave misconduct or to have caused pecuniary loss to Government by misconduct or

negligence, during his service including service rendered on re-employment after retirement.”

Thus, in the present case, the petitioner has not caused any pecuniary loss to the Government and the respondents cannot withhold pension and gratuity of the petitioner.

For the reasons explained above, the petition is allowed and order dated 05.03.2012 (P-6) is hereby quashed and respondents are directed to release the pensionary benefits of the petitioner along with 9% interest per annum after three months from the date of his retirement 01.01.2009.

(RITU BAHRI)
JUDGE

12.04.2016

G Arora