IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 25276 of 2014 (O&M)
Date of Decision: 21.10.2016

Parshottam Chand

... Petitioner

V/s

Punjab State Supply & Marketing Federation Ltd & Another

..Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH.

Present: Ms. Jagdeep Bains, Advocate,
for the petitioner.

Mr. Ayush Arora, Advocate,
for Mr. Sumit Jain, Advocate,
for the respondents.

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KULDIP SINGH, J. (ORAL)

Parshottam Chand-petitioner has filed the present writ petition under Article 226/227 of the Constitution of India for issuance of writ of certiorari for quashing the order dated 05.11.2014 *(Annexure P-13)* withholding retiral benefits and arrears of pay of the petitioner which was approved as per order dated 07.01.2011 *(Annexure P-9).*

Brief facts of this case are that the petitioner was working as Senior Branch Officer in the respondent department. He retired from service on 30.04.2011 vide order dated 21.04.2011 *(Annexure P-1)* in terms of Rule 2.21 (i) of Markfed Common Cadre Rules, 1990. It was mentioned in the said retirement order that all the retiral benefits due will be released on receipt of clear cut 'No Dues Certificate' (NDC) from all the concerned quarters. At that time, no departmental proceedings were pending against the petitioner. It also comes out that vide order dated 07.01.2011 *(Annexure P-9),* when the petitioner was in service, he was granted revised pay-scale. The retiral benefits of the petitioner were not released, consequently, the petitioner approached this Court by way of *CWP No. 13071 of 2014* in which vide orders dated 10.07.2014 *(Annexure P-4)*, the department was directed to expeditiously dispose of the representations dated 13.06.2012 and 05.11.2013. Consequently thereto, order dated 05.11.2014 *(Annexure P-13)* was passed in which department has justified the withholding of the retiral benefits on the ground of pendency of the following proceedings: -

> *"1. An arbitration proceedings is pending against Sh. Parshottam Chand, Sr. Branch Officer (Retd.) for recovery of half of the total amount of ₹19,96,896/- (50% share ₹ 9,98,448/-) as on 10.10.2012 before the ARCS, SBS, Nagar due to the reason that the official failed to shift the paddy stocks crop year 2009-2010 lying at M/s Pratham Rice Mills, Jogewal Balachaur during his tenure as SBO Balachaur.*
>
> *2. An arbitration case is under process recovery of total loss of ₹1,83,11,062/- before Registrar Cooperative Societies, Punjab, Chandigarh on account of unmilled/non delivery of rice crop 2010-2011 to FCI.*
>
> *3. ₹ 9,000/- on account of ex-gratia advance recoverable from Sh. Parshottam Chand, Senior B.O. (Retd.)"*

So far as a sum of ₹9,000/- in respect of ex-gratia advance is concerned, learned counsel for the petitioner has no objection if the same is deducted from retiral dues of the petitioner. However, it has been pressed that on account of the pendency of the arbitration proceedings which were initiated against the miller after the retirement of the petitioner, the retiral benefits which are in the form of gratuity, leave encashment and arrears of revised pay as per order dated 07.01.2011 *(Annexure P-9),* cannot be withheld for an indefinite period.

In the written statement the respondents have re-iterated their stand that on account of pendency of arbitration proceedings the retiral benefits are being withheld.

I have heard learned counsel for both the parties.

Admittedly, at the time of the retirement of the petitioner, no departmental proceedings were pending against him. It was only thereafter that some arbitration proceedings were initiated against the miller regarding paddy stock for the year 2009-2010 and 2010-2011. However, learned counsel has informed that as per his instructions, first arbitration proceedings have been adjourned sine die. In any case, in the arbitration proceedings, it is still to be determined as to what is the liability of the miller and what is the liability of the petitioner. The respondent-department cannot assume that in the arbitration proceedings, the petitioner will be held liable and for that liability, which is yet to be fixed, his entire retiral benefits are withheld. The action of the respondents is wholly illegal. The department can always avail the remedy of obtaining appropriate interim order if they are of the view that they will not be able to effect the recovery, if in the arbitration proceedings, liability of the petitioner is ultimately fixed. In any case, if the matter is to be finally decided, it will take several years. The respondent-department can always execute the said order. However, this itself is no ground to withhold all the retiral benefits of the petitioner.

It being so, impugned order dated 05.11.2014 *(Annexure P-13)* is hereby quashed. The respondents are directed to release the retiral benefits i.e. gratuity, leave encashment and arrears of pay as per order dated 07.01.2011 *(Annexure P-9)* after deducting ₹9,000/- on account of ex-gratia advance. The respondents shall also pay interest @ 9 % per annum starting three months from the date of retirement of the petitioner till its payment.

In view of the above, the petition stands allowed.

October 21, 2016 **(KULDIP SINGH)**
Suresh Kumar **JUDGE**

Whether speaking / reasoned ***Yes***

Whether Reportable ***Yes***