

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 26497 of 2014

Date of Decision:- 25.04.2016

Harbhajan Dass

....Petitioner

Versus

Haryana Vidyut Prasaran Nigam Ltd. and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. V.M. Handa, Advocate
for the petitioner.

Mr. Gaurav Jindal, Advocate
for the respondents.

RITU BAHRI, J. (Oral)

Petitioner by way of present petition is seeking quashing of order dated 23.05.2014 (Annexure P-5) whereby payment of the pension has been stopped.

Petitioner while working as Assistant Foreman in the office of SDO, Operation Sub-Division Babyal, Ambala Cantt. was caught red handed while taking bribe by the State Vigilance Bureau and FIR No.03 dated 07.02.2006 was registered against him with Police Station SVB, Ambala. The Special Judge, Ambala, vide judgment dated

27.08.2011/29.08.2011, convicted the petitioner under Sections 7 and 13 of the Prevention of Corruption Act, 1988 and sentenced him to undergo rigorous imprisonment for a period of two years and to pay fine of ₹2,000/-.

Petitioner retired on 30.11.2008 as AFM from the Office of SDO, Suburban, Sub-Division, UHBVNL, Ganaur. He was released only provisional pension and all other retrial benefits were withheld by the department. After the conviction of the petitioner on 27.08.2011, on the advice given by the L.R., H.P.U, Panchkula, a notice was issued to him under Rule. 2.2.(A) of Punjab C.S.R. Vol. II, for stoppage of pension. The petitioner gave his reply to the said notice dated 31.12.2012. After the conviction, the petitioner has filed CRA-S No.2280-SB of 2011 before this Court. Thereafter, the appeal was admitted by this Court vide order dated 13.09.2011 and interim bail was granted to the petitioner. After considering the reply to the above said notice, the respondents decided to stop the provisional pension of the petitioner, vide impugned order dated 23.05.2014 (Annexure P-5). The petitioner is seeking setting aside of the said order on the ground that once he was granted the provisional pension after his retirement in the year 2008, the same could not be stopped as the conviction was after the date of his retirement.

The only stand taken by the respondent in the written statement is that after the conviction on 27.08.2011, the provisional pension has been stopped under Rule 2.2(a) of the Punjab Civil Services Rules, as applicable to State of Haryana because the conviction has not been stayed and only the sentence has been suspended, the respondents

withheld the pension till the final decision of CRA-S No.2280-SB of 2011, which stands admitted in the Hon'ble High Court. The impugned order has been passed by following the due procedure under Rule 2.2. Punjab C.S.R. and by giving notice to the petitioner.

A similar question came before the Full Bench of this Court in **Punjab State Civil Supplies Corporation Ltd. and others Vs. Pyare Lal, 2013(2) S.C.T. 591** whereby the question before the Full Bench was whether the retrial benefit of an employee, who at time of superannuation was facing departmental proceedings, can be withheld and if so, which of the retrial benefits the employer was entitled to withhold. During the pendency of the department proceedings, the Gratuity could be withheld. Another question for consideration before the Full Bench was whether the encashment of earned leave could also be withheld on the date of superannuation. While referring the Rule 2.2.(c) of Punjab Civil Services Rules, Volume-II, the Full Bench has observed in para No.11 is as under: -

“11. According to us, the aforesaid enunciation is in accord with the correct legal position. Therefore, what is to be seen in the present case is as to whether there is any rule which empowers the appellants to withhold the benefit of encashment of leave. On this issue, we may point out that Full in Dr.Ishar Singh's case (supra) referred to rule 2.2.(c) of the Punjab Civil Services Rules, Volume-II, which is applicable to the appellants as well, and that rule reads as under:-

"Rule 2.2 (c).

(1) Where any departmental or judicial proceeding is instituted under Clause (b) of Rule 2.2. or where a departmental proceedings is continued under Clause (i) of the proviso thereto against an officer who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date of which, upon conclusion of such proceedings, final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his

qualifying service up to the date of retirement or if he was under suspension on the date of retirement up to date immediately proceeding to the date on which he was placed under suspension; but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceedings and of final orders thereon.

The gratuity, if allowed to be drawn by the competent authority on the conclusion of the proceedings will be deemed to have fallen due on the date of issue of final orders by the competent authority.

(2) Payment of provisional pension made under Sub- clause (1) shall be adjusted against the final retirement benefits sanctioned to such officer upon conclusion of the aforesaid proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period."

As per the aforesaid rule, only gratuity or death-cum-retirement gratuity can be withheld and no other retiral benefit is stipulated. Learned counsel for the appellants also could not point out any other rule authorizing the appellants to withhold the benefit of encashment of leave."

The Full Bench finally held that as per the above said Rules only Gratuity or death-cum-retirement gratuity could be withheld, no other retiral benefit is stipulated and further the department could not withhold the benefit of leave encashment as well. The department was bound to give provisional pension and benefit of leave encashment. The Full Bench accepted the view taken by the Division Bench in the case of **G.S. Gupta Vs. Uttar Haryana Bijli Vitran Nigam Limited and others, 2006(8) SLR 690**, in which, it was held that the payment of leave encashment should be released and could not be withheld from an employee merely because some departmental proceedings or criminal proceedings are pending.

Applying the ratio of the above-said judgment of Full Bench to the facts of the present case, the present writ petition is allowed. The order dated 23.05.2014 (Annexure P-5) is set aside and direction to the

respondents to restore the pension and release leave encashment to the petitioner, within a period of one month, from the date of receipt of certified copy of this order.

April 25, 2016
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(RITU BAHRI)
JUDGE