

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CWP No. 26512 of 2014  
Date of Decision:- 25.04.2016

Om Parkash

....Petitioner

Versus

State of Haryana 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. Pankaj Middha, Advocate  
for the petitioner.

Mr. Rajesh Gaur, Additional Advocate General, Haryana.

Mr. Parteek Mahajan, Advocate  
for respondent Nos.2 to 4.

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RITU BAHRI, J. (Oral)

Petitioner by way of present petition is seeking quashing of memo dated 08.10.2013 (Annexure P-2) whereby he has been denied retrial benefits i.e. pension, leave encashment, death-cum-retirement gratuity, commutation of 40% pension etc.

Petitioner was working as Assistant Lineman on 01.05.1979.

Thereafter, on a complaint made by complainant Nishan Singh a criminal case was registered against the petitioner vide FIR No.18 dated 04.11.2010

on account of demanding of ₹1000/- as illegal gratification for changing the transfer. The Additional Sessions Judge, Jind, vide judgment dated 19.03.2012/22.03.2012, convicted the petitioner under Sections 7 and 13 of the Prevention of Corruption Act and sentenced him to undergo rigorous imprisonment for a period of one year and to pay fine of ₹3,000/-.

Petitioner served the department for a long period of 31 years. He retired on 30.09.2011 after attaining the age of superannuation but he has not been released any retiral/pensionary benefits. In this regard, he served a legal notice dated 01.08.2013 (Annexure P-1) to the respondents. His claim was denied by the respondents, vide memo dated 08.10.2013 (Annexure P-2). Presently, the petitioner is suffering from diseases like sugar and hyper tension.

The stand taken by the respondents in the written statement is that as per Rule 2.2 (a) of Punjab Civil Services Rules, Vol. II, the respondents can withhold the pension till the decision of the criminal appeal. It is admitted further that after conviction, the petitioner filed appeal bearing CRA-S No.1288-SB of 2012, which stands admitted and his sentence has been suspended by this Court, vide order dated 17.04.2014.

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 retiral 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 memo dated 08.10.2013 (Annexure P-2) is set aside and direction to the respondents to release the pension and 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  
naresh.k

( **RITU BAHRI** )  
JUDGE