**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-3697-2013 (O&M)
Date of decision: 27.10.2016

Shiv Lal

…..Petitioner

versus

State of Haryana and another

……Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Deepak Sharma, Advocate for the petitioner
Mr.Gaurav Goel, AAG Haryana

1. Whether Reporters of Local Newspapers 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?

Kuldip Singh, J. (Oral)

Petitioner, who was working as Superintendent with the Director of Employment, Haryana, retired on 31.12.2009. According to the petitioner, no disciplinary proceedings were pending against him. It also comes out from the reply of the respondents that on 4.11.2009 (Annexure R2) i.e. before his retirement, the petitioner had addressed a communication to the Director, Employment Department Haryana Chandigarh that he has not committed any irregularity regarding keeping one Jaswant Singh, Assistant in service after age of 55 years. He further disclosed in the said letter that he has come to know that the department has decided to recommend disciplinary action against him. He prayed that action be not taken against him as he is not at fault. Similar communication Annexure R3 was addressed by him on 14.11.2009.

However, it comes out that after the retirement of the petitioner, neither any show cause notice nor any charge sheet was issued to him.

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Though the provisional pension was released to the petitioner but the gratuity and commuted pension were withheld without passing any order to that effect. On 25.10.2011 i.e. little less than two years after the retirement of the petitioner, Director of Employment Haryana Chandigarh addressed a communication (Annexure R5) to Financial Commissioner & Principal Secretary to Government Haryana, Employment Department, wherein the case of the petitioner was stated to have been re-examined and certain comments were submitted regarding Chattar Singh, Assistant and Jaswant Singh, Assistant. The Financial Commissioner, vide letter dated 15.6.2012 (Annexure R6) informed the Director General Employment Department Haryana Chandigarh that the matter has been dropped. Thereafter, the gratuity and commuted value of the pension were ordered to be released to the petitioner vide letter dated 4.7.2012 (Annexure R7).

I have heard learned counsel for the parties and have also carefully gone through the file.

Learned State counsel seeks to rely upon the instructions dated 20.2.2002 (Annexure R1), in which, in Rule 5 clause (iii), it is provided as under to justify the withholding of gratuity and commuted value of pension:-

> *"iii) In case of an employee against whom disciplinary proceedings are dropped on account of lack of evidence (i.e. He is not proved innocent) or disciplinary proceedings are dropped only on the grounds that the employee has retired, no interest would be payable on the retiral benefits in his case till a period of three months from the date of final decision on the disciplinary proceedings. If the delay in these cases is beyond a period of 3 months of the date of decision on disciplinary proceedings and the employee concerned has completed the formalities on his part, interest on such dues from the date of decision of disciplinary proceedings till the date of payment may also be allowed."*

I am of the view that the State cannot invoke the said clause. In the present case, the petitioner retired from service on 31.12.2009 and

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though before retirement, the petitioner was apprehensive of some action but no action was taken. No show cause notice or charge sheet was issued to him and only a letter was written by the Director on 25.10.2011 i.e. little less than two years later. Even during this period, without issuing any show cause notice or initiating departmental proceedings, the gratuity and commuted value of pension were withheld and only provisional pension was released.

I am of the view that if the department was of the view that some disciplinary action is required to be taken, the department should have initiated the same within three months from the date of retirement of the petitioner and if the department failed to initiate the action within time, the entire pensionary benefits should have been released to the petitioner and if later on the petitioner is charge sheeted under Rule 2.2(b), a cut in the pension could be imposed. However, there is no justification in withholding the gratuity and commuted value of pension. Under the colour of initiating the departmental proceeding without issuing any formal orders to that effect, the pensionary benefits could not be withheld.

Accordingly, the petitioner is held entitled to interest on the delayed payment of gratuity, commuted value of pension and the balance pension @ 9% per annum starting three months from the date of retirement till actual payment. Interest be paid within two months from the date of receipt of a certified copy of this order.

The writ petition stands allowed accordingly.

27.10.2016 **(Kuldip Singh)**
gk **Judge**

Whether speaking/ reasoned: Yes
Whether Reportable: No

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