

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

Date of decision: 29.03.2016

CWP No.6456 of 2013

Inderjit

...Petitioner

Vs.

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

- 1. To be referred to the Reporters or not?*
- 2. Whether the judgment should be reported in the Digest?*

Present: Mr. V.B.Aggarwal, Advocate, for the petitioner.

Mr. Nikhil K. Chopra, Addl. AG, Punjab.

RAJIV NARAIN RAINA, J. (ORAL)

Challenge in this petition is to the action of the respondent – Department in withholding Death -cum- Retirement Gratuity (DCRG). The petitioner retired from service on 31st October, 2012. Before he retired, an FIR was registered against the petitioner on 12th August, 2012 under Sections 323/324/506/148/149 IPC. A perusal of the FIR discloses a clash between neighbours in the village of the petitioner. The matter could not be compromised with the help of the Panchayat, which led to the registration of the criminal case. In the free fight, the petitioner was attributed injuries No.1 & 2, on the person of Jobanpreet Singh - complainant which were blunt in nature.

Mr. Chopra states that later on offence under Section 326 IPC was also attracted on an injury caused on the finger of the complainant. The section was added later on by the police.

The charge was framed against the petitioner on 9th July, 2013 i.e. after his retirement. There is no dispute that after retirement the petitioner has been granted full pension provisionally. However, the amount of DCRG has been withheld in view of the pending trial.

Learned counsel for the petitioner submits that the charge against the petitioner was framed after he retired and therefore, merely on the basis of registration of an FIR, pension or pensionary benefits cannot be withheld. He cites the law laid down by Division Bench of this Court in Atam Bodh Sharma Vs. State of Haryana & others 2006 (4) SCT 760 to support his case.

In *Atma Bodh Sharma's case*, Rule 2.2(b) of the Punjab Civil Services Rules was considered by the Bench in the background when an FIR was lodged against Atam Bodh Sharma. The Bench took the view that Explanation (2)(i) of Rule 2.2(b) means it to evident that judicial proceedings would be deemed to have been instituted on the date on which challan is submitted to a criminal court and if challan is not presented before the employee retires, he would be entitled to his terminal benefits. The Bench applied the law in Union of India Vs. K.V. Jankiraman, (1991) 4 SCC 101, where the Supreme Court held that disciplinary proceedings begin with the charge-sheet or when a charge-sheet in a criminal case is issued to the employee then alone can it be said that the departmental proceedings or criminal prosecution is initiated against the employee, as the case may be. The final report/ challan in the present case was presented under Section 173 of the CrPC on 1st December, 2012 before the trial Court, while the charge was framed by an order dated 9th July, 2013 passed by the Judicial Magistrate.

Therefore, on the date of retirement, there was no legal impediment in the way of the petitioner and gratuity being a one-time settlement, the right to it matures on the date of retirement and cannot be postponed or the money touched even by a bargepole. Accordingly, the petitioner is held entitled to his DCRG basket.

There is another aspect of the matter which deserves some attention, that is, where the Court considers the nature of the offences committed by an employee; whether they relate to his employment or otherwise. There can be no doubt that the offences in this case arises not out of employment but are private acts of commission or omission which have taken a criminal flavor with the registration of the case. The court is not called upon in the present case to consider whether any of the offences with which the petitioner was charged involved moral turpitude as that aspect would remain subject to criminal trial, the result of which is not known yet. An FIR was lodged against the petitioner before retirement but the charge was framed later on leaving no margin for withholding money belonging to the petitioner.

The reliance of the learned counsel for the petitioner on the decision rendered by the learned Single Judge of this Court in CWP No.20529 of 2006 titled 'Darshan Singh Vs. State of Punjab & others' decided on 25th May, 2011 is not also misplaced. The learned Single Judge has followed the Division Bench judgment in *Atam Bodh Sharma's case* to reach the conclusion that there is no provision in the Punjab Civil Services Rules which may entitle the Government to initiate post retiral action against the retired Government employee for his conviction for an offence unrelated to service misconduct. This is the other protection afforded to the petitioner and persons like him facing criminal trial in case final report was not presented to the trial court or the charge framed by a criminal court of competent jurisdiction.

As a result of the above discussion, this petition is allowed. The impugned order dated 31st October, 2012 (Annex P-4) is set aside. A mandamus is issued to the respondents to pay the withheld amount of gratuity and other retiral benefits, if any remaining unpaid, within two months from the date of receipt of certified copy of this order. The amount of gratuity having been wrongly withheld on an incorrect premise would also earn interest at the rates fixed on fixed deposits receipts by nationalized banks. The same is directed to be calculated and paid in addition to the principal DCRG but the element of interest will be calculated from the expiration of a period of three months from the date of retirement till realization to make sufficient elbow room for office procedure to have been followed had there been no criminal case pending.

29.03.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE