

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

LPA No.1599 of 2015 (O&M)
Date of Decision: 19.09.2016

Punjab Agricultural University, Ludhiana and others

...Appellants

Versus

Kuldip Chand Bhargav

....Respondent

**CORAM : HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

Present:- Mr. H.N.S.Gill, Advocate,
for the appellants.

Mr. Namit Kumar, Advocate,
for the respondent.

SUDIP AHLUWALIA, J.

1. This Intra Court appeal is directed against the judgment of the Ld. Single Judge passed in CWP No.17987 of 2005 (O&M) dated 11.05.2015. By virtue of the impugned judgment, various orders passed by officials of the appellant (Punjab Agricultural University, Ludhiana) against the respondent were set aside and the University Authorities were directed to release all the retiral benefits of the respondent from the date of his retirement till its payment, apart from the amount already deducted from the retiral dues along with interest at the rate of 8% per annum.

2. The background of the matter is that the Writ Petitioner/Respondent, who had initially joined as a Sectional Officer in the Respondent/University on 7.12.1970, after being promoted during his service there, retired on attaining the age of superannuation on 31.3.2002.

He was granted Provisional Pension with effect from 1.4.2002, after his order of superannuation had been issued four days earlier. His retiral dues were, however, withheld, on account of which, he issued a Legal Notice upon the University/Authorities followed by Civil Writ Petition No. 9411 of 2004 for release of the same. It was disposed of by this Court on 12.7.2004 with a direction upon the respondents to take a decision on the Legal Notice by passing a Speaking Order within a period of two months. Consequently, the claim for retiral benefits was rejected by respondent No. 4 on behalf of the University, vide his communication dated 16.9.2004, purportedly in compliance of the order dated 12.7.2004. In the aforesaid communication (Annexure-C), reference was made to various correspondences purportedly issued from the Office of Executive Engineer (C-II), and other allied offices, and the claim for retiral benefits was ultimately rejected with the following notings -

“In view of the facts and circumstances explained above you are yourself responsible for the delay in release of your retiral benefits. As per rule 5.6 of Manual of Orders, the Sectional Officers/Junior Engineer is responsible for the execution of work and rendering its account in time. Thus by not rendering the accounts of the works got executed by you in the capacity of the Sectional Officer/Junior Engineer and by not returning the official record viz measurement books, MAS Registers, Indent books etc., you have failed to discharge your legitimate duties. By not performing your legitimate duties, you have rendered yourself liable for disciplinary/legal action and forfeited your right to retiral benefits. Therefore, you are not entitled for any relief in terms of the orders passed by the Hon'ble Punjab and Haryana High Court. However, your case

can be reconsidered, provided you submit the accounts of all the works/imprest and also return the official record, otherwise the University authorities shall be compelled to proceed legally against you.”

3. The petitioner/respondent in challenging the aforesaid order of rejection passed by respondent No.4 filed the next Writ Petition (CWP No. 17987 of 2005), in which, he specifically claimed that he had already rendered the necessary accounts, which fact was even noted by the Vice Chancellor of the University. The relevant specific claims made by the petitioner/respondent in this regard, as narrated in Para 17(vi) of the Writ Petition, are set down below -

“That the petitioner was served upon a notice to render the accounts of works executed by him. On 22.04.1989 petitioner was given one month more time by the Vice Chancellor, PAU to render the accounts. The Vice Chancellor on 14.12.2000 perused the reply of the petitioner and categorically observed that “the perusal of the file shows that Sh. Bhargav has rendered the accounts of all the advances taken by him as Section Officer and it has been confirmed by the Estate Officer as has been indicated at page 242 NP”. In view of this Sh. Birla becomes entitled for the grant of Senior Scale of Rs.3000-45 with immediate effect from due date, but no such recommendation has been made specifically. The petitioner has inspected the files from the office. The record showing the passing of these orders by the Estate Officer and Vice Chancellor (which are reproduced herein above) may be verified by summoning the record from the University itself.

That from the perusal of the orders passed by the Estate Officer and Vice Chancellor, it is crystal clear that the petitioner had already rendered the accounts

pertaining to the year 1970-1974 while working as Sectional Officer. Thus the present proceedings initiated by the officials time and again asking the petitioner to render the accounts for the same period is actuated with mala-fide just to deprive the petitioner from his retiral benefits. The relevant part of the proceedings are annexed as Annexure P-18.”

4. In addition, it was his contention that the order for recovery of pension passed by the University Authorities was in violation of the Pension Rules of the University. It may also be mentioned that during pendency of the writ petition, he had filed C.M. No. 17684 of 2007 seeking release of his gratuity amount, which was allowed by the Court on 25.11.2008 and the University Authorities were directed to release the same. They subsequently filed C.M. No. 3230 of 2009 for recalling/modification of the aforesaid order. The same was disposed of by the Court by its subsequent order passed on 13.08.2010. We will proceed on to consider the ramifications of that order at a later stage, but here it would be apposite to first acquaint ourselves with the University's Rules governing the Pension and Provident Fund of its retired employees. The same have been derived from the Punjab Government Pension Rules/Instructions as has been mentioned in Clause 2.4 of the relevant Statutes, ***“Any restrictions concerning the withholding, reducing or withdrawing of pension or any part thereof from the pensioner, shall be regulated as per corresponding provisions of the Punjab Government Pension Rules/Instructions as applicable from time to time.”***

5. Regarding recoveries from pension, the Pension Rules of the University provide as follows -

“11.4 (a) No recovery may be made from the pension of any employee (whether by reduction of pension or deduction of pension) which has already been sanctioned or which is in the progress of being sanctioned, without the consent of the pensioner in respect of any dues or overpayment such as :

- (i) Recovery as a punitive measure in order to make good loss caused to the University as a result of negligence or fraud on the part of the person concerned while he was in service;*
 - (ii) Recovery of other University dues such as house rent, outstanding advance; and*
 - (iii) Recovery of non-University dues.*
- (b) In such cases, however, the Pension Sanctioning Authority would have to consider whether they should not try to effect the recovery otherwise than from Pension, e.g. by going to a Court of Law, if necessary.”*

6. Rule 11.5 (a) lays down the circumstances, in which, the University may withhold or withdraw any part of a retired employee's pension. Rules are set out as below -

“11.5(a) The University reserves to themselves, the right of withholding or withdrawing a pension or part of it, whether permanently or for a specific period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to the University, if in a departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence during the period of his service rendered upon re-employment after retirement.

(b) The departmental proceedings, if instituted while the employee was in service, whether before his retirement or during his re-employment, shall after the final retirement of the employee be deemed to be

proceeding under clause (a) above and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service.

(c) Such departmental proceedings, if not instituted while the employee was in service whether before his retirement or during his re-employment:-

(i) shall not be instituted save with the sanction of Vice-Chancellor;

(ii) shall not be in respect of any event which took place more than four years before such institutions; and

(iii) shall be conducted by such authority as may be decided by Vice-Chancellor and in accordance with the procedure applicable for departmental proceedings in which an order of dismissal from service could be made in relation to the employee during his service.”

7. As seen from the Rules 11.4 and 11.5 above, no recovery from pension can be made, except in a situation where the departmental proceedings were already pending against a Retired Employee. Admittedly, such proceedings were initiated in 1986-87, which is 15/16 years before the respondent's superannuation. It is no where the case of the Appellants/University Authorities that the Petitioner/Respondent was actually found guilty, nor any copy of the Enquiry Officer's Report or the Disciplinary Authority's final order in this regard has been placed on record.

8. In this regard, the writ petitioner/respondent had two grievances. Firstly, according to him, the event in question took place in between the years 1970 to 1974, which is almost three decades before his retirement, on account of which, the departmental proceedings after his

retirement could not have been initiated in terms of Rule 11.5 (c) (ii) quoted above. The second grievance is that the Punjab Government Pension Rules/Norms do not authorize recovery from pension in excess of one third of the Pension amount, whereas the University/Authorities in the present case ordered such recovery at the rate of 60% of pension per month. The University has sought to counter the first objection by contending that no departmental proceedings were initiated by them after the respondent's retirement, since such proceedings had already commenced as far back as in 1986-87. In this regard, it has been claimed that the Charge-Sheet for non-rendering of the accounts of works had been issued to the respondent, vide Office Communication No.A.1/86/2963-64 dated 16.5.1986, and that subsequently, one Sh. R.P.Rana, Accounts Officer was appointed Enquiry Officer, vide Endst. No.Admn.VII.AU.87/1303-08 dated 10.1.1987 to enquire into the Charges against him.

9. On the contrary, from the order passed by the Ld. Single Judge in the Writ Petition on 13.8.2010, which was in relation to CM No.3230 of 2009 filed on behalf of the present appellants for recalling/modifying an earlier order dated 25.11.2008, vide which, the gratuity amount of the Writ Petitioner had been ordered to be released, it is seen that the University/ Authorities had been directed to complete the pending disciplinary proceedings against the Writ Petitioner. The relevant extracts of the Order dated 13.8.2010 are set out below -

“Order dated 25.11.2008 passed by this Court was after hearing the counsel for the parties, as per the pleadings and grounds raised by them at that moment. Order dated 25.11.2008 has also been complied with. However, keeping in view that the interest of the

applicant-respondents/University may not adversely be affected by passing of the said Order, it is added here that the Order dated 25.11.2008 shall be subject to the final outcome of the present writ petition.

It has been brought to the notice of the Court that action against the petitioner has as yet not been taken in the disciplinary proceedings, which were initiated during his service tenure.

Respondent/University should not sleep over the matter and cannot keep an employee in limbo for all times to come. It is expected that the University should take recourse to necessary measures and finalize the said proceedings at the earliest in accordance with law.....” (Emphasis added)

10. On thus going through the text of the aforesaid order, it becomes crystal clear that the direction of the Ld. Single Judge was to complete the pending disciplinary proceedings against the Writ Petitioner. But the authorities appear to have adopted a novel approach by directly sending a Show Cause Notice for recovery of an amount of ₹ 8,91,714-95 P., acceptance of which was purportedly refused by the petitioner or his family members, after which, the Order for recovery of the aforesaid amount from his pension was passed by the Registrar of the University on instructions of the Vice Chancellor. It, therefore, becomes clear that the compliance of the earlier order dated 13.8.2010 was not by way of resumption of the allegedly pending departmental proceedings against the Writ Petitioner, but by way of straightway issuing a demand notice for payment of a specified monetary amount upon him, which, on the face of it, is incompatible with the direction contained in the order dated 13.8.2010, as well as the claim of the University/Authorities that the retiral dues were

being withheld on account of 'pendency of departmental proceedings' against the Writ Petitioner.

11. Now, we have already noted the averments of the Writ Petitioner to the effect that he had already submitted the relevant accounts, as reproduced from his pleadings in Para 17(vi) of the Writ Petition, in earlier Para 3 of this Judgment. It is, however, remarkable that in their written statement dated 4.7.2013, the appellants as respondents in the Writ Petition did not make any reference to the aforesaid averments of Para 17, much less, to deny the same categorically.

12. It may also be observed that copies of all the relevant official documents obviously would naturally have been in the custody of University/Authorities and admittedly, the Writ Petitioner after his retirement could have no access to them. Now Annexure P-26 goes to show that he had approached the State PIO of the Appellant/University under the RTI Act for copies of certain specified documents, including the Enquiry Report of the departmental proceedings conducted against him and various other correspondences and documents mentioned in the application. The same is Annexure P26 on Pages 182 & 183 of the Paper Book. Surprisingly, such request of the Writ Petitioner was rejected by the authorized PIO of the University, by his letter dated 30.8.2013 (Annexure P27), not on the ground of availability of the documents, but for the simple reason that the same could not be provided to the applicant *“because court cases filed by you before Hon'ble Sessions Judge, Ludhiana and Hon'ble Punjab and Haryana High Court are consideration. As per legal advice taken in this regard from the University Lawyer, it has been asked not to provide the demanded information. Therefore, the information sought by you cannot be provided*

under Section 8(1)(h) of the R.T.I. Act, 2005". The appellants, through their own authorized officer in the rank of Deputy Registrar, have thus flagrantly acted in a manifestly arrogant manner only to harass the petitioner or withheld the truth from him. At any rate, it was incumbent upon the Appellants/University authorities to show from their own side what the result of the pending departmental proceedings against the Writ Petitioner was, since as per standing Rules, they could not have ordered recovery from the respondent's pension unless he had been found guilty in the departmental proceedings. But they have not even taken a stand that the aforesaid proceedings initiated in 1986-87 had ever concluded at any stage much less that the result had gone against the respondent.

13. For the above reasons, we find no merit in this appeal which is accordingly dismissed.

(SURYA KANT)
JUDGE

(SUDIP AHLUWALIA)
JUDGE

19.09.2016
adhikari

Whether speaking/reasoned : ***Yes/No***

Whether Reportable : ***Yes/No***