

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-10162-1997 (O&M)
Date of decision: 14.03.2017

M.N. Bhagat

.....Petitioner

versus

Haryana State Electricity Board

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Sanjiv Gupta, Advocate for the petitioner
Mr.U.K.Agnihotri, Advocate for the respondent

- 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 was working as Superintending Engineer (Civil) with Haryana State Electricity Board and retired from service on 31.5.1994. It also comes out that during service on 4.1.1989, he was served with a charge sheet containing 8 articles of charges. As the petitioner denied the charges, therefore, an inquiry officer was appointed. Inquiry Officer submitted the report on 2.9.1992, whereby charge nos.3 and 4 were held to be "proved", whereas other 6 charges were held to be "not proved". Thereafter, a show cause notice was issued to the petitioner on 26.5.1993/3.6.1993 (Annexure P1), proposing the punishment of recovery of Rs.22,35,000/- and stoppage of two increments without commutative effect. However, after considering the reply and taking into consideration the relevant record, the punishing authority vide order dated 9.1.1996 (Annexure P3) found that the said two charges are also not proved and consequently, the petitioner was exonerated.

Petitioner claimed that during pendency of enquiry, only 2/3rd provisional

pension was released to him. Remaining dues were released to him as under:-

<i>Date of payment</i>	<i>Particulars of payment</i>	<i>Amount of payment</i>
06/09/95	Pension – 6/94 to 8/95	Rs.57,288/-
15.4.96	Leave encashment	Rs.89,768/-
04/05/96	Gratuity	Rs.1,00,000/-
20.5.96	Arrears of pension 6/94 to 9/96	Rs.40,261/-
07/06/96	CVP	Rs.1,20,192/-
01/02/97	Arrears of CVP	Rs.3,921/-
	Balance of CVP	Rs.4,043/-

Petitioner claimed interest on the delayed payment of the arrears.

In the reply, respondents have not denied the departmental proceedings. While stating about the charges, it was stated that when the departmental inquiry was finalized, the arrears of provisional pension, leave encashment and gratuity was approved and released. Commuted value of pension was also released.

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

Admittedly, the inquiry was pending against the petitioner when he retired from service on 31.5.1994 and inquiry report was already submitted on 2.9.1992 against him and he was held guilty of two charges. On the retirement of the petitioner on 31.5.1994, 2/3rd provisional pension was released to him. Since the petitioner was held guilty, the government was competent to withhold the part of the leave encashment and gratuity. Ultimately, the matter was decided on 9.1.1996, vide which, the inquiry report qua charge no.3 and 4 was also rejected and the petitioner was exonerated of the said charges also. Therefore, the leave encashment and gratuity became due when the matter was finally decided dropping the charges. From the said date, payment of leave encashment and gratuity and

arrears of pension was made within three to four months and there is no inordinate delay. The commuted value of pension is to be computed only after pension case has been finally decided. The commuted value of pension was also released on 7.6.1996 i.e. with the delay of five months.

Learned counsel for the petitioner has placed reliance upon the Full Bench authority of this Court in Dr.Ishar Singh vs. State of Punjab and another, 1994(1) S.C.T. 563 and has pressed that in fact, 100% pension should have been released to him and commuted value of pension should also have been released to him subject to the decision in the pending inquiry. A perusal of the said authority shows that following conclusions were drawn by the Full Bench of this Court:-

- (i) The Government has no right to withhold or postpone pension or the payment on account of commutation of pension. The State is bound to release 100 per cent pension at the time of superannuation, may be provisionally.*
- (ii) The Government can withhold the gratuity or other retiral benefits except pension or postpone payment of the same during pendency of an enquiry.*
- (iii) Pension cannot be adversely affected before a finding of guilt is returned.*
- (iv) The Government can initiate Departmental enquiry after long lapse before retirement, rather there is no limitation for initiating the departmental enquiry from the date of incident before retirement. The delay and the explanation for the same may reasonably be taken note of keeping in view its likelihood to cause prejudice to the delinquent if the enquiry is challenged in appropriate proceedings.*
- (v) The enquiry proceedings cannot be quashed solely on the ground of long pendency.*
- (vi) There is no effect of superannuation on the pendency of the enquiry proceedings.*

(vii) The recovery of the Government dues can be made from gratuity or other retiral benefits only.

When the ratio of the said case is applied to the facts of the present case, it comes out that inquiry report was submitted on 2.9.1992. Petitioner retired from service on 31.5.1994 i.e. after about one year and eight months of submission of inquiry report. This was the sufficient time for the department to pass a final order on the inquiry report. However, the same was kept pending for about three years and four months and the final order was passed on 9.1.1996. Therefore, applying ratio of the aforesaid case, I am of the view that full pension should have been released to the petitioner because he was not at fault for delay caused by department in taking the decision on the inquiry report. He was also entitled to commuted value of pension on the 100% pension. Since in the show cause notice dated 26.5.1993/3.6.1993 (Annexure P1), the proposed punishment was for the recovery of Rs.22,35,000/- and stoppage of two increments without commutative effect, therefore, the department could withhold the leave encashment and gratuity from which the said recovery could be effected.

In view of the matter, the petition is allowed to the extent that the petitioner is entitled to interest @ 9% per annum on the delayed payment of arrears of pension, arrears of commuted value of pension from the date it fell due till actual payment. The respondents shall also check up whether any balance payment of commuted value of pension of Rs.4043/- is still due and if the same is due, the same shall also be paid with above noted rate of interest.

14.03.2017

gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:

Yes

Whether Reportable:

No