

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

**CWP No.22218 of 2014 (O&M)  
Date of decision : March 28, 2017**

**Mrs. Varinder Kaur**

**..... Petitioner**

**Versus**

**State of Punjab and others**

**..... Respondents**

**CORAM : HON'BLE MR. JUSTICE KULDIP SINGH**

**Present:-** Mr. Rajinder Sharma, Advocate for the petitioner.

Mr. Anshul Gupta, AAG, Punjab.

Mr. Simranjeet Singh, Advocate for respondent Nos.1, 3 and 4.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

**KULDIP SINGH J. (ORAL)**

Petitioner has challenged the order/resolution dated 23.05.2012 (Annexure P-5), vide which respondent No.4 has released only 75% of the pension and 90% of the gratuity on account of pendency of CWP No.1835 of 2008, filed by one Suresh Chander, junior to the petitioner, claiming seniority above the petitioner.

It comes out that the petitioner was originally appointed as Clerk on 02.05.1977. She was promoted as Auction Recorder on notional basis on 23.07.2007 w.e.f. 01.11.1983. However, one Harish Chander, Auction Recorder challenged the said promotion by way of filing CWP No.1835 of 2008. The said petition is lying admitted and has not been

decided so far. Later on, the petitioner was notionally promoted as Mandi Supervisor w.e.f. 18.02.2008, vide Annexure P-3 subject to the decision of CWP No.1835 of 2008. The petitioner retired from service as Mandi Supervisor on 31.08.2011. After retirement of the petitioner, vide order dated 14.07.2014 (Annexure P-12), he was notionally promoted as Mandi Supervisor w.e.f. 10.07.1991 to 17.02.2008. However, his pay and pension have not been refixed from the said date.

The reply of the respondents shows that the said part of the pension and gratuity has been withheld only on account of pendency of CWP No.1835 of 2014, apprehending that if the seniority and promotion of the petitioner are quashed, the respondents will not be able to recover the dues from the petitioner.

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

It is not the plea of the respondents that any stay has been granted in CWP No.1835 of 2008. At the most, the promotion of the petitioner is subject to the final out come of the said writ petition. However, the petitioner has retired from service on 31.08.2011 and part of his pensionary benefit cannot be withheld without any service rules. Whatever pension and gratuity is payable and whatever pay has to be fixed, in view of the notional promotion as Mandi Supervisor w.e.f. 10.07.1991, the same has to be paid, subject to the decision of the aforesaid writ petition. It is to be noted here that it may take years to decide an admitted writ petition and further remedy is available with one or the other party. The matter may not be finalized during the life time of the parties. Therefore, without any rule,

the part of the pension and gratuity cannot be withheld. As such, the present petition is allowed and the impugned order/resolution dated 23.05.2012 (Annexure P-5) is hereby quashed. Respondent No.4 is directed to release the remaining withheld part of the pension and gratuity along with interest @ 9% per annum from the date it became due. The respondents are also directed to refix the pay and pension of the petitioner, in view of his notional promotion as Mandi Supervisor w.e.f. 10.07.1991 and also release the arrears. However, it will be subject to the decision of CWP No.1835 of 2014 and in case, the matter is decided against the petitioner and it is found that some recovery is to be made from him, the respondents shall always be competent to recover the same from the pension of the petitioner. The respondents are also directed to comply with this order within three months from the date of receipt of certified copy of this order.

**(KULDIP SINGH)**  
**JUDGE**

**March 28, 2017**

sarita

Whether speaking / reasoned                      Yes

Whether Reportable:                                      No