IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 122

Civil Writ Petition No.21415 of 2017 (O & M)
Date of Decision: *September 20, 2017*

Mohinder Singh Teji

..... PETITIONER

VERSUS

State of Punjab & others

..... RESPONDENTS

. . .

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

. . .

PRESENT: - Mr. H.S. Brar, Advocate, for the petitioner.

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Jaspal Singh, J

1. The instant petition has been preferred under Article 226/227 of the Constitution of India, for issuance of a writ in the nature of Mandamus, directing the respondents to release the retiral benefits of petitioner including pension, gratuity, leave encashment etc. which have been withheld illegally.

2. Learned counsel for the petitioner has contended that petitioner joined Punjab Police as Deputy Superintendent of Police on April 21, 1990 and became IPS officer in the year 2005. He retired on July 31, 2016 but his retiral benefits have not been released so far and there is no departmental enquiry against him. Though, there is matrimonial dispute going on between the petitioner and his wife, it has nothing to do with the release of retiral benefits.

3. This Court has given an anxious thought to the aforesaid submissions made by learned counsel for the petitioner and gone through the record available.

4. As per Instruction No. 3/63/2003-03 FPPC/6058 dated July 16, 2003 issued by the Government of Punjab, Department of Finance, the Government is keen that no hardship is caused to the retiring employee and as far as possible, all the retiral benefits should be paid to an employee on the date of his/ her retirement and where this is not possible because of procedural formalities, these should be cleared within two months of the date of retirement.

5. The Full Bench judgment of this Court in **Dr. Ishar Singh v. State of Punjab and another**, **1994(1) SCT 563**, is relevant for resolving the controversy, in hand, wherein, it has been held that the State is liable to pay pension and it cannot escape its liability. The retiree would be entitled to 100% provisional pension till the Government finally sanctions pension or imposes any cut in pension. It has also been held that merely on pendency of enquiry, the pension cannot be withheld. The observations of the Full Bench of this Court as made in Dr. Ishar Singh's case (supra) in para Nos.31, 34, 53 and 59 are reproduced as under:-

> "31. The pension can be affected for the reasons provided by statutory rules. The pensionary or retiral benefits could not be refused solely on the ground of initiation or intending initiation of disciplinary proceedings. The finding of misconduct envisaged by rules is a pre-condition for withholding or withdrawing pension. Pension can be affected but the reduction has to be commensurate with the correlation to the gravity of the charge attributed. Pension can only be adversely affected after show-cause notice is served and finding returned in accordance with the procedure laid down by the statutory rules as well as keeping in view the principles of natural justice. The pension cannot be withheld retrospectively though it can be done prospectively. Concept of grant of provisional pension is provided under two contingencies

viz. (i) when grant of gratuity or pension is still under consideration of the authority before it finally sanctioned the pension. The Government was unable to finalise the pension and finally determine the admissible pension for some reasonable cause and (ii) where some disciplinary proceedings are pending on the date of superannuation and they are continued after retirement.

32 and 33. xxx xxx xxx xxx

34. While interpreting pension rules one has to keep in mind that justice is constant. Its object and purpose is to render each one his due. The prime consideration of pension is its social welfare nature. Attempts must be made not to negate what the pension rules intend to achieve. Though sympathy may be irrelevant in the interpretation of the rules yet the fact of an interpretation resulting in depriving a person of his
pension, and thereby rendering the purpose of pension rules as ***non-est*** cannot be lost sight of. Since the pension rules provide for alleviating hardship to the retiree, rule of interpretation according to spirit and not to the letters should be adhered to as far as possible. Law is for deviating hardship and not to result in hardship. It would be misplaced (sic) to mention that it is a serious matter to deprive a person his source of livelihood when one's physical and mental faculties have grown weak because of age and he cannot withstand strenuous work to earn his bread.

35 to 52. xxx xxx xxx xxx

53. On comprehensive reading of Rules 2.2(a), 2.2(b) and 2.2(c), it emerges that the State preserves to itself the right to withhold or withdraw pension or any part of it on the happenings of circumstances imbibed in the statutory rules. Further on carefully and assiduously examining the arguments, it is quite clear that by providing Rule 2.2 Govt. has preserved its right to adversely affect the pension after the person has retired and pension has been granted to him. It provides that the pension can only be withheld or withdrawn if the pensioner after his retirement is found to be guilty of grave misconduct or has been convicted of a serious crime. Summary procedure for affecting the pension adversely has been provided by this subrule. The legislature has designedly desired by enacting statutory provisions that ordinarily where part of pension is withheld or withdrawn, it should not exceed 1/3 of the pension of originally sanctioned with a further limit that the pension cannot be reduced to less than Rs.40/- per month. Rules make it incumbent and impose a statutory duty on the authorities that while applying cut to pension, it should be kept in view, that

> the pensioner is left with an adequate pension for his maintenance.
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> 54 to 58. xxx xxx xxx xxx]
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> 59. I may venture to put plainly the conditions imposed by Rule 2.2(b). The proceeding can only be instituted with the sanction of the Government. The event relating to which proceedings are proposed to be instituted should not be more than four years only on the date of institution of the proceedings. The authorities are required to proceed in the manner and follow the procedure provided for passing an order of dismissal from service. When judicial proceedings are required to be initiated, it is further enjoined that the Public Service Commission should be consulted. It may be pertinent to notice that the State has provided by statutory rules in the form of notes which would be deemed to be part of the rules (as observed in earlier part of the judgment and as laid down by the Hon'ble Supreme Court) that ordinarily affected pension shall not exceed 1/3rd of the pension sanctioned. Further emphasis has been laid down that adequacy for maintenance of the retiree would be considered."

6. In the case in hand, pension papers of petitioner were though prepared on April 28, 2016 and he retired on July 31, 2016, yet pensionary benefits have not been released despite the fact that there was no enquiry against the petitioner. As per the settled principles of law and government instruction(s), petitioner is entitled to pensionary benefits.

7. As a result of aforesaid discussion, instant petition is allowed and respondents are directed to release all the pensionary benefits of petitioner within a period of three months from the date of receipt of a certified copy of this judgment, failing which, it shall entail interest @ 9% per annum till its realization. In case of non-compliance, the petitioner shall be at liberty to approach this Court.

(Jaspal Singh)
Judge

September 20, 2017
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Whether Speaking/ Reasoned: Yes/ No
Whether Reportable: Yes/ No