IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.2933 of 2016
Date of Decision: August 04, 2017

Chandigarh Administration through Registrar, Co-operative Societies, Chandigarh

...Petitioner

Versus

Vijay Kumar Sharma & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AJAY KUMAR MITTAL, JUDGE
HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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Present: Mr.Suvir Sehgal, Senior Standing Counsel with Mr.Vikas Bali, Advocate, for the petitioner.

Ms.Sushma Chopra, Advocate, for respondent No.1.

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AMIT RAWAL, J.

1. Chandigarh Administration has challenged the order of the Central Administrative Tribunal, Chandigarh Bench (for short "CAT") dated 16.4.2015 (Annexure P-1) passed in O.A.No.1480/PB/2013 titled as "Vijay Kumar Sharma Versus Union of India & others", whereby direction has been issued to the petitioners to release the Death-cum-Retirement Gratuity (for short DCRG") to applicant-respondent No.1 with interest @9% from the date it became due till its final payment.

2. The facts leading to the filing of the Original Application, at the instance of applicant-respondent No.1 before the CAT, were that on 31.8.2012, while working as Senior Assistant, applicant-respondent attained the age of superannuation, but was not given his pensionary benefits. In this regard, the applicant-respondent submitted a representation dated 17.1.2013 for release of the pension and pensionary benefits, but no action

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was taken. Thereafter, he submitted further representations dated 29.4.2013 and 24.5.2013 (Annexures A-3 and A-4 respectively). Vide letter dated 27.5.2013 (Annexure A-5), i.e., post retirement, the Joint Registrar of Cooperative Societies, U.T.Chandigarh called upon the applicant-respondent to hand over the registration registers to one Lalit Kumar, Clerk within a period of three days or submit the receipt of registration registers handed over to him, failing which contemplated action was to be taken.

3. The contention of applicant-respondent No.1 before the CAT was that he had unblemished record and no enquiry proceedings had been taken against him for non-handing over of the charge at the time of his superannuation and, thus, would not fall within the definition of serious offence as per the provisions of Rule 2.2 (b) of the Punjab Civil Services Rules (Vol.II) (for short “Punjab Rules”). It was claimed that applicant-respondent No.1 was entitled to the retiral benefits on superannuation. The CAT has allowed the Original Application filed by applicant-respondent.

4. Mr.Suvir Sehgal, learned Senior Standing Counsel assisted by Mr.Vikas Bali Advocate, representing the petitioner submitted that the benefits of leave encashment, final payment of GPF and GIS, commutation and pension have already been released to the applicant-respondent except DCRG. It was urged that the necessity for withholding the DCRG had arisen as the applicant/respondent did not hand over the registration registers of the Cooperative Societies, but had handed over the keys only. Further various letters dated 29.7.2013, 31.10.2013 and 6.12.2013 were sent to the Senior Superintendent of Police, U.T.Chandigarh for instructing the Station House Officer, Police Station, Sector 17, Chandigarh to lodge an FIR against the applicant-respondent.

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5. It was next contended that the CAT has committed illegality in issuing the direction to the petitioners, whereas the claim of applicant-respondent No.1 falls within the provisions of Rule 2.2 (c) of the Punjab Rules, which empowers the department not to reimburse the DCRG to a government official, against whom judicial proceedings are contemplated. It was pointed out that a charge sheet was also issued vide memo dated 27.4.2016 coupled with Annexure-1 (articles of charges), Annexure-II (statement of imputations of misconduct or misbehaviour, Annexure III (list of documents) and Annexure-IV (list of witnesses). Finding the reply of the applicant-respondent to be not satisfactory, Shri Sanjeev Jindal, Addl.District & Sessions Judge (Retired) was appointed as an Enquiry Officer.

6. Per contra, Ms.Sushma Chopra, learned counsel representing applicant-respondent No.1 submitted that there is no illegality or perversity in the order of the CAT. The department cannot withhold DCRG as no condition was imposed in the retirement order dated 31.8.2012. The registration registers were always in the custody of the Clerk and not with the applicant-respondent. In this regard, he drew the attention of this Court to letter dated 27.9.2013 (Annexure A-7). Even the police did not find it to be an appropriate case to register an FIR against the applicant-respondent despite perpetual requests by the department. It was claimed that the Enquiry Officer, vide report dated 23.1.2017, copy of which has been handed over to the Court during the course of the hearing, exonerated him from all the charges and allegations, and, thus, urged this Court for dismissal of the writ petition.

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7. We have heard the learned counsel for the parties and appraised the paper book.

8. The admitted position on record is that the applicant-respondent No.1 had been exonerated in an enquiry vide report dated 23.1.2017, owing to imploring allegation of non-handing of the registration registers, no case is made out on behalf of the petitioners to withhold the DCRG. Further, the CAT passed the impugned order dated 16.4.2015 in O.A.No.1480/PB/2013, which does not call for any interference by this Court. The relevant observation made while disposing the Original Application reads thus:-

> *9. In the light of the above, we now examine the facts of the case. The relevant rule formulation which deals with case is 2.2(b) of the PCS Rules (Vol.II). For better appreciation, the same reads as under:-*
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> > *2.2(b) The Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if, in a departmental or judicial proceeding, the pensioner is found guilty of grave mis-conduct or negligence during the period of his service, including service rendered upon re-employment after retirement :*
> >
> > *Provided that-*
>
> *(1) Such departmental proceedings, if instituted while the officer was in service, whether before his retirement or during his re-employment, shall after the final retirement of the officer, be deemed to be a proceeding under this article and shall be continued and concluded by the authority by which it*

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was commenced the same manner as if the officer had continued in service;

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

(i) shall not be instituted save with the sanction of the Government;

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

(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the officer during his service.

1. These rules may be called, the Punjab Civil Services (3rd Amendment) Rules , Volume II , 1986.

2. In the Punjab Civil Services Rules, Volume II , to clause (c) (1) rule 2.2, the following proviso shall be added, namely:-

"Provided that where Departmental Proceedings have been instituted under rule 10 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 for imposing any of the penalties specified in clauses (i) and (ii) & (iv) of rule 5 of the said rules, the payment of gratuity or death-cum-retirement gratuity, as the case may be, shall not be withheld."

10. A perusal of the above extraction makes it clear that the legislature has given power to the respondents to withhold the pension/DCRG of a retiree, if any pecuniary loss is caused to the government and in a departmental or judicial proceedings, it is established that the pensioner is found guilty of grave misconduct or negligence during his service including service rendered on re-employment after retirement. Therefore, it can safely be concluded that if on date of retirement, the inquiry is pending or he has already been held guilty of charges on a pecuniary loss to the department, then the respondents can

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withhold the amount of DCRG otherwise under the above rule, they are precluded from doing so. The above Rule 2.2 (b) of the PCS Rule, came for interpretation before the Hon'ble High Court in case of L.R. Dhawan's case (supra), wherein the Hon'ble High Court in para 4 has recorded a categorical finding that if a departmental proceeding has been initiated, after retirement of employee, then in terms of 2.2(b) of the PCS Rules, the respondents cannot withhold the amount of DCRG as it is due on the date of retirement because on that date there was nothing against an employee. Following the above law, subsequently, in case of Rajinder Kumar Dania's case (supra) action of the respondents therein was quashed and direction was issued to the department to release the amount as same had been withhold without there being pendency of any inquiry/judicial proceeding against the applicant on the date of retirement. The commencement of criminal proceeding or departmental proceeding has also been decided in case of Atma Bodh Sharma's case (supra) wherein the Hon'ble Division Bench have laid down that in terms of 2.2(b) of the PCS Rules, the department can withhold the amount if the employee is found guilty of grave mis-conduct or guilty of causing pecuniary loss to the department during the service. Explanation of 2.2(b) of PCS Rules provides that departmental proceeding can be deemed to be instituted on the date on which the statement of charges is issued to the officer or pensioner or the officer has been placed under suspension from an earlier date, on such date and a judicial proceedings shall deemed to be instituted (i) in the case of criminal proceedings on the date on which the complaint on which Magistrate takes cognizance, is made and (ii) in the case of civil proceeding, on the date of presentation of the plaint in the court.

11. In the light of the above legal proposition, we have considered the present case. It is clear that there was nothing against the applicant on date of his retirement i.e. 31.08.2012. After a period of nine months, for the first time, the

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respondents issued a letter asking the applicant to hand over the record. Subsequently, on 27.09.2013, the respondents passed the order to withhold the DCRG till further orders. During the pendency of the O.A, the competent authority accorded the sanction to withhold the gratuity and DCRG. Suffice to record that on date of retirement of applicant, there was nothing against him, therefore, in terms of 2.2(b) of the PCS Rules, the respondents could not withhold the amount of DCRG as held in case of L.R. Dhawan's (supra) and subsequently, in case of Rajinder Kumar Dania (supra).

12. In view of the above, we are left with no other option but to allow the present Original Application. The respondents are directed to release the amount of DCRG to the applicant with an interest @ 9% from date when it becomes due till its final payment."

10. Keeping in view report dated 23.1.2017 of the Enquiry Officer and for the reasons recorded in the order of the CAT, we do not find any ground to interfere and uphold the same. Accordingly, the writ petition is disposed of with a direction to the petitioners to release the DCRG to applicant-respondent No.1 within a period of one month from the date of receipt of certified copy of this order in terms of the order passed by the CAT.

(AJAY KUMAR MITTAL)
JUDGE

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned **Yes/No**

Whether Reportable: **Yes/No**

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