

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

CWP No. 7186 of 2015

Date of Decision: 02.02.2017

JUGRAJ SINGH

... Petitioner

VS.

STATE OF PUNJA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH.

Present: Mr. Rajesh Bhateja, Advocate,
for the petitioner.

Ms. Vandana Malhotra, Addl. A.G., Punjab.

KULDIP SINGH, J (ORAL)

The petitioner vide this writ petition under Articles 226/227 of the Constitution of India for issuance of writ of mandamus for directing the respondent to release the retiral benefits of the petitioner and for issuance of writ of certiorari for quashing the impugned order dated 16.12.2014 (Annexure P-4) passed by the respondent No. 4 denying to proceed with the pension case of the petitioner.

Brief facts of this case are that the petitioner while serving as Sub Inspector (ORP Rank) retired on 28.02.2009. During the service, an FIR No. 103 dated 30.08.2006 under Section 58 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "NDPS Act") was registered at Police Station, Nathana against the petitioner for allegedly planting a false case. As a result of the trial in the said case, the petitioner, alongwith another police official, was convicted and sentenced under Section 58 of the NDPS, Act and to pay the fine of ₹ 2000/- vide judgment of conviction and order of sentence dated 29.03.2014 passed by the Judge, Special Court (Fast Track

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Court), Bathinda. The appeal bearing No. CRA-S-2519-SB of 2014 against the said order, was admitted on 29.05.2014 and is still pending before this Court. The petitioner claimed that he is 50% disabled person as per the disability certificate (Annexure P-2) and that his retiral benefits such as leave encashment, gratuity, GPF, pension and commuted value of pension are not being released. The pension case of the petitioner is also not processed.

The State in the reply has taken the stand that in addition to FIR No. 103 dated 30.08.2006 under Section 58 of the NDPS Act, against which an appeal is pending before this Court, the petitioner is involved in another FIR No. 47 dated 10.08.2003 under Section 420/465/468/471 IPS registered at Police Station, Maur. However, cancellation report in the said case has been submitted. It was further stated that payment of GPF amounting to ₹5,47,041/- has been released to the petitioner vide bill No. 44 dated 09.04.2009. The payment in respect of leave encashment of the petitioner amounting to ₹1,96,470/- has also been released to him vide order dated 20.03.2009. It is also mentioned in the reply that the petitioner is getting basic provisional pension amounting to ₹4,465/- per month from the department. The gratuity has been withheld as per provisions of Rule 9.14 of the Punjab Civil Services Rules, Volume II which the Government is competent to withhold.

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

The relevant extract of Rule 9.14 of the Punjab Civil Services Rules, Volume II is reproduced as under: -

“9.14. Provisional pension where departmental or judicial proceedings may be pending.— (1) (a) In respect of Government employee referred to in

clause (c) of rule 2.2, the Head of Office shall authorise the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government employee or if he was under suspension on the date of retirement, up to the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorised by the Accountant-General, Punjab during the period commencing from the date of retirement up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

(c) No gratuity shall be paid to the Government employee until the conclusion of the departmental or judicial proceedings and issue of final order thereon:

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), (ii) and (iv) of rule 5 of the said rules, the payment of gratuity shall be authorised to be paid to the Government employee.

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government employee upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.”

Clause (c) of the Rule 9.14 shows that no gratuity shall be paid to the Government employee until the conclusion of the departmental or judicial proceedings. Admittedly in this case an appeal is pending before this Court and the criminal case against the petitioner under Section 58 of the NDPS, Act has not been finally decided.

The prayer of the learned counsel for the petitioner is that he is being paid basic provisional pension and since, he is 50% disabled as per the

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disability certificate placed on the file and that the conclusion of the appeal filed in the year 2014 will take time, therefore, he cannot left to be starved.

After considering the provisions of Rule 9.14 (c) of the Punjab Civil Service Rules, Volume II, it is held that the Government is competent to withhold the gratuity, pending the final disposal of the appeal. However, at the same time, the Government cannot withhold the entire pension keeping in view the fact that in the criminal case, fine of only ₹2000/- was imposed upon the petitioner. Assuming that sentence of fine is upheld, I am of the view that for such conviction and sentence involving fine only, the State cannot be allowed to withhold the entire/major portion of the pension of the petitioner.

As such the petition is partly allowed to the extent that the State is directed to release the entire 100% pension alongwith arrears to the petitioner, subject to the undertaking to be given by the petitioner that on the conclusion of the judicial proceedings, if an adverse order is passed against him and if the State decides to proceed under Section 2.2 (b) of the Punjab Civil Services Rules and passes adverse order, he shall be liable to deposit the part of the pension which is sought to recovered from him or the same can be recovered from the Gratuity withheld by the State. It is further ordered that except gratuity, all the other retiral benefits which are still due to the petitioner, shall be released alongwith interest as per the Government instructions.

February 2, 2017

Suresh Kumar

(KULDIP SINGH)
JUDGE



Whether speaking / reasoned :

Yes / No



Whether Reportable :

Yes / No