IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

216 **CWP No.8633 of 2017 (O&M)**
Date of Decision: 27.09.2017

Krishan Kumar

....Petitioner

vs.

Union of India and others

....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. Ashu Kaushik, Advocate
for the petitioner.

Mr. Mukul Aggarwal, Advocate
for the respondents.

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<u>TEJINDER SINGH DHINDSA, J.</u> (Oral)

The un-controverted facts are that the petitioner while serving on the post of Senior Tax Assistant, was placed under suspension in the month of June 2016.

A request submitted by the petitioner for withdrawal of an amount of Rs.5 lacs from his G.P.F. Account on account of marriage of his daughter, was declined vide order dated 03.01.2017 (Annexure P-3) passed by the Assistant Commissioner of Income Tax, Circle(Admn.), Patiala. The petitioner having reiterated such request, the same stands declined vide order dated 03.02.2017 (Annexure P-7), passed by the same very authority/respondent No.5.

The instant petition has been filed seeking the issuance of a writ of mandamus for directing respondent No.5 to release the G.P.F.

amount of Rs.5 lacs to enable the petitioner to perform marriage of his daughter which is now fixed for 28.11.2017. Further prayer is for the issuance of any other writ, order or direction that this Court may deem fit and proper in the circumstances of the case.

Counsel for the parties have been heard.

The first rejection of the request of the petitioner for release of Rs.5 lacs from his G.P.F. Account was by passing of a cryptic and non-speaking order dated 03.01.2017 (Annexure P-3). Such order does not disclose any reason or basis of the rejection of the request made by the petitioner.

The second rejection is vide communication dated 03.02.2017 (Annexure P-7). The rejection is by citing Rule 15 (1)(A)(b) of the G.P.F. Rules of the General Provident Fund Rules (Central Rules) and as per which, the amount lying in the G.P.F. Account could be disbursed only upon an employee having rendered 15 years or more of permanent service. It has been stated that the permanent service rendered by the petitioner is of 14 years and 7 months as on the date of passing of the order dated 03.02.2017 and as such, the request for withdrawal cannot be entertained.

This Court is of the considered view that a situation has arisen, whereby, respondent No.5/competent authority would need to pass a fresh order with regard to request of the petitioner.

Such view is being taken for the reason that the rejection vide communication dated 03.02.2017 at Annexure P-7 was at a point of time when the petitioner purportedly did not fulfil the requirement of 15 years permanent service. Such embargo would not apply as of date. Concededly, the petitioner has completed 15 years of service so as to be eligible for withdrawal of a sum of money from his G.P.F. Account as per eventualities enumerated under the General Provident Fund Rules itself.

Suffice it to observe that marriage of the daughter is one of the contengencies mentioned under the rules.

During the course of arguments Mr. Mukul Aggarwal, learned counsel representing the respondents, would make an attempt to oppose the prayer on the ground that the petitioner has been implicated in FIR No.125 dated 11.06.2016, under Sections 420, 467, 468, 471, 120-B & Section 380 IPC, registered at Police Station Kotwali, Patiala and the allegation against the petitioner as also other co-accused, was with regard to embezzlement of an amount in excess of Rs.50 lacs. Such allegation is founded on the basis that present petitioner and other co-accused had fraudulently issued withdrawal slips for refund of income tax amount and had gained pecuniary advantage.

Such submission would not be of any consequence for purposes of deciding the instant petition. It is being so observed as such basis does not even find a mention in the impugned rejection order dated 03.02.2017 (Annexure P-7). The only ground contained in the rejection order is that the petitioner has not completed the requisite 15 years of permanent service and as such, not being eligible. Even otherwise, it is by now well settled that an order passed to the detriment of an employee has to be examined in the light of the reasons furnished in the order itself. Such order cannot be supplemented and fortified by subsequent filing of affidavits in proceedings, in which, a challenge has been laid to such order.

In view of the reasons recorded above and against the conceded factual premise that the petitioner has as of date more than 15 years of permanent service, the orders of rejection dated 03.01.2017 (Annexure P-3) and 03.02.2017 (Annexure P-7) are set aside.

Directions are issued to respondent No.5 i.e. the Assistant Commissioner of Income Tax, Circle(Admn.), Patiala to pass an order afresh on the request of the petitioner seeking withdrawal of Rs.5 lacs from his G.P.F. account for purposes of marriage of his daughter.

Directions of this Court be complied within a period of one month from today and in accordance with law. It goes without saying that it would be open for respondent No.5 to call upon the petitioner to furnish requisite documents/proof as regards marriage of his daughter and in support of his claim for withdrawal from G.P.F. account as per entitlement under the General Provident Fund Rules.

Disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

27.09.2017
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No