

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Civil Writ Petition No.19851 of 2016 (O & M)

Date of Decision: August 07, 2018

Shiv Dev Singh

..... PETITIONER

VERSUS

State of Punjab & others

..... RESPONDENTS

...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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PRESENT: - Mr. Vivek K. Thakur, Advocate, for the petitioner.

Mr. Navdeep Chhabra, Deputy Advocate General,
Punjab.

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Jaspal Singh, J

Through the instant petition, preferred under Article 226 of the Constitution of India, petitioner has sought issuance of a writ in the nature of mandamus, directing the respondents to release his regular pension/ computation of pension, gratuity alongwith interest and arrears.

Learned counsel for the petitioner has contended that petitioner was recruited as Constable in Punjab Police on August 12, 1972 and retired from the post of Inspector on April 30, 2010. During his service period, he alongwith 20 other police officials was involved in a criminal case registered by Central Bureau of Investigation (CBI) viz. RC No.IV(S) dated February 05, 1997 under Sections 364, 34, 203, 201, 120-B IPC, registered at Police Station SIU V/SIC 2/CBI/SPE, New Delhi, due to which his retiral

benefits were withheld. He was again implicated in a case FIR No.112 dated July 01, 2007 registered at Police Station, Noor Mahal, District Jalandhar, when he was posted as Station House Officer.

Learned counsel has further contended that as far as criminal case registered by CBI is concerned, he stands acquitted vide judgment dated March 31, 2015 passed by the Additional Sessions Judge, Special Judge, CBI, Patiala. As far as case FIR No.112 dated July 01, 2007 is concerned, though he has been found innocent and cancellation report has been filed time and again, still cancellation reports have not been accepted by the courts and returned for re-investigation despite the fact that even the complainants have also given their statements to the effect that they are satisfied with the investigation conducted by the police.

Learned counsel for the petitioner has contended that petitioner stood retired in the year 2010 and his retiral benefits have been withheld on account of pendency of FIR No.112 dated July 01, 2007, whereas till date, no cognizance has been taken against him by any court of law. As such, withholding of retiral benefits is not permissible in the eyes of law and instant petition deserves to be accepted, and he is entitled to receive his retiral benefits alongwith interest from the date of his retirement.

Per contra, learned State counsel has contended that FIR No.112 dated July 01, 2007 registered under Sections 217, 323, 341, 120-B IPC was registered at Police Station, Noor Mahal, District Jalandhar, is pending investigation against the petitioner. As such, instant petition is not maintainable.

This Court has given a deep thought to the rival contentions made by learned counsel for the parties and gone through the record available.

The sole point for determination in the instant petition is that whether on account of pendency of a criminal case, petitioner can be denied the release of pensionary benefits ?

Undisputably, petitioner got involved in two criminal cases. In the case registered by CBI, he stood acquitted by the Special Judge, CBI, Patiala. In the other case FIR No.112 dated July 01, 2007, though he has been found innocent 2/3 times and cancellations reports were filed but the same has not been accepted by the courts and reinvestigation has been ordered.

Be that as it may, it is also clear that he has not been found guilty as yet. Even the challan has not been presented against him. Therefore, respondents merely on the basis of registration of FIR on July 01, 2007, are not within their rights to withhold the pension or pensionary benefits of petitioner. It is settled proposition of law that judicial proceedings would be deemed to have been instituted on the date on which challan is submitted to a criminal court. In the present case, challan has not been presented so far against the petitioner although he retired on April 30, 2010 and FIR No.112 was registered on July 01, 2007. In this case, petitioner stood exonerated by the investigating officers and cancellations reports were filed. As such, case is still at the stage of preliminary evidence. It may also be seen that if charges have been formulated against an employee, pendency of such departmental proceedings would deprive him from claiming the retiral benefits. Similarly, 'judicial proceedings' shall be

treated to be pending against an employee on the date on which the complaint is made or a challan is submitted to a criminal court. It is only when the Magistrate takes 'cognizance' after application of mind that 'judicial proceedings' shall be deemed to be pending or instituted. In the case in hand, investigating officers have exonerated the petitioner and submitted cancellation reports. Therefore, this Court is of the considered view that mere pendency of registration of FIR, pension or pensionary benefits cannot be withheld.

In the light of what has been discussed above, instant petition is disposed of with a direction to the respondents to consider the claim of the petitioner for grant of pensionary benefits alongwith interest within a period of three months from the date of receipt of a copy of this order and thereafter, if there is no legal impediment and petitioner is found entitled, same be released within a period of one month.

No order as to costs.

August 07, 2018
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No