

CWP No.5719 of 2016

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

Sr. No.235

Civil Writ Petition No.5719 of 2016

DECIDED ON: May 22, 2018

ABINASH KUMAR GOYAL

..PETITIONER

VERSUS

**PUNJAB STATE CIVIL SUPPLIES CORPORATION LIMITED
AND OTHERS**

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Ravish Bansal, Advocate,
for the petitioner.

Mr. J.S. Mundi, Advocate,
for the respondents.

JASPAL SINGH, J.

Through the instant civil writ petition preferred under Articles 226/227 of the Constitution of India, petitioner has sought five fold relief (i) for issuance of writ in the nature of Mandamus directing the respondents to release his retiral benefits i.e. Gratuity and Leave Encashment admissible to him from the date of his retirement i.e. on 31.07.2015 along with interest @ 12% per annum; (ii) for issuance of writ in the nature of Certiorari for setting aside the order dated 23.07.2015 communicated to him vide Endst. Dated 29.07.2015 (P-3) passed by

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respondent No.1; (iii) for issuance of writ in nature of Certiorari for setting aside the order dated 04.02.2015 communicated to him vide Endst. Dated 23.09.2015 (P-4) passed by respondent No.1, whereby recovery of Rs.31,000/- has been imposed; (iv) for issuance of direction to the respondents to release/disburse his entire retiral benefits except disputed amount of Rs.31,000/- and (v) for dropping wrongful departmental proceedings initiated against him vide show cause notice dated 11.02.2014.

2. Undoubtedly, petitioner stood retired on attaining the age of superannuation on 31.07.2015 but till date retiral benefits have not been paid just for the simple reason that he was served with a show cause notice for recovery of Rs.31,000/- as per the provisions of Punjab Civil Services (Punishment and Appeal) Rules, 1970 and on account of reason that he committed dereliction of his duty while not appearing before the Civil Judge, Sr. Division, Faridkot as a witness on behalf of respondent-Corporation.

3. It would be desirable that first of all, matter with regard to imposition of penalty of recovery to the tune of Rs.31,000/- vide order dated 04.02.2015 communicated to the petitioner vide Endst. Dated 23.09.2015 (P-4) be looked into. Though, it has been asserted by the learned counsel for the petitioner that petitioner has been rendering services to the respondent-department with utmost devotion and sincerity and enjoying unblemished service career yet for his non-appearance as a witness in the civil suit captioned as ***Punjab State Civil Supplies Corporation Ltd. vs. Kapoor Singh*** pending before the Civil Judge (Sr.

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Divn.), Faridkot, petitioner was illegally and wrongly imposed penalty to the tune of Rs.31,000/-. In fact, either Managing Director or General Manager was required to appear as a witness to prosecute the case on behalf of PUNSUP as some documents were required to be proved and in this regard certain letters were also written by the learned counsel appearing on behalf of PUNSUP. But they did not opt to appear and ultimately, evidence was closed by order, which was challenged by way of Civil Revision No.4988 of 2013, captioned as ***Punjab State Civil Supplies Corporation Ltd. vs. Kapoor Singh & ors.***, before this Court and said order was set aside and PUNSUP was granted one opportunity to adduce evidence subject to payment of Rs.20,000/- as costs. The petitioner has been penalized that on account of his non-appearance as a witness, a penalty has been imposed and in addition to it, counsel fee has already been paid to the tune of Rs.11,000/-. But the whole process was adopted by the respondents, in fact, after the retirement of the petitioner. The order dated 04.02.2015 (P-4) is ante-dated. Though, passing of date of order has been shown as 04.02.2015 but it was only conveyed to the petitioner on 23.09.2015 whereas prior to that, petitioner stood retired on 31.07.2015.

4. On the other hand, learned counsel for the respondents has supported the order dated 04.02.2015 (P-4) and justified imposition of penalty to the tune of Rs.31,000/- especially, submitting that it was only on account of his non-appearance, who was dealing assistant of the case and custodian of relevant record was liable to appear as a witness in the above referred civil suit, due to his non-appearance in the Court evidence was closed by order and PUNSUP had to file a Civil Revision No.4988 of

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2013, captioned as ***Punjab State Civil Supplies Corporation Ltd. vs. Kapoor Singh & ors.*** in this Court and which was allowed but a cost to the tune of Rs.20,000/- was imposed vide order dated 20.08.2013 (P-2) for one effective opportunity.

5. This Court has weighed the rival submissions made by learned counsel for the parties and does not find any legal and factual substance in the submissions made by learned counsel for the petitioner. The petitioner concededly has been dealing the cases and was incharge of storage and transportation wings of Corporation at the relevant time and it was his duty to appear as a witness to depose on behalf of PUNSUP. Since, he failed, which ultimately resulted into closure of the evidence by court order. Thereafter, PUNSUP suffered loss which had been sought to be recovered by way of impugned order dated 04.02.2015 (P-4). Thus, impugned order dated 04.02.2015 is legally and factually justified and calls for no interference by this Court. Accordingly, relief sought in this regard through instant petition is declined.

6. As far as another relief with regard to release of his retiral benefits is concerned, undoubtedly petitioner retired on 31.07.2015 except the show cause notice, regarding which subsequently, order dated 04.02.2015 (P-4) was passed, no other departmental or judicial proceeding was pending against him on the date of his retirement. The respondents unnecessarily withheld the retiral benefits i.e. Gratuity and Leave Encashment admissible to the petitioner on the date of his retirement. At the most, respondents were legally justified to withhold a sum of Rs.31,000/- just for the implementation of order dated 04.02.2015 (P-4).

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There was no reason what to talk of any cogent reason to withhold his retiral benefits. By withholding the retiral benefits of the petitioner, he stands deprived of proper utilization of amount and for that reason he deserves to be compensated by way of grant of interest as well as a direction to make the payment of retiral dues. As far as, interest is concerned, in view of Instructions No.1/15/90IFPIII/4226 dated 10.05.1990 issued by the Government of Punjab as well as judgment passed by Full Bench of this Court in case *A.S. Randhawa vs. State of Punjab & Ors., 1997 (3) SCT 468*, by now, it is settled that grant of interest @ 9% after the expiry of three months from the date of his retirement, is justified to compensate him.

7. Accordingly, instant petition is allowed in this regard. Consequently, respondents are directed to release the retiral benefits of the petitioner i.e. Gratuity and Leave Encashment, etc. admissible to him, that too, along with interest @ 9% per annum after expiry of three months from the date of his retirement till actual payment, within a period of two months from the date of receipt of certified copy of this order. In case of non compliance of aforesaid directions, petitioner shall be at liberty to have recourse to the other remedies available under law as well as to approach this Court.

8. With the passing of above order, instant petition is stands partly allowed, with no order of the cost.

May 22, 2018

Ankur

Whether speaking/reasoned

Whether reportable

Yes

Yes/No

(JASPAL SINGH)

JUDGE