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

212 **CWP No.14758 of 2016**
Date of decision: 05.04.2019

Harnarinder Singh **..Petitioner**

Vs.

Punjab State Power Corporation Ltd. & Anr. **...Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Alka Chatrath, Advocate with
Ms. Daljeet Kaur, Advocate
for the petitioner.

Mr. Roshan Lal Sharma, Advocate
for the respondents.

******

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, though the grievance which has been raised by the petitioner are multiple but at the time of the arguments today, counsel for the petitioner states that the petitioner is only pressing her request for grant of interest on the delayed release of the pensionary benefits, which were released to the petitioner only in March 2017, though the petitioner had already retired from service on 28.02.2014.

The facts as stated in the writ petition are that the petitioner was appointed as a Lineman on 19.02.1980. He was appointed in erstwhile Punjab State Electricity Board, (now Punjab State Power Corporation Limited). Thereafter, he was promoted as Junior Engineer on 27.05.1988 and further promoted as Additional

Assistant Engineer on 31.01.2008. While working on the said post, the petitioner retired on attaining the age of superannuation on 28.02.2014. It is stated here that at the time of the retirement, there were two charge-sheets pending against the petitioner in respect of which department enquiries were going-on. One charge sheet was dated 27.12.2012 and the other charge sheet was dated 22.01.2013. Apart from these charge sheets, there was an FIR No. 2 dated 24.03.2008, which was registered by the Vigilance Department against the petitioner and 5 others, which was also pending at the time when petitioner attained the age of superannuation.

After the petitioner retired, the charge sheet dated 22.01.2013 was taken to its logical end and an order of punishment was passed on 25.07.2014 imposing punishment of 5% cut in the pension of the petitioner for a period of one year. In respect of the charge sheet dated 27.12.2012, an order was passed on 01.08.2014 imposing 10% cut in the pension of the petitioner for a period of one year. After August 2014, except the FIR No. 2 dated 24.03.2008, no other proceedings were pending against the petitioner.

Counsel for the petitioner states that the pendency of an FIR could not have given the right to the respondents to withhold the pensionary benefits and after the punishments were imposed upon the petitioner in both the charge sheets by which proceedings came to an end in August 2014, there was no valid justification with the respondents to with-hold the pensionary benefits thereafter especially in view of the fact that in the

FIR No.2 dated 24.03.2008, a cancellation report had already been submitted by the competent authority in the year 2013 i.e. before the petitioner retired. Ultimately, the said cancellation report has been accepted on 05.03.2016 and, therefore, the pensionary benefits which were released to the petitioner on 20.03.2017 should carry interest as the same was withheld by the respondents without any valid justification after August, 2014.

Counsel for the respondents on the other hand states that though the two charge sheets, which were pending against the petitioner issued in December 2012, and January 2013, were decided by passing appropriate orders in July 2014 and August 2014 respectively, but the pensionary benefits of the petitioner could not have been released as there was an FIR pending against him and it was only when the cancellation report was accepted in February 2016 by the competent Court of law, the petitioner became entitled for the release of the benefits and the benefits were released to the petitioner thereafter in March 2017 and, therefore, there was no delay in releasing the benefit as the department was well within its right to withhold the pensionary benefits due to the pendency of the FIR No. 2 dated 24.03.2008.

I have heard the counsel for the parties and have gone through the record.

The argument which has been raised by the counsel for the petitioner that after August-2014, when the two charge sheets, which were pending against the petitioner at the time of his retirement on 28.02.2014, came to an end, the pensionary benefits should have been released by the respondents has merit. Withholding of the benefits by the respondents on the basis of an FIR is not valid as till the charges are framed, the registration of an FIR is only an allegation against an employee and it is only when the investigating agency present the challan, it can be said that there are criminal proceedings pending against the said employee. In order to come to this conclusion, I draw my support from the decision of the Hon'ble Supreme Court of India in **Union of India Vs. K.V. Jankiraman 1991 (4) SCC 109** wherein, the Hon'ble Supreme Court of India has held that it is only when a charge sheet is served in the departmental proceedings, it can be said that the department proceedings are pending against an employee & in respect of criminal proceedings, it will be deemed to be pending only in case the challan has been presented and accepted by the competent Court of law.

The relevant portion of the **K.V. Jankiraman (supra)** is as under:-

> "On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced

> by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc., does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet".

With regard to the FIR No.2, dated 24.03.2008, no charges were ever framed till the FIR was quashed by accepting the cancellation report by the competent Court of law. It is a matter of fact that before petitioner retired, after investigation, cancellation report was submitted on 03.05.2010. The said cancellation report was not accepted by the Court on 03.05.2010 & competent Court directed the Vigilance Bureau to re-investigate the matter, which action was challenged by the petitioner alongwith others before this Court by filing CRM-M-31882 of 2013. The said petition was decided by this Court on 10.02.2016 holding that the directions to reinvestigate the matter was not correct. This Court directed the competent Court of law to pass appropriate orders on the cancellation report submitted by the investigating agency. The relevant portion of the order is as under:-

> "I am of the considered view that the orders passed are unsustainable in law. After the Special Judge directed the investigating agency to reinvestigate the matter vide order, Annexure P-3, investigating agency reinvestigated the

matter and submitted a cancellation report. Same could not have been rejected merely on the ground that the complainant did not agree with the final report submitted by the investigating agency. Even, thereafter, the investigating agency came to the same conclusion and submitted another report. It is evident that there has been an effort on the part of the Magistrate to impose his view on the investigating agency by asking it to investigate the matter time and again. Such an action cannot stand scrutiny of law. Thus, orders Annexures P-4 and P-5 are hereby set aside. It cannot be lost sight of that in absence of sanction as envisaged under Section 19 of the Act, the court in any case cannot proceed further with the matter."

After the directions were given by this Court, the cancellation report was accepted on 05.03.2016 by the Court. These facts clearly show that there were no charges framed in respect of FIR No. 2 dated 24.03.2008 against the petitioner. In the absence of the same, it cannot be said that there were criminal proceedings pending against the petitioner at any stage so as to entitle the respondents to withhold the pensionary benefits. It is admitted by the respondents that the pensionary benefits were released on 20.03.2017.

As per the settled principle of law, an employee will be entitled for the interest on the delayed release of the payment of retiral benefits in case there is no valid justification with the respondents to withhold the same. Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab, 1997 (3) SCT 468*** has held as under:-

"Since a Government employee on his retirement becomes immediately entitled to pension and other benefits in terms of the Pension Rules, a duty is simultaneously cast on the State to ensure the disbursement of pension and other benefits to the retirer in proper time. As to what is proper time will depend on the facts and circumstances of each case but normally it would not exceed two months from the date of retirement which time limit has been laid down by the Apex Court in M. Padmanabhan Nair's case (supra). If

the State commits any default in the performance of its duty thereby denying to the retiree the benefit of the immediate use of the money, there is no gainsaying the fact that he gets a right to be compensated and, in our opinion, the only way to compensate him is to pay him interest for the period of delay on the amount as was due to him on the date of his retirement."

The case of the petitioner is covered by the above-said judgment on the ground that the reason which is being given by the respondents to withhold the pensionary benefits i.e. pendency of an FIR dated 24.03.2008 is not a valid reason. Once the reason as given by the respondents to withhold the pensionary benefits of the petitioner is not valid, the necessary corollary will be that pensionary benefits were withheld without any valid justification and hence when the petitioner becomes entitle for interest on the delayed release of the payment.

A Coordinate Bench of this Court in ***J.S. Cheema Vs. State of Haryana and others, 2014(13) RCR (Civil) 355,*** has held that once an amount for which an employee had become entitled for, has been withheld and used by the department, the employee will be entitled for interest. The relevant paragraph of the said judgment is as under:-

"The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it."

In the present case, the amount which should have been released to the petitioner in August 2014 after the two charge sheets pending against the petitioner came to an end when appropriate orders were passed in those charge sheets imposing punishment upon the petitioner, the amount which the respondents retained with them, should carry interest as per the above-said law.

Keeping in view the above, the petitioner is held entitled for interest on the delayed release of the payment @ 9% per annum. The said interest shall be calculated from 01.08.2014 i.e. when the charge sheet pending against the petitioner came to an end till the actual payments were released to the petitioner in March 2017.

Let the calcuations of interest be done by the respondents within a period of two months from the receipt of the copy of this order and whatever the amount the petitioner is found entitled for as interest, be released to the petitioner within a period of one month thereafter.

In respect of the prayer of the petitioner for the grant of promotional increment after rendering 23 years of service, counsel for the petitioner states that a bunch of writ petitions have been decided by this Court being CWP No.1013 of 2017, on 29.11.2018, wherein the directions have been given in the case of the similarly situated employees to consider their case for the grant of the said benefits. Counsel for the petitioner states that in respect of this relief, a direction be issued to the respondents that the case of the petitioner should also be considered in terms of the said judgment for the grant of the relief of promotional increment after rendering 23 years of service.

Counsel for the respondents very fairly states that the case of the petitioner will be considered for the grant of the said benefit as directed by this Court while deciding CWP No. 1013 of 2017.

In view of the directions given by this Court in CWP No. 1013 of 2017 and other connected cases decided on 29.11.2018, appropriate orders in this regard will be passed by the Corporation within a period of 2 months from receiving the certified copy of this order.

The writ petition is disposed of in the above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

April 05, 2019
Poonam Sharma

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No