IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-18648-2014
Date of Decision: - 21.01.2019

Shyam Lal

...Petitioner

Versus

Chaudhary Charan Singh Haryana Agriculture University, Hisar and others

...Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Vivek Khatri, Advocate
for the petitioner.

Mr. Aman Pal, Advocate
with Ms. Aashma Gill, Advocate
for the respondents.

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<u>HARSIMRAN SINGH SETHI, J. (ORAL)</u>

In the present writ petition, the challenge is to the non-release of the retiral benefits of the petitioner. A prayer has been made that despite the fact that the petitioner has retired from service on attaining the age of superannuation on 31.01.2014, nothing has been paid to him so far. Further, a claim has been made for the release of the retiral benefits alongwith interest @ 18% per annum.

As per the facts narrated in the writ petition, petitioner joined as a Petrol Man with the respondent-University on 02.03.1981. As per the averments made, the work and conduct of the petitioner remained satisfactory and he was promoted as a Water Pump Operator on 09.11.2009. On 04.09.2013, an FIR No.36 under Section 7 of the

Prevention of Corruption Act was registered against the petitioner at Police Station State Vigilance Bureau, Hisar. After the investigation, nothing was found against the petitioner and a cancellation report was also filed on 27.10.2013. The said cancellation report has already been approved by the Director General of Police, State Vigilance Bureau, Haryana, Panchkula, on 11.11.2013. Before any action could be taken by the Court on the cancellation report, the petitioner sought voluntary retirement for which permission was granted to him and he retired on 31.01.2014.

Counsel for the petitioner states that as of now, there is no impediment with the respondents to withhold the pensionary benefits and therefore, as the pensionary benefits are delayed, an appropriate direction be issued to the respondents for the release of the same alongwith interest.

Counsel for the respondents contends that FIR No.36 dated 04.09.2013 is still pending before the competent authority as the cancellation report is still to be accepted. Counsel for the respondents submitted that there is one more investigation going on against the petitioner before the Lokayukta, Haryana in respect of a complaint filed before the said authority.

Counsel for the respondents further contends that in view of the above facts, the respondents are well within their rights to withhold the pensionary benefits of the petitioner. Counsel further stated that provisional pension was paid to the petitioner for a period of one year.

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

From the facts, which have been narrated above, it cannot be said that either disciplinary proceedings are pending or even the criminal proceedings are pending against the petitioner. As per law laid down by the Hon'ble Supreme Court in **Union of India** Vs. **K.V. Jankiraman**, **1991(4) SCC 109,** it is only when a charge-sheet is served in the departmental proceedings, it could be said that the departmental proceedings are pending. In respect of the criminal proceedings, until a challan is presented, it cannot be said that the criminal proceedings are pending. The relevant paragraph of the said judgment 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...."(Emphasis added)."

Keeping in view the said law, it can be safely said that at present, there are neither any criminal proceedings pending; nor any criminal proceedings pending against the petitioner, which would entitle the respondents to withhold his pensionary benefits.

As far as the objection taken by the respondents in respect of the pendency of FIR No.36 dated 04.09.2013, it has not been denied that the cancellation report has already been approved upto the DGP level. Further, no challan has been put up in the said FIR against the petitioner and therefore, the pendency of the said FIR will not give a right to the respondents to withhold the pensionary benefits of the respondents.

As far as the objection taken by the respondents that there is an investigation going on with the Lokayukta, Haryana, the same is only an investigation and nothing concrete has been placed on record as to whether, there is anything more than the allegations pending against the petitioner in the said investigation.

Further a Division Bench of this Court while deciding **CWP No.3567 of 2006** titled as '**<u>Atam Bodh Sharma</u> Vs**. **<u>State of Haryana and others</u>**, **decided on 09.10.2006**, **reported as 2006(4) S.C.T. 760,** has clearly held that merely a registration of FIR will be no ground to deny or withhold the pensionary benefits. The relevant paragraph 6 of the said judgment is as under: -

> "In the present case also there is no conclusion of the trial. Even the challan has not been presented. Therefore, the respondents merely on the basis of registration of the FIR on 21.8.2003, are not within their rights to withhold the pension or pensionary benefits of the petitioner. Therefore, the impugned order dated 15/22.2.2006 (P-7) is liable to be set aside."

In view of the above, the writ petition is allowed. The respondents are directed to release all the pensionary benefits of the petitioner. Let the pensionary benefits be calculated and released within a period of two months from the date of receipt of a certified copy of this order.

Further, as the action of the respondents has been held to be unjustified in withholding the pensionary benefits of the petitioner, the petitioner shall also be entitled for interest @ 9% per annum from the day the pensionary benefits became due till the receipt of the same by him.

Let the calculation be done within a period of two months as mentioned earlier and the amount so arrived at by the respondents shall be released in favour of the petitioner within a period of one month thereafter.

(HARSIMRAN SINGH SETHI)
JUDGE

January 21, 2019
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Whether reasoned/speaking? Yes
Whether reportable? Yes