

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

CWP-17966-2016

Date of decision: - 05.11.2019

Gulzar Singh

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

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

Mr. Navdeep Chhabra, Deputy Advocate General, Punjab.

HARSIMRAN SINGH SETHI, J. (ORAL)

The grievance, which is being raised by the petitioner is that regular pension and the commutation of pension alongwith gratuity of the petitioner has been withheld by the respondents keeping in view the FIR No.46 dated 14.03.2012. The prayer of the petitioner is that on the day, when the petitioner retired from service, no charges were framed against him in respect of FIR No.46 dated 14.03.2012.

As per the averments in the present writ petition, the petitioner retired from the post of Deputy Superintendent of Police on attaining the age of superannuation on 30.04.2012. On the said date, an FIR No.46 dated 14.03.2012, which was registered against the petitioner as well as other police officials in the Police Station Sadar, Jagraon, District Ludhiana was pending. It has been stated that the investigation

was carried out in the said FIR, which was registered about 1 ½ years before the retirement of the petitioner and a cancellation report was submitted on 17.12.2013. Despite the said situation, the benefits such as regular pension, benefit of commutation of pension and gratuity were withheld by the respondents on the ground that criminal proceedings are pending against the petitioner. Thereafter, in the year 2015, the cognizance of the said FIR was taken by the competent Court of Law and the petitioner was summoned to face the trial. The grievance of the petitioner is that action of the respondents in withholding the pensionary benefits of the petitioner due to the pendency of FIR No.46 dated 14.03.2012, in which, no charges had been framed against him at the time when he retired on 30.04.2012 is arbitrary & illegal and contrary to the settled principle of law.

Upon notice of motion, respondents have filed a short reply, in which, it has been stated by the respondents that on the day when the petitioner retired, an FIR No.46 dated 14.03.2012 was pending against petitioner and though, a cancellation report was submitted on 17.12.2013, but the same was not accepted and ultimately, petitioner was asked to face the trial and therefore, once a criminal proceeding is pending against the petitioner in respect of FIR No.46 dated 14.03.2012, the action of the respondents in not releasing the regular pension and withholding the benefit of gratuity as well as commutation of pension is in consonance with the rules governing the service as well as the law in that regard.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The only question, which arise for the consideration of this Court is whether keeping in view the facts and circumstances of this case, the benefit of regular pension, gratuity and commutation of pension of the petitioner could have been withheld after he attained the age of superannuation on 30.04.2012 on the ground that criminal proceedings were pending against the petitioner on the date of retirement.

It is not disputed that in case there are any disciplinary proceedings pending against an employee on the date of retirement, initiated by the department, the department is well within its right to withhold the pensionary benefits such as gratuity and leave encashment. Even if a criminal proceeding is pending against an employee on the date of retirement, the respondents will be well within their jurisdiction to withhold the gratuity and leave encashment. The question, which has been posed before this Court is whether in the facts and circumstances of this case, mere pendency of an FIR can be treated as a criminal proceeding pending against the petitioner so as to entitle the respondents to withhold the pensionary benefits.

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).”

In the present case, on the day when the petitioner retired on 30.04.2012, only an FIR was pending against the petitioner and the charges had not been framed so as to term that any criminal proceeding is pending against the petitioner, which would give the jurisdiction to the respondents to withhold the pensionary benefits of the petitioner.

This question also came for consideration before this Court in LPA No.905-2013 titled as 'Sarup Singh Vs. State of Punjab and others', decided on 09.03.2015, wherein, the Division Bench in somewhat similar circumstances held that once on the day of retirement, there was no charges, which were formulated against an employee, the pendency of such proceedings cannot be treated as a judicial proceedings pending against an employee so as to entitle the respondents to withhold the pensionary benefits. The relevant paragraph of the said judgment is as under: -

“(10) The short question that arises for consideration is whether on account of pendency of the above stated criminal complaint, the appellant can be denied the release of gratuity and

commutation of pension?

(11) The Rule which the learned Single Judge has construed against the appellant reads as follows:-

“Explanation.- For the purpose of this rule- (1) departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him or, if the officer has been placed under suspension from an earlier date, on such date; and

(2) judicial proceedings shall be deemed to have been instituted-

(i) in the case of criminal proceedings, on the date on which the complaint is made or a challan is submitted to a criminal court; and

(ii) in the case of civil proceeding, on the date on which the plaint is presented or, as the case may be, an application is made to civil Court.

Note 1.- As soon as proceedings of the nature referred to in the above rule are instituted, the authority which institutes such proceedings should without delay intimate the fact to the Accountant General.

Note 2- In a case in which a pension as such is not withheld or withdrawn, but the amount of any pecuniary loss caused to Government is ordered to be recovered from the pension, the recovery should not ordinarily be made at a rate exceeding one third of the gross pension originally sanctioned including any amount which may have been commuted.”

(Emphasis supplied)

(12) It may be seen that if the charges have been formulated against an employee, the 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.

(13) We have considered Clause (2) above in the context of denial of retiral benefits to an employee, who ordinarily is entitled to such benefits as a matter of right. We are of the considered view

that mere filing of a private complaint before the Judicial Magistrate or after submission of a cancellation report in a police case, are not the stages to be treated as if judicial proceedings are still pending. It is only when the Magistrate takes 'cognizance' after application of mind that the 'judicial proceedings' shall be deemed to be pending or instituted. Here is a case where the Investigating Team has exonerated the appellant and submitted a cancellation report. Learned Judicial Magistrate is yet to take cognizance of the private complaint and the complaint is only at the stage of preliminary evidence.

(14) It is equally pertinent to mention that the objections filed by the complainant have been treated as a 'private criminal complaint' by the learned Judicial Magistrate on 04.07.2012, i.e. much after the retirement of appellant.

(15) In these peculiar facts and circumstances, we find no justification either in law or in equity to with-hold the retiral benefits admissible to the appellant. At best, he can be asked to execute an indemnity bond to indemnify any consequence that might fall upon him if he is found guilty by learned Judicial Magistrate.

(16) Consequently and for the reasons above stated, we allow this appeal, set aside the order passed by learned Single Judge and while accepting the writ petition, the respondents are directed to release the gratuity as well as commutation of pension, if so applied by the appellant, in accordance with rules on his furnishing an indemnity bond to the satisfaction of the competent authority.

(17) Needful shall be done within a period of three months from the date of receipt of a copy of this order. The appellant shall also be paid interest on the gratuity amount as per Government instructions.”

Learned counsel for the respondents is unable to distinguish the case of the petitioner in any way to contend that on the day when the petitioner retired on 30.04.2012, there were any criminal proceedings

pending against the petitioner as defined in **K.V. Jankiraman's case (supra)** so as to entitle the respondents to withhold the pensionary benefits.

The case of the petitioner is squarely covered by the decision rendered by the Hon'ble Supreme Court in **K.V. Jankiraman's case (supra)** as well as the Division Bench of this Court in **Sarup Singh's case (supra)**.

In view of the above, the writ petition is allowed. The respondents are directed to release the pensionary benefits of the petitioner, which have been withheld due to the pendency of FIR No.46 dated 14.03.2012, within a period of two months from the date of receipt of certified copy of this order.

It is made clear that this Court expresses no opinion with regard to the pendency of FIR No.46 dated 14.03.2012. In case, at any given point of time, petitioner is convicted or any order is passed, which gives right to the respondents-State to proceed against the petitioner, under Rule 2.2 of the Punjab Civil Services Rules, the respondents will be free to do so after complying with the provisions of Rule 2.2(b) of the Punjab Civil Services Rules, Volume II, Part-I.

Present writ petition stands allowed in the above terms.

(**HARSIMRAN SINGH SETHI**)
JUDGE

November 05, 2019
naresh.k

Whether reasoned/speaking?	Yes
Whether reportable?	Yes