IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP NO. 18927 OF 2017
DATE OF DECISION : 05.07.2019

Pardip Singh Kaleka and another
...Petitioners

versus

State of Punjab and another
...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. B. S. Patwalia, Advocate, for the petitioners.

Ms. Ambika Bedi, AAG, Punjab.

ARUN MONGA, J. (ORAL)

Grievance of the petitioners is that having rendered unblemished service for more than 25 years, they have been retired on 31.07.2014 and 31.03.2017, respectively as Additional Directors from the Department of Rural Development and Panchayat, Punjab, on attaining the age of superannuation. However, they have neither been granted regular pension nor even gratuity, which learned counsel for the petitioners contends cannot be withheld by the department in the case of petitioners, under any circumstances.

2. In return filed by the respondents, following preliminary objection has been taken :

" *That the petitioners are making the issue of promotion with the issue of withholding the gratuity.*

Both these issues are different. In this regard, it is clarified that the promotion of the petitioner is a different issue than with holding the gratuity of the petitioner. In this regard a specific provision in the Punjab Civil Service Rules there and this specific Rule 9.14 explained in para 3 above. Further, after the retirement of the petitioner, the following sanctions on account of retiral benefits have already been made :

J. P. Singla		
G.P.F.	*6,75,058/-*	*Released vide order dated 21.08.2017*
Leave encashment	*12,66,000/-*	*Order dated 13.07.2017 letter issued by 17.07.2017*
G.I.S	*-*	*Under consideration (will be released shortly)*
Pension	*-*	*Provisional pension Rs.25,985/- released vide order dated 07.06.2017 letter issued by 12.06.2017 + other admissible allowances*

Pardip Singh Kaleka		
G.P.F	*2,88,563/-*	*Order dated 01.10.2014 issued vide letter dated 22.10.2014*
Leave encashment	*9,91,600/-*	*Order dated 19.09.2014 issued vide letter dated 24.09.2019*
G.I.S	*-*	*-*
Pension	*24,790/- + other admissible allowances*	*Sanction has been issued on 07.10.2014*

Hence the petitioners are not entitled to invoke the extraordinary writ petition and liable to be dismissed."

3. A perusal of the above objection reflects that as far as the merits of the claim of petitioners are concerned, the same have been conceded though, implicitly, with a caveat that the amounts mentioned as above, have been released and/or have been sanctioned and/or under consideration to be released.

4. Learned counsel for the petitioners points out that the above break-up of the amount does not reflect the status with regard to the amount of gratuity, which cannot be withheld by the respondents, as no case is pending against the petitioners.

5. Per contra, learned State counsel submits that criminal proceedings arising out of an FIR No. 8(s) 2003 dated 26.06.2003 under Sections 420/468/471/ 167/201/120-B IPC and under Section 13 (1) (d) read with Section 13 (2) of Prevention of Corruption Act, 1988 registered by Central Bureau of Investigation (hereinafter referred to as "the CBI") against the petitioners and others are still pending in CBI Court.

The said factual position has also been stated in para 2 of the affidavit filed by Shri Sibin C., Director-cum-Special Secretary, Rural Development and Panchayats, Punjab. However, the same is belied by the orders dated 11.02.2010 and 17.08.2011 contained at Annexures P-1 and P-2 respectively, which reflect that not only the sanction for prosecution sought by the CBI against the petitioners was declined, but even the charge-sheets issued to the petitioners owing to same set of allegations forming part of the FIR, was also withdrawn by the department. Giving the benefit of withdrawal of the charge-sheets and not granting sanction to prosecute against the petitioners, they were also granted promotion to the post of Additional Directors, vide order dated 08.08.2016 (Annexure P-3).

6. In the premise, I do not find any force in the argument of learned State counsel that gratuity is rightly being withheld by the department on account of pending CBI case and/or registration of the FIR.

7. Learned counsel for the petitioners submits that the petitioners are also entitled to interest on the amounts which were withheld by the department for no fault of theirs. In support of his contentions, he relies on judgment rendered by the Coordinate Bench of this Court in case titled as "J. S. Cheema v. State of Haryana and others" 2014 (13) RCR (Civil) 355, wherein learned Brother Ajay Tewari, J. held that when the legitimate pensionary dues are withheld by the department, the petitioner is entitled to interest. The relevant paragraph of the judgment is extracted below:-

> "*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 laying 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*."

8. I am in respectful agreement with the above view of the co-ordinate Bench and am inclined to accept the submissions

made by learned counsel for the petitioners. Not only the sanction sought by the CBI to prosecute the petitioners pursuant to the FIR was declined by the department itself, but thereafter, the petitioners were awarded with promotion and successfully allowed to superannuate. I see no reason why the petitioners be not given pensionary benefits along with interest.

9. In view of my above discussion and reasons contained therein, the writ petition is allowed. The respondents are directed to take a decision qua the amounts which have not been released so far and also grant regular pension along with disbursement of gratuity amount to the petitioners. The respondents are also directed to calculate the dues of the petitioners and grant the same to the petitioners, along with interest @ 8% per annum from the date of their entitlement till actual date of disbursement of the same to them. Needful be done within a period of three months from the date of receipt of certified copy of this order.

(ARUN MONGA)
JUDGE

JULY 05, 2019
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No