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

**CWP-26406 of 2015**
**Date of decision: 06.11.2019**

Subha Chand .... Petitioner

versus

State of Haryana and another .... Respondents

**CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Ravi Verma, Advocate
for the petitioner.

Ms. Safia Gupta, A.A.G. Haryana.

***

**HARSIMRAN SINGH SETHI, J.** .

In the present writ petition, the grievance which is being raised by the petitioner is that his claim for grant of interest on delayed release of gratuity as well as commutation of pension has been wrongly denied to him vide impugned order dated 27.11.2015 (Annexure P/5). The prayer of the petitioner is that he is entitled for interest on the delayed release of gratuity as well as commutation of pension.

As per the facts mentioned in the writ petition, the petitioner was appointed as Clerk in Haryana Civil Secretariat w.e.f. 19.10.1978, thereafter, he was promoted on different posts and ultimately retired from service on attaining the age of superannuation on 28.02.2015 while working on the post of Under Secretary. It has been pleaded by the petitioner that at the time of his retirement there was no impediment in the release of his pensionary benefits as there were no proceedings pending against him, which would have entitled the respondents to withhold his pensionary benefits. But after the retirement of the petitioner, a charge sheet dated 09.03.2015 was issued to him under Rule 8 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 and on the basis of said charge sheet, the pensionary benefits of the petitioner were withheld by the respondents.

As per the pleadings, the said charge sheet was taken to its logical end and as nothing could be substantiated against the petitioner, disciplinary proceedings initiated against him were dropped vide order dated 15.06.2015 (Annexure P/2). After dropping of disciplinary proceedings, the benefits of gratuity as well as commutation of pension were extended to the petitioner vide Annexures P/3 and P/4. The prayer of the petitioner is that on account of charge sheet dated 09.03.2015, which was issued to him after his retirement, the pensionary benefits of the petitioner could not have been withheld by the respondents. Even otherwise, once the charge sheet has been dropped by the respondents vide order dated 15.06.2015 (Annexure P/2), petitioner will be entitled for interest on delayed release of the payment of gratuity and commutation of pension from the date the petitioner became entitled for the release of said benefits.

Upon notice of motion, respondents have filed reply and in the reply the facts which have been mentioned hereinbefore have not been disputed. Relevant para of the reply is as under:-

> "That petitioner was chargesheeted under Rules-8 of Haryana Civil Services (Punishment and Appeal) Rules, 1987 vide No.10/12/2014-5-Estt-I, dated 09.03.2015 for committing following acts of omission and commission while posted from 12.06.2012 to 09.12.2013 as Superintendent in Health-I Branch, Haryana Civil Secretariat petitioner:-
>
> That in the matter of disciplinary proceedings under rule-7 against Dr. A.P. Sodhi,

Deputy Director, Hon'ble Chief Minister ordered as under:-

Hon'ble CM has approved the proposal without prejudice to the outcome of the Criminal case pending against him".

As such petitioner was supposed to issue order after getting draft approved from the Joint Secretary to Government, Haryana Health Department. He failed to do so and issued order/ Memo NO.7/7/2006-4HB-I, dated 17.10.2013 at his own level which was not in accordance with the above mentioned orders of Hon'ble C.M. As he failed to mention in the orders/ Memo dated 7.10.2013 that the chargesheet dated 29.10.2007 is being dropped without prejudice to the outcome of the criminal case pending against him. These orders seem to be issued for giving benefit to Dr. A.P. Sodhi, Deputy Director. Thus, petitioner disobeyed the orders of the Hon'ble C.M and therefore provided undue benefit of Dr. A.P. Sodhi.

That petitioner submitted his reply to the chargesheet on 08.04.2015. In his reply, he submitted that while issuing the orders of dropping the chargesheet of Dr. A.P. Sodhi, Deputy Director, the words "without prejudice to the outcome of the criminal case pending against him" could not be mentioned inadvertently due to rush of work. He has not committed this mistake deliberately or with malafide intention for providing undue benefit to Dr. A.P. Sodhi. Lateron said mistake was rectified by issuing a substitute orders in accordance with the orders of Hon'ble CM. He also requested to drop the chargesheet. Thereafter, comments of the then Additional Chief Secretary to Govt. Haryana, Health Department were obtained and has commented that petitioner was admitted his mistake. His reply is based on facts and no financial loss caused to State ex-chequer.

That after taking into consideration reply to the chargesheet submitted by petitioner, comments of the Additional Chief Secretary to Govt. Haryana, Health Department and going through all the facts available on relevant record. Respondent No.1 i.e. Chief Secretary to Govt, Haryana viewed that ends of justice would be met it a penalty as per rule be imposed upon him for the proven charges but keeping in view that petitioner had already retired from Govt. service on 28.02.2015 and his pensionary benefits (like as gratuity, commutation of pension etc. ) stands withheld, taking a lenient view in the matter and ordered to drop above mentioned disciplinary proceedings against petitioner vide order dated 15.06.2015 (Annexure P-2). Consequent upon dropping of disciplinary proceedings against petitioner, respondent No.2 i.e. The Principal Accountant General Haryana was requested by the office of respondent No.1 vide letter dated 16.07.2015 to issue withheld commutation of pension and revised gratuity orders in respect of petitioner. Accordingly, respondent No.2 i.e. Principal Accountant General

> Haryana had issued withheld commutation of pension and revised gratuity vide his orders dated 31.07.2015, which were received in office on 03.08.2015 and it was further credited to the saving account of the petitioner by his bank in his account on 08.09.2015 through Treasury Officer, Haryana Chandigarh i.e. within three months of the date of decision on his disciplinary proceedings from 15.06.2015, in accordance with the provisions contained in sub para (ii) of para 5 of the instruction of Finance Department, Haryana dated 20.02.2002 (Annexure P-6).
>
> That the petitioner made representation to respondent No.1 on 28.10.2015 for grant him interest from 01.03.2015 to 08.09.2015 on account of delay in making payment of gratuity of Rs.9,41,886/- and commutation of pension of Rs.5,38,423/- as these amounts were withheld due to pendency of the disciplinary proceedings which were dropped vide order dated 15.06.2015 (Annexure P-2). The said representation of the petitioner was rejected and communicated to the petitioner vide letter NO.8/3/2014-8 Estt. 1 dated 27.11.2015 as he was retired from Government service in accordance with rule 2.2.(b) of Punjab Civil Services Rule, Volume-II, as such an amount of gratuity and commutation of pension of petitioner were withheld till the finalisation of disciplinary proceedings.
>
> Therefore, in view of the submissions made above, the petitioner is not entitled for relief claimed. Therefore, present writ petition being devoid of merit deserves to be dismissed."

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

It is an admitted fact that on the day when the petitioner attained the age of superannuation and retired in the year 2015, there was no charge sheet pending against him and the position for releasing the pensionary benefits to an employee is to be seen on the date of retirement of the employee and not subsequently. Once on 01.03.2015, there was no impediment in the release of the pensionary benefits of the petitioner, the respondents could not have withheld his pensionary benefits. It is the settled principle of law settled by this Court in CWP No.3493 of 1986 titled as **L.R. Dhawan vs. State of Haryana and others 1996(3) S.C.T 11** wherein, it has been held that any charge sheet which has been issued after retirement, cannot be made ground for withholding the pensionary benefits of the employee. Relevant paragraph of the judgment is as under:-

> "Gratuity due to an employee is payable to him on the date of retirement. Payment of the gratuity can be deferred in a case where the employee is under cloud at the time of his retirement, namely, in a case where he is facing departmental inquiry or judicial proceedings. If no inquiry or judicial proceedings is pending on the date of retirement of the employee, the Government/employer does not have any authority to withhold the payment of gratuity. Similarly, full pension payable to an employee can be withheld during the pending of the departmental inquiry or judicial proceedings. The Government is also possessed with the power to withhold the pension or a part thereof or recover any pecuniary loss caused to the Government from the pension payable to an employee in case such Government servant is found guilty of grave misconduct or negligence in the discharge of his duties during the course of service. Deduction from the pension can be made even on the basis of an inquiry which may be initiated against the employee after his retirement but subject to the fulfilment of the conditions enumerated in proviso to Rule 2.2(b). However, proceedings initiated against an employee under proviso to Rule 2.2 (b) cannot be made a ground for withholding of death-cum-retirement gratuity or the pension payable to an employee on the date of his retirement. In the case in hand, no inquiry was pending against the petitioner on the date of his retirement. The proceedings have been initiated against him after over three years and nine months of his retirement from service. That may ultimately lead to the withholding of the pension or part thereof or recovery therefrom in terms of Rule 2.2(b) but there does not appear to be any legal justification for withholding of death-cum-retirement gratuity payable to the petitioner on the ground that inquiry has been initiated against him under Rule 2.2(b) with the issue of notice dated 26.12.1986."

This question again came up for consideration in **Amarjit Singh Vs. Punjab State Civil Supplies Corporation Limited and another, 2016(4) PLR 191,** wherein, this Court after relying upon **L.R. Dhawan's case (supra)** held that the retiral benefits can only be withheld on the basis of a charge-sheet, which has been issued prior to the date of the retirement of an employee. The relevant part of the said judgment is as under: -

> "To the extent gratuity is claimed by the petitioner, this petition

> must succeed. To claim such benefit, learned counsel for the petitioner relies appropriately on the case law in Narinder Dev Sharma Vs. State of Punjab & another, 1996 (1) SCT 623; L.R.Dhawan Vs. State of Haryana & others, 1996 (3) SCT 11 and Ram Narain Dua Vs. Dakshin Haryana Bijli Vitran Nigam Ltd. & others, 2007 (1) SCT 161. This is because the respondents admit that no charge-sheet was served on the petitioner prior to his retirement and therefore, gratuity could not have been withheld. Neither can gratuity be withheld by initiating inquiry under Rule 2.2 (b) of the Punjab Civil Services Rules, Volume II after employee retires and departmental proceeding were not contemplated during service. This is for the reason that gratuity is a one-time payment which falls due and payable on the date of retirement and is not a recurring right like pension. However, an enquiry based on a charge-sheet issued after retirement under Rule 2.2(b) can be conducted and concluded. The charge-sheet was issued in this case on 02.04.2013 for an incident of alleged misconduct which occurred during the period 2009-10, while the petitioner retired from service on 30.04.2011. To that extent no court directions are called for in this petition to draw the curtains on the departmental proceedings.
>
> For the foregoing reasons, this petition is allowed while setting aside the impugned decision withholding gratuity for no rhyme or reason. Since the amount of gratuity has been withheld for the wrong reason, the petitioner would be entitled to interest on delayed payment @ 8.7% p.a. i.e. the rate payable on long term fixed deposits sitting invested in nationalized Banks."

Thereafter, while deciding CWP-13449-2014 titled as '**Hans Raj Vs. Registrar, Cooperative Societies, Punjab and others',** on 24.05.2017, this Court once again held that the gratuity cannot be withheld on the basis of the charge-sheet, which has been served after the retirement of an employee. The relevant portion of the judgment is as under: -

> "Now, the further question would arise as to whether the gratuity of the petitioner could be withheld or not? The petitioner retired from service on 30.9.2012. Charge sheet was served upon him on 11.4.2014 i.e. after more than one and half years of the said retirement. The gratuity is otherwise required to be released immediately on the retirement. It goes to show that the gratuity of the petitioner was probably not released immediately on account of the impending charge sheet. Petitioner is getting provisional pension and if the department finds that the charges are proved, they are always at liberty to impose a cut in the pension. However, the gratuity of the petitioner cannot be withheld for indefinite period on the basis of the charge sheet which is issued after more than one and half years of his retirement.
>
> Accordingly, the present writ petition is partly

> allowed to the extent that the gratuity of the petitioner is ordered to be released with interest @ 9% per annum starting three months from the date of retirement till the date of actual payment."

Also the Division Bench of this Court in '**Ram Narain Dua Vs. Dakshin Haryana Bijli Vitran Nigam Ltd. and others, 2007(1) S.C.T. 161**, has held that gratuity payable to an employee cannot be withheld on account of allegations which have emanated after the date of retirement of the employee. The relevant paragraph of judgement is as under: -

> "2. Having heard the learned Counsel for the parties, we are of the considered view that the respondents could not have withheld any amount of gratuity payable to the petitioner on account of allegation which have been emanated after the date of his retirement. Such a course is not available to the respondents. In some what similar circumstances, this Court has earlier also in the case of Hans Raj Sharma v. Uttar Haryana Bijli Vitran Nigam Limited and Ors. 2004(4) SCT 117 (P&H), Civil Writ Petition No. 152 of 2004, decided on October 28, 2004 had allowed the writ petition by following the judgment of Hon'ble the Supreme Court in P.R. Naik v. Union of India, AIR 1972 SC 554. It has been laid down in the aforementioned judgment that issuance of charge-sheet for initiation of departmental enquiry is a sine qua non.
>
> 3. In view of the above, we allow the writ petition and quash the impugned order dated March 1, 2005 (P-15). We further direct the respondents to release the 100% pension, arrears of pension, gratuity and commutation of pension amount to the petitioner within a period of one month from the date a certified copy of this order is presented to the respondents. In case, the needful is not within one month, then the petitioner shall be entitled to interest at the rate of 6% per annum from the date the amount is payable till its actual payment."

Therefore, in view of the law which has been cited above, the action of the respondents in withholding the pensionary benefits of the petitioner on the basis of charge sheet dated 09.03.2015, which was issued to him after his retirement was without jurisdiction.

Even otherwise, charge dated 09.03.2015 has been dropped by the respondents vide order dated 15.06.2015 (Annexure P/2) and once the respondents were not able to substantiate the charges and the charge sheet was dropped, the pendency of the said charge sheet cannot cause prejudice to the petitioner.

In the present case on the basis of charge sheet, allegations of which could not be substantiated by the respondents, the petitioner has been restrained from availing the benefits of gratuity as well as commutation of pension for approximately seven months, thus, the petitioner needs to be compensated for the same by way of grant of interest.

A Co-ordinate Bench of this Court in ***J.S. Cheema Vs. State of Haryana 2014 (13) RCR (Civil) 355*** held that where an amount is retained and used by the respondents/employer, an employee will be entitled for interest on the same. Relevant paragraph of the 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 gratuity and commutation of pension has been retained by the respondents without any valid jurisdiction/justification, therefore, keeping in view the law laid down in **J.S. Cheema's case (supra)** the petitioner is entitled for interest. Impugned order dated 27.11.2015 (Annexure P/5) stands quashed.

Keeping in view the above, the present writ petition is allowed. The petitioner is held entitled for interest @ 9% per annum on the delayed payment of gratuity and commutation of pension from the date it became due till the same was actually released to the petitioner.

Let computation of the interest, for which the petitioner is entitled as per this order be carried out within a period of two months from the date of receipt of copy of this order and the payment so calculated be released to the petitioner within a period of one month thereafter.

**(HARSIMRAN SINGH SETHI)**
06.11.2019 **JUDGE**
*aarti*

1. Whether speaking/non-speaking? Yes/No
2. Whether reportable? Yes/No