

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 29015 of 2017
Date of Decision : 18.01.2019

Jaspal Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

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

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

Mr. Mehardeep Singh, Additional Advocate General, Punjab.

Harsimran Singh Sethi, J.(Oral)

In the present writ petition, the challenge is to order dated 30.11.2017 (Annexure P-3) vide which the petitioner has been denied interest on the delayed payment after the petitioner was retired from service on 16.09.2015 and further the prayer is for issuance of a direction to the respondents-State for the release of the gratuity, which is being withheld on the basis of the registration of an FIR No. 96 dated 06.06.2014 registered under Sections 420, 120-B IPC at Police Station Civil Lines, Batala.

The facts which have been pleaded are that the petitioner joined as a Block and Development Panchayat Officer on 16.08.1984. He was promoted as District and Development Panchayat Officer on 28.05.1992. Thereafter, the petitioner was promoted as Deputy Director, Rural Development and Panchayat on 10.08.2001. The petitioner was nominated as PCS Executive on 12.01.2015 and retired from service on 16.09.2015.

It is submitted here that the actual date of retirement on attaining the age of superannuation (58 years) of the petitioner was 30.04.2014. He was given two years' extension. It was during this extended period, the petitioner was retired vide order dated 16.09.2015 with immediate effect.

Learned counsel for the petitioner states that after the retirement, the petitioner became entitled for the pensionary benefits, which the respondents released after undue and unexplained delay. He further states that gratuity of the petitioner is being withheld and the petitioner is being paid 100% provisional pension only. Learned counsel for the petitioner further states that in respect of FIR No. 96 dated 06.06.2014, after investigation, a cancellation report has already been submitted by the investigating authority in January, 2016 but the same is pending approval of the competent authority. He contends that pendency of the said FIR cannot come in the way of the release of gratuity of the petitioner.

Notice of motion was issued on 20.12.2017. Respondents have filed their reply. In the reply, it has been stated in para 6 that the retiral benefits have already been paid to the petitioner and, therefore, no grouse can be made by the petitioner in this regard and further for non-release of the permanent pension as well as the gratuity, the respondents have taken shelter behind the registration of FIR No. 96 dated 06.06.2014.

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

With regard to the prayer of the petitioner for release of the gratuity, in my opinion, the same is liable to be allowed. As per the admitted facts, only an FIR was registered on 06.06.2014 and the

investigating agency has already recommended for cancellation of the FIR. It is a settled principle of law that mere the pendency of an FIR without there being a challan, cannot be a valid ground to deny the benefit of gratuity. The respondents have the right to withhold the gratuity in case the departmental or the criminal proceedings are pending against an employee. The pendency of the departmental proceedings or the criminal proceedings have been clarified by Hon'ble the Supreme Court in the case of ***Union of India Vs. K.V. Jankiraman, 1991(3) SCT 317***, wherein it has been clarified that it is only when a charge-sheet is issued to an employee in the departmental proceedings, it can be stated that the departmental proceedings are pending against an employee. In respect of the criminal proceedings, it was held that unless and until a challan is presented, it cannot be said a criminal proceeding is pending against an employee. The relevant paragraph(s) of the said judgment are reproduced hereunder :-

“16. 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. If the allegations are serious and the authorities are keen in investigating them, ordinarily it would not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a ,remedy. It was then contended on behalf of the authorities that conclusions nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows:

"(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;

(2)

(3).....

(4) the sealed cover procedure can be resorted only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before;"

17. There' is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion no. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending

against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions.”

From the above, it is clear that in the present case, there is no challan which has been filed against the petitioner in respect of the FIR No. 96 dated 06.06.2014 and therefore, it cannot be said that any criminal proceeding is pending against the petitioner, which would entitle the respondents to withhold the gratuity for which the petitioner became entitled for after retirement on 16.09.2015.

Further, the investigation agency has already filed a cancellation report as far back as in January, 2016. Non-approval of the same cannot cause prejudice to the petitioner for the non-release of his pensionary benefits. In some what similar circumstances, a Division Bench of this Court while deciding LPA No. 905 of 2013, decided on 09.03.2015 held as under :-

“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 proceeding' 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 withhold 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.”*

With regard to the claim for interest on the delayed payment of the retiral benefits, the respondents in their reply have admitted that though the petitioner retired on 16.09.2015, leave encashment amounting to ₹9,47,850/- was released on 26.10.2017. The provisional pension upto 70% with effect from the date of retirement amounting to ₹15,575/- was released on 23.05.2016. 100% provisional pension from the date of retirement amounting to ₹22,250/- was released on 01.09.2017. The arrears of salary amounting to ₹2,39,581/- was released to the petitioner on 16.10.2017.

No justification has been given as to why the same was delayed. In the absence of any justification, keeping in view the law laid down by the Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab, 1997 (3) SCT 468***, an employee becomes entitled to interest on the delayed release of the pensionary benefits. In the absence of any

justification in the present case, the petitioner is entitled for the interest keeping in view the law laid down by the Full Bench of this Court mentioned above. The findings of the Full Bench of this Court in **A.S. Randhawa's case (supra)** is 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 retiree 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.”

Keeping in view the above, the writ petition is allowed. The respondents are directed to release the gratuity of the petitioner as well as the regular pension within a period of two months from the date of receipt of certified copy of this order. Further, the petitioner is held entitled for interest @ 9% per annum on the delayed payments from the date it became due till the release of the same. Let the amount be calculated within the abovesaid period of two months and be released to the petitioner within a period of three months thereafter. It is made clear that as the criminal proceedings are pending, the interest of the State will be secured in case a direction is given to the petitioner to submit indemnity bond to the State that

the petitioner will indemnify the State in case he is found guilty by the learned Judicial Magistrate. Let the petitioner submit the indemnity bond duly executed as per law with the respondents within three weeks from today.

The writ petition stands allowed in the above terms.

January 18, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned? *Yes/No*
Whether reportable? *Yes/No*