IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-8655 of 2016
Date of decision: 22.10.2019

Devender Singh .... Petitioner

versus

Uttar Haryana Bijli Vitran Nigam Limited and others .... Respondents

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.K. Chaudhary, Advocate
for the petitioner.

Mr. Hitesh Pandit, Advocate
for the respondent-UHBVNL.

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HARSIMRAN SINGH SETHI, J. .

In the present writ petition, the grievance which is being raised by the petitioner is that the gratuity amounting to Rs.8,04,701/- has been withheld by the respondents without any valid justification and further the retiral benefits of the petitioner were not released within a reasonable time and, therefore, the petitioner is entitled for interest on the said delayed payment of the retiral benefits.

As per the facts mentioned in the writ petition, the petitioner retired on 31.03.2015 on attaining the age of the superannuation. On the date of retirement of the petitioner, charge sheet dated 12.09.2014 was pending against the petitioner. Keeping in view the pendency of the charge sheet, provisional pension was sanctioned in favour of the petitioner on

28.07.2015 but the other retiral benefits of the petitioner were withheld. Charge sheet dated 12.09.2014 was filed by the respondents vide order dated 18.02.2016 (Annexure P/6) and after filing of the said charge sheet, it is the case of the petitioner that there was nothing pending against the petitioner, which would have entitled the respondents to withhold the pensionary benefits of the petitioner. The petitioner has filed the present writ petition seeking direction from this Court to the respondents for the release of his pensionary benefits.

During the pendency of the present writ petition, the respondents served upon the petitioner another charge sheet dated 06.03.2017. After serving the said charge sheet, respondents released the pension of the petitioner on 17.4.2017 from the due date and on the same date i.e. 17.04.2017, a sum of Rs.1,95,299/- was also released on account of gratuity but a sum of Rs.8,04,701/- was withheld by the respondents. On 10.11.2016 a sum of Rs.2,37,765/- was released on account of difference of leave encashment and on account of arrears.

It is the case of the petitioner that once the charge sheet, which was pending against the petitioner on the date of retirement, was filed, the pensionary benefits of the petitioner could not have been withheld by the respondents on account of another charge sheet, which was issued approximately two years after his retirement.

Upon notice of motion, respondents have filed reply, in which, it has been stated that there was charge sheet, which was served upon the petitioner for causing loss to the Corporation and under Rule 2.2 of the Punjab Civil Services Rules, Volume II, Chapter II, as applicable to

Haryana withholding of the benefits by the respondents is in consonance with the rules governing the service and settled principle of law. Respondents have admitted that the pension of the petitioner was refixed on 17.04.2017 and further difference of leave encashment as well as arrears on the said amount also released on 10.11.2016 and gratuity amounting to Rs.1,95,299/- was also released and a sum of Rs.8,04,701/- have been retained by the respondents due to pendency of the charge sheet dated 06.03.2017.

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

The only argument which has been raised by the learned counsel for the petitioner is that there was only one charge sheet dated 12.09.2014, which was pending on the date, when the petitioner retired and the same was filed by the respondents vide order dated 18.02.2016 and thereafter no proceedings were pending against the petitioner, which would have entitled the respondents to withhold the pensionary benefits of the petitioner and, therefore, the retaining of the amount of retiral benefits only due to the charge sheet, which was served on 06.03.2017 i.e. after the period of two years of retirement of the petitioner, is not at all valid as the charge sheet served after retirement cannot be made ground to retain the gratuity of the petitioner.

Learned counsel for the respondents argued that once the charge sheet has been served and is pending, though, served two years after the retirement, the same would entitle the respondents to withhold the gratuity as the proceedings are pending as of now and, therefore, the claim of the petitioner is liable to be rejected.

It is the settled principle of law that the position is to be seen on the date of retirement of the employee and not subsequently and it is the admitted case of the respondents that there was only one charge sheet, which was served upon the petitioner on 12.09.2014, which was pending at the time of retirement of the petitioner on 31.03.2015, which was also filed by the respondents vide order dated 18.2.2016 (Annexure P/6) and starting from the said date till 06.03.2017 when another charge sheet was issued, there was no impediment in releasing the gratuity of the petitioner and once the impediment, which existed on the date of retirement was no longer in existence, the pensionary benefits could not have been withheld by the respondents.

A Co-ordinate Bench of 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** has 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."

In the present writ petition, the charge sheet on the basis of which the gratuity has been retained was issued even after filing of the present writ petition and once the charge sheet which was brought into operation for withholding the gratuity was not in existence on the date of the retirement the same cannot be pressed into for withholding the pensionary benefits keeping in view the law laid down in **L.R. Dhawan's case (supra).**

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)** this Court 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.
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> 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."

While deciding CWP-13449-2014 titled as '**Hans Raj Vs. Registrar, Cooperative Societies, Punjab and others',** decided 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. 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.
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> 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."

In view thereof, the claim of the petitioner for releasing of gratuity is allowed. Respondents are directed to release the gratuity of the petitioner within a period of two months from the date of receipt of certified copy of this order. However, it is made clear that this Court is making no observation with regard to charge sheet dated 06.03.2017 and the respondents are well within their jurisdiction to take appropriate decision on the same, if permissible under law.

The writ petition stands allowed in above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

22.10.2019
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1. Whether speaking/non-speaking? Yes/No
2. Whether reportable? Yes/No