

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 6399 of 2018
Date of decision : 29.10.2019

Pushpa Rani

....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Jagbir Malik, Advocate for the petitioner.

Mr. C.S. Bakhshi, Additional Advocate General, Haryana.

Harsimran Singh Sethi, J. (Oral)

The grievance which has been raised in the present writ petition by the petitioner is that her pensionary benefits (except the payment of the provisional pension) have been withheld by the respondents due to pendency of an FIR No. 393 dated 06.06.2011, which act of the respondents is contrary to the settled principle of law as the retiral benefits have been withheld only on the basis of the registration of an FIR, wherein no challan has been filed even upto now.

As per the facts mentioned in the writ petition, petitioner was appointed as a Home Science Mistress on 09.08.1982 on ad-hoc basis and thereafter, her services were regularized on 01.11.1986. Petitioner thereafter promoted as a Lecturer on 10.12.1991. While the petitioner was

in service, an FIR No. 393 dated 06.06.2011 was registered against her at Police Station Gurugram City under sections 420, 467, 468, 471 and 409 of the Indian Penal Code, 1860. After enquiring into the allegation, untrace/closure report was submitted by the police under section 173 Cr.P.C. to the concerned Magistrate on 09.08.2014. The said untrace report was not accepted by the Illaqa Magistrate and the case was ordered to be further investigated. In the meantime, petitioner retired from the post of Lecturer on attaining the age of superannuation on 30.04.2017. After the retirement, petitioner has not been paid any of her retiral benefits except the provisional pension. The said provisional pension was also started from December, 2017 and not from the date when the petitioner superannuated i.e. on 30.04.2017. The prayer of the petitioner is for the release of all the pensionary benefits, which the respondents have withheld on account of the pendency of the FIR No. 393 dated 06.06.2011 alongwith arrears and interest thereupon.

Upon notice of motion, respondents have filed the reply, in which, it has been admitted by the respondents that the untrace report was filed on 09.08.2014, which was returned by the Illaqa Magistrate for further investigation and no report has been submitted by the police thereafter. It has been further stated in the reply that on 09.01.2018, ASI Naresh Kumar had appeared before the Court of Chief Judicial Magistrate, Gurugram and gave a short report stating that closure report has been prepared again but the same was yet to be submitted in the Court. The respondents have justified their action in withholding the pensionary benefits of the petitioner on the ground that the criminal case is pending against the petitioner in the

form of FIR No. 393 dated 06.06.2011. In order to justify the action of withholding the pensionary benefits, respondents are relying upon Rule 69 of the Haryana Civil Services (Leave) Rules, 2016 (hereinafter referred to as '2016 Rules') to contend that where disciplinary or criminal proceedings are pending against an employee at the time of retirement, the benefit of leave encashment and other retiral benefits can be withheld.

An additional affidavit has been filed by the respondents today in Court, in which, it has again been reiterated by the respondents that no charges have been framed so far against the petitioner in FIR No. 393 dated 06.06.2011. In the said affidavit, the respondents have again relied upon 2016 Rules and in addition have been have mentioned Rule 12 (3) of 2016 Rules to contend that where the departmental or judicial proceedings are pending against an employee, only provisional pension is to be paid. Learned counsel for the respondents after seeking instructions from SI Nity Anand, who is present in Court, very fairly submitted that the matter is still pending for further investigation with the police and no challan has been submitted against the petitioner so far.

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

The only question which arises for consideration before this Court is as to whether any criminal proceedings pending against the petitioner, which would entitle the respondents to withhold the pensionary benefits keeping in view the rules governing the service as well as settled principle of law.

As per the facts, which have been recorded in the preceding

paragraph, though the FIR No. 393 dated 06.06.2011 is still pending but the police had submitted a closure report on 09.08.2014 initially and thereafter, had again prepared a closure report dated 09.01.2018, which is yet to be submitted. This shows that no involvement of the petitioner has been found during the investigation in respect of the allegations which have been alleged against the petitioner so far in respect of FIR No. 393 dated 06.06.2011. As the closure report is being submitted by the police, no charges have been framed against the petitioner so far.

Mere pendency of an FIR against an employee cannot be treated as criminal proceeding so as to entitle the respondents to withhold the pensionary benefits. In Union of India Vs. K.V. Jankiraman, 1991(3) S.C.T. 317, a Full Bench of Hon'ble Supreme Court of India gave the guidelines as to when the proceedings against an employee can be termed to be pending in respect of disciplinary proceedings as well as in respect of the criminal proceedings. Hon'ble Supreme Court of India has held that where a charge-sheet has been served upon an employee in the departmental proceedings, the disciplinary proceedings are to be treated as pending against an employee and where, a challan has been presented against a person in the criminal proceedings, the criminal proceedings are to be treated as pending against the said person. The relevant paragraph of the judgment in K.V. Jankiraman's case (supra) is as under :-

“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 should 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.”

In the present case, the respondents are contending that there are criminal proceedings pending against the petitioner in the shape of FIR No. 393 dated 06.06.2011, hence, withholding of pensionary benefits of the petitioner is within their jurisdiction. The said assertion of the respondents is contrary to the settled principle of law settled by a full Bench of Hon'ble Supreme Court of India in **K.V. Jankiraman's case (supra)**. Once the challan has not been put up against the petitioner in the said FIR till date of her retirement, it cannot be said that the criminal proceedings are pending against her on the date of her retirement so as to entitle the respondents to withhold her pensionary benefits. Even as of today, there is no challan submitted by the competent authority duly accepted by the Judicial Magistrate, so as to treat the said FIR No. 393 dated 06.06.2011 as criminal proceedings pending against the petitioner.

The same view has been reiterated by this Court more than once. A Division Bench of this Court while deciding LPA No. 905 of 2013, on 09.03.2015 titled as **Sarup Singh Vs. State of Punjab and others**, has held that where a cancellation report has been submitted but the Magistrate is yet to take the cognizance of the same and there are no charges which have been framed against a person after due application of mind, it cannot

be said that any criminal proceeding is pending against the said employee. The Division Bench in **Sarup Singh's case (supra)** held that the pensionary benefits of an employee can only be withheld in case the charges have been framed in the judicial proceedings. The relevant paragraphs of the said judgment are 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.”

In view of the above, it is clear that it is only in case the charges are framed in the judicial proceedings, it can be said that any judicial proceedings are pending against an employee so as to entitle the department to withhold the pensionary benefits.

Further, A Co-ordinate Bench of this Court while deciding CWP No. 4033 of 2000, on 07.11.2000 titled as ***Lakhdev Singh Vs. State of Punjab***, held that mere registration of an FIR on the allegation of corruption, without there being any further proceedings, especially, when no charges have been framed for long time, cannot be made a ground for withholding the pension and other retiral benefits. The relevant paragraphs of the said judgment are as under:-

“6. Learned counsel appearing for and on behalf of the State has not been able to rebut the argument of the learned counsel for the petitioner and has candidly admitted that in fact no judicial proceedings were pending at the time of retirement and even now the challan is yet to be put in Court. So far as departmental proceedings are concerned, they in fact had not been initiated against the petitioner. Thus, the learned counsel had not been able to substantiate his argument except that reference has been made to rule 11.1 of the Rules which reads as under :-

"11.1. (a) xxx xx xxx xxx xxx xxx

xxx xx xxx xxx xxx xxx

Provided also that a Government employee against whom judicial or a departmental proceeding has been instituted or continued under rule 2.2(b) ibid, shall not

be permitted to commute any part of his pension during the pendency of such proceeding.

(b) xxx xxxx xxxx xxx xxx xxx xxx xxx

Note 1:- The commutation of an anticipatory pension will require the sanction of the Finance Department. (See also sub-note below Rule 11.4 below). An explanation of the reasons of delay in the sanction of the final pension should be furnished to the Finance Department, alongwith the report on the title to the commutation applied for. In order to secure repayment of the commuted value of the part of an anticipatory pension paid in declaration in the form below should be obtained from the pensioner concerned along with the application for commutation."

7. I am of the view that the respondents did not have any authority in withholding the amount due and payable as leave encashment, DCRG and the commutation of the pension because no judicial proceedings or departmental proceedings were pending against the petitioner at the time of retirement. In fact no judicial proceedings have been initiated for the last four years from the dale of incident and in fact as per the said rule, before passing final orders, the Public Service Commission is required to be consulted. Admittedly, even the challan has not been put up in the court pursuant to the FIR till date.

8. In view of the foregoing discussion, this petition is allowed and the Government is directed to release the amount due against leave encashment, DCRG and consider the case of the petitioner for commutation of pension in accordance with Annexure P6 within a period of three months from the date of receipt of copy of this order from this Court or a certified copy from the petitioner whichever is earlier."

In the present case also, no charges have been framed against

the petitioner in respect of the FIR No. 393 dated 06.06.2011 even upto now and rather, the untrace report was submitted as far back as the year 2014 i.e. much before the retirement of the petitioner and a second closure report has already been prepared to be submitted, it cannot be said that criminal proceedings are pending against the petitioner.

Therefore, keeping in view the settled principle of law noticed above, it cannot be said that any criminal/judicial proceedings are pending against the petitioner so as to entitle the respondents to withhold the pensionary benefits of the petitioner even under 2016 Rules.

Even otherwise, it is a settled principle of law that position is to be seen on the date of retirement. On the date of retirement, there were no charges framed against the petitioner in respect of the FIR No. 393 dated 06.06.2011. The respondents have exceeded their jurisdiction in withholding the pensionary benefits of the petitioner by totally overlooking the settled principle of law, where pendency of criminal/judicial proceedings has been explained. It has been clarified/held more than once by the Competent Court of Law that mere registration of an FIR against a person will not be termed as the pendency of the criminal judicial proceedings unless before the retirement, the charges are framed against the said employee in those proceedings, which is being taken as a ground for withholding the retiral benefits. Petitioner has been harassed for more than 2 years as without there being any jurisdiction, the respondents have withheld her pensionary benefits.

In view of the above, the action of the respondents in withholding the pensionary benefits of the petitioner on the ground that

criminal proceeding is pending against the petitioner is held to be bad and without any jurisdiction. In the facts and circumstances of the present case, respondents are directed to release all the pensionary benefits of the petitioner alongwith arrears.

Learned counsel for the petitioner argues that as the respondents have ignored the settled principle of law settled by a Full Bench of Hon'ble Supreme Court of India in ***K.V. Jankiraman's case (supra)***, which was laid down as far back as August 1991 and withheld the pensionary benefits and this illegal action has caused prejudice to the petitioner hence, petitioner is entitled for the release of the pensionary benefits alongwith interest.

Learned counsel for the respondents raises objection to the grant of interest to the petitioner on the ground that respondents were under genuine belief that during the pendency of an FIR, pensionary benefits of an employee can be withheld.

I find force in the claim of the petitioner for the grant of interest for the reason that without any application of mind, the respondents withheld the pensionary benefits of the petitioner, which is the only source for survival of a retired employee to lead a dignified life. In case pensionary benefits of an employee are withheld without any jurisdiction, the employee suffers a lot, not only financially but physically and mentally as well. In the absence of the amount of pensionary benefits, the employee is also not able to lead a dignified life, which is guaranteed under article 21 of the Constitution of India. The government is suppose to take action permitted under the rules as well as the settled principal of law.

In the present case, even in the affidavit, which has been filed today, the respondents have justified the withholding of the pensionary benefits, though, the said act is contrary to the settled principal of law as noticed above. As in the present case, the petitioner has been denied the benefit of legitimate claim of the pensionary benefits for a period of 2 years, which has caused prejudice to her, petitioner needs to be compensated by the grant of interest. Let the pensionary benefits of the petitioner be released alongwith interest @ 9% per annum from the date it became due within a period of 2 months from the receipt of certified copy of this order.

It is made clear that this Court is not expressing any opinion about the investigation or the FIR No. 393 dated 06.06.2011 pending before the Illaqa Magistrate. In case, any action is required to be taken against the petitioner after the conclusion of the proceedings in respect of FIR No. 393 dated 06.06.2011, if permitted under the Rules governing the service, the respondents will be free to do so in accordance with law.

Writ petition is allowed in above terms.

October 29, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking? *Yes*
Whether reportable? *Yes*