

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 28030 of 2019
Date of decision : 27.09.2019

Prithvi Pal Singh

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Ms. Sushma Chopra, Advocate for the petitioner.

Harsimran Singh Sethi, J. (Oral)

In the present writ petition, the prayer of the petitioner is for quashing the order dated 17.12.2018 (Annexure P-5) by which respondents had passed an order that keeping in view the provisions of Rule 9.14(1)(c) of the Punjab Civil Services Rules, Vol. I, no gratuity can be paid to the employee until the conclusion of the departmental or the judicial proceedings. After the retirement of the petitioner, the gratuity for which the petitioner was entitled, has been withheld keeping in view the pendency of an FIR No. 18 dated 12.9.2015, under Sections 406, 498-A IPC, which is stated to be pending against the petitioner even as of today. Petitioner had filed CWP No. 5712 of 2019 challenging the same order with the same prayer before this Court and on 30.04.2019, following order was passed :-

“Learned counsel for the petitioner states that at this

stage the petitioner wishes to withdraw the present writ petition with liberty to file a fresh one on the same cause of action after the proceedings in the criminal case are concluded.

Dismissed as withdrawn with liberty as prayed for.”

A bare perusal of the above reproduced order would show that the petitioner was granted liberty to claim the benefit of gratuity after the proceedings in the criminal case are concluded.

The relief claimed in the present writ petition is for quashing of order dated 17.12.2018 (AnnexureP-5) which was also the subject matter of the earlier Civil Writ Petition No. 5712 of 2019.

Learned counsel for the petitioner argues that after the earlier writ petition was withdrawn on 30.04.2019, there is a compromise effected between the parties in pursuance to which, the petitioner had filed CRM-M No. 39985 of 2019 for quashing of the FIR, which came up for hearing on 19.09.2019 and following order was passed on that date:-

“Prayer made in this petition is for quashing of FIR and all the consequential proceedings arising therefrom on the basis of the compromise between the parties.

Notice of motion for 30.01.2020.

At this stage, Mr. Arihant Goyal, Advocate, has put in appearance on behalf of respondent No. 2 and filed memorandum of appearance, which is taken on record. He admits the factum of compromise entered between the parties.

The parties are directed to appear before the Illaqa Magistrate/trial Court for recording their respective statements with regard to compromise/settlement on 11.11.2019.

The Illaqa Magistrate/trial Court is directed to submit a

report alongwith copies of statements of parties on or before the next date of hearing containing the following information as well:-

- (i) Number of persons arrayed as accused in FIR;*
- (ii) Whether any accused is proclaimed offender;*
- (iii) The stage of trial/proceedings;*
- (iv) Whether the compromise is genuine, voluntary and without any coercion or undue influence”*

Learned counsel for the petitioner states that once there is a compromise effected between the parties, the proceedings in respect of FIR No. 18 dated 12.09.2015, registered against the petitioner, comes to an end and there is no need to wait for the recording of the statements of the complainant as well as the petitioner as directed by this Court vide order dated 19.09.2019 and the respondents are bound to release the gratuity of the petitioner by treating the FIR No. 18 dated 12.09.2015 as quashed.

I have heard learned counsel appearing on behalf of the petitioner.

There is no word 'Deemed quashed' in the criminal jurisprudence. It cannot be said that on the basis of a compromise entered between the complainant and accused, criminal proceedings are deemed to have been concluded automatically. Till the FIR is quashed by the competent Court of law on the basis of compromise, the arguments raised by learned counsel for the petitioner that on the basis of compromise, FIR is deemed to be quashed automatically, cannot be accepted.

Not only this, the compromise has been placed on record by the petitioner while filing CRM-M No. 39985 of 2019. In order to verify the

genuineness of the same, this Court has directed the parties to appear before the learned trial Court to get their statements recorded. Even as of today, the statements have not been recorded and CRM-M No. 39985 of 2019 filed by the petitioner for quashing the FIR is now adjourned to 02.11.2019. Veracity of the compromise is still to be ascertained by this Court. Under these circumstances, the assertion of learned counsel for the petitioner that the proceedings in respect of quashing of the FIR, on the basis of the compromise, which is yet to be verified, has already come to an end, cannot be accepted as the compromise, if any, cannot be treated as conclusion of the proceedings in respect of FIR No. 18 dated 12.09.2015 in any manner.

Further, before this Court, the petitioner had given an undertaking that it is only on the conclusion of the proceedings, the petitioner will have the liberty to approach this Court claiming the release of the gratuity, if the same is not released by the respondents themselves. Once, the FIR No. 18 dated 12.09.2015, on the basis of which the gratuity of the petitioner has been withheld, is still pending even as of today and the compromise, on the basis of which petitioner is deeming that the criminal proceedings have come to an end, is yet to be verified as the statements are yet to be recorded, the petitioner, *prima-facie*, has violated the undertaking given before this Court on 30.04.2019 in CWP No. 5712 of 2019 and wasted the time of the Court by filing the present writ petition.

A Full Bench of this Court in ***Punjab State Civil Supplies Corporation Limited and others Vs. Pyare Lal, 2013 (1) PLR 36*** has held that gratuity or death-cum-retirement gratuity can be withheld during the pendency of the departmental enquiry or criminal proceedings. The relevant

portion of the said judgment is as under :-

11. According to us, the aforesaid enunciation is in accord with the correct legal position. Therefore, what is to be seen in the present case is as to whether there is any rule which empowers the appellants to withhold the benefit of encashment of leave. On this issue, we may point out that Full in Dr. Ishar Singhs case (supra) referred to rule 2.2. (c) of the Punjab Civil Services Rules, Volume-II, which is applicable to the appellants as well, and that rule reads as under:-

"Rule 2.2 (c).

(1) Where any departmental or judicial proceeding is instituted under Clause (b) of Rule 2.2. or where a departmental proceedings is continued under Clause (i) of the proviso thereto against an officer who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date of which, upon conclusion of such proceedings, final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service up to the date of retirement or if he was under suspension on the date of retirement up to date immediately proceeding to the date on which he was placed under suspension; but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceedings and of final orders thereon.

The gratuity, if allowed to be drawn by the competent authority on the conclusion of the proceedings will be deemed to have fallen due on the date of issue of final orders by the competent authority.

(2) Payment of provisional pension made under Sub-clause (1) shall be adjusted against the final

retirement benefits sanctioned to such officer upon conclusion of the aforesaid proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period."

As per the aforesaid rule, only gratuity or death-cum-retirement gratuity can be withheld and no other retiral benefit is stipulated. Learned counsel for the appellants also could not point out any other rule authorising the appellants to withhold the benefit of encashment of leave.

Keeping in view the settled principle of law as settled by the Full Bench of this Court in ***Pyare Lal's case (supra)***, department was well within its right to withhold the benefits due to the pendency of the FIR No. 18 dated 12.09.2015.

Keeping in view the above, as the proceedings in respect of the FIR No. 18 dated 12.09.2015 are still pending against the petitioner and have not been finalized, no ground is made to interfere with the order passed by the State (Annexure P-5) withholding the gratuity of the petitioner till the conclusion of the proceedings in FIR No. 18 dated 12.09.2015.

Dismissed.

September 27, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

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