

**IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH
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**CM-16000-C-2018 &
CM-16001-C-2018 &
RSA-5818-2018**

Date of decision: 23.01.2019

UHBVNL AND ORS

...APPELLANTS

VS.

NARINDER PAL SINGH

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Rahul Dev Singh, Advocate,
for the appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM-16000-C-2018

Prayer in this application is for condonation of delay of 66 days in filing the appeal. Application is supported by the affidavit of the Executive Engineer, Sub Urban Division No. 1, UHBVNL, Model Town, Rohtak.

For the reasons mentioned in the application, the present application is allowed. Delay of 66 days in filing the appeal stands condoned.

RSA-5818-2018

The suit for declaration with consequential relief of mandatory injunction was filed by the respondent-plaintiff who was working as an Assistant Engineer (A.E.) and had retired on 31.05.2013 after completing the age of 58 years but his final pension, gratuity, revised leave encashment, G.I.S., commutation and other related retiral benefits have not been released.

During the pendency of the suit, all reliefs, which the respondent-plaintiff would have been entitled to except for gratuity, have been released to him along with interest on the delayed payment of three months. The trial Court dismissed the suit, vide judgment and decree dated 22.11.2016, holding that the respondent-plaintiff was not entitled to the release of gratuity as there was an enquiry pending against him. On an appeal preferred by the respondent-plaintiff, learned Lower Appellate Court proceeded to allow the said claim of gratuity along with interest @ 9.5% per annum from the date of retirement till the date of actual release.

It is the contention of the learned counsel for the appellants that the Lower Appellate Court has wrongly proceeded on the premise that the appellants cannot withhold the gratuity of an employee, against whom a departmental enquiry is pending. He contends that it is an admitted position that the charge-sheet was issued to the respondent-plaintiff on 23.11.2011. He contends that the said charge-sheet still holds good against him. He, however, could not dispute the fact that at the time when the appellant was heard by the learned Additional District Judge, Rohtak on 03.05.2018, even the Enquiry Officer has not been appointed. This fact stands recorded in the order passed by the Lower Appellate Court (para-28). He, on instructions from Sh. Davinder, LDC, O/o UHBVNL, Rohtak, informs the Court that till date, no enquiry officer has been appointed. He further contends that as per the Statutory Rules, the department is entitled to withhold the gratuity in case of initiating of a departmental enquiry prior to the date of retirement or the same is contemplated, as provided under the Statute. He, thus, contends that the order passed by the learned Lower Appellate Court dated 03.05.2018 cannot sustain and deserves to be set aside.

I have considered the submissions made by the learned counsel for the appellants and with his assistance, have gone through the records of the case.

This Court is unable to accept what has been asserted by the counsel for the appellants although in Statute, he may be right but the fact remains that the charge-sheet was issued to the employee (respondent herein) on 23.11.2011. An enquiry officer had not been appointed till the passing of the judgment by the Lower Appellate Court i.e. 03.05.2018. Almost 7 years have passed by that time and even the enquiry officer had not been appointed till date. Merely because a charge-sheet has been issued and thereafter nothing has been done by the department although the employee has retired on 31.01.2013, this inordinate delay has to be held to be the fault on the part of the department, for which an employee cannot be penalized for all times to come. The Rule does not give a blanket license to an employer to issue a charge-sheet for holding an enquiry for all time to come as the enquiry has not proceeded thereafter. This is one classic case where the Lower Appellate Court has rightly proceeded to hold the respondent-plaintiff entitled to the release of gratuity because of the conduct of the appellants. This Court does not find any justification or reason to interfere in the well-reasoned order passed by the Additional District Judge, Rohtak dated 03.05.2018.

The appeal, therefore, stands dismissed.

CM-16001-C-2018

In view of the dismissal of the main appeal, the present application for stay has been rendered infructuous and the same is, therefore,

disposed of accordingly.

January 23, 2019

(AUGUSTINE GEORGE MASIH)

pj

JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No