

CWP No. 21524 of 2012(O&M) and
CWP No. 1464 of 2017

1

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

203

CWP No. 21524 of 2012(O&M)

Gurmail Singh

.....Petitioner

Vs.

Punjab Water Supply and Sewerage Board and another

.....Respondent

226

CWP No. 1464 of 2017

Sukhdev Singh

.....Petitioner

Vs.

State of Punjab and others

.....Respondents

Date of Decision:03.03.2020

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. M.S. Sidhu, Advocate
for the petitioner in CWP No. 21524 of 2012

Mr. K.S. Dadwal, Advocate
for the petitioner in CWP No. 1464 of 2017.

Mr. Vijay Kumar Kaushal, Advocate
for respondent No.1 in CWP No. 21524 of 2012

Mr. Navdeep Chhabra, DAG, Punjab in both the cases.

HARSIMRAN SINGH SETHI, J.(Oral)

CM-8398-CWP of 2018 in CWP No. 21524 of 2012

No order is required to be passed in this application as the
same has been rendered infructuous.

Main cases:

By this order two writ petitions, details of which have
been given in the heading, are being disposed of by way of a common

order as both the writ petitions involves the same question of law and similar facts. For the purpose of this order, the facts are being taken from CWP No. 21524 of 2012.

In the present writ petition the grievance of the petitioner is that the petitioner has already retired on attaining the age of superannuation on 30.04.2008, but his pensionary benefits, in respect of the service which the petitioner has rendered with the respondent, have been withheld only due to the pendency of an FIR No. 36 dated 06.06.2003, which is impermissible keeping in view the settled principle of law. The prayer of the petitioner is for issuance of a direction to the respondent to release the pensionary benefits of the petitioners forthwith.

The facts leading to the filing of the present writ petition are that while working as a Sub Divisional Officer with the respondent-Board, an FIR No. 36 dated 06.06.2003 was registered against the petitioner by the Vigilance Bureau, Punjab for offences under Sections 420, 409, 467, 468, 471, 477 and 120-B of the Indian Penal Code as well as under Section 13 (1) read with Section 13(2) of Prevention of Corruption Act, 1988. Immediately upon the registration of the said FIR the petitioner was suspended, but was later on reinstated on 30.10.2003 pending the criminal proceedings.

Petitioner retired on attaining the age of superannuation on 30.04.2008. At the time of the retirement, the FIR No. 36 dated 06.06.2003 was pending against the petitioner and against one Sh.

Gurcharan Singh Sawhney, who was also named in the said FIR. Due to the pendency of the FIR, the gratuity of the petitioner was withheld by the respondents. The prayer of the petitioner is for issuance of a direction to the respondents to release the gratuity of the petitioner forthwith.

Upon notice of motion, respondents have filed the reply. In the reply, the respondents have stated that as the criminal proceedings are pending against the petitioner in shape of the FIR No. 36 dated 06.06.2003, the respondents are well within their rights to withhold the gratuity of the petitioner during the pendency of the said criminal proceedings keeping in view the rules governing the service. Respondent No.2-Vigilance Bureau Punjab alongwith their reply has placed on record the copy of the Challan dated 25.06.2013.

The position in **CWP No. 1464 of 2017** is some what similar. It is an admitted case that the sanction to prosecute the petitioner, which was granted by the respondent-Department, was challenged by the petitioner by filing CWP No. 618 of 2015, wherein, the operation of the sanction to prosecute has already been stayed and therefore, no proceedings have been undertaken in respect of the FIR registered against the petitioner in CWP No. 1464 of 2017. Nothing has been placed on record by learned counsel for the respondents to show that at any given point of time, prior to the retirement of the petitioner, any Challan was presented before the Competent Court of law so as to initiate criminal proceedings against the petitioner. In the

absence of any material, the learned counsel for the petitioner argues that at the time of retirement of the petitioner in CWP No. 1464 of 2017, only an FIR was pending and there was no Challan presented against the petitioner so as to treat pending FIR as criminal proceedings pending against the petitioner so as to give jurisdiction to the respondents to withhold the pensionary benefits of the petitioner.

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

The only question which arises for determination before this Court in the present writ petition is whether the action of the respondents in withholding the gratuity of the petitioner keeping in view of the pendency of the FIR No. 36 dated 06.06.2003 is justified or not?

First question which needs to be decided is whether on the date of the retirement of the petitioner i.e. 30.04.2008 whether any criminal proceedings were pending against the petitioner so as to give the jurisdiction to the respondent-State to withhold the pensionary benefits i.e. gratuity of the petitioner.

It is an admitted case that the FIR No. 36 dated 06.06.2003 was pending against the petitioner at the time of retirement, but the Challan in the said FIR was presented against the petitioner in the year 2013, which is clear from the reply filed by respondent No.2. That being so, on the day when the petitioner retired after attaining the age of superannuation on 30.04.2008 only the FIR

No. 36 dated 06.06.2003 was pending, which was being investigated.

The question that can mere pendency of an FIR on the date of retirement give jurisdiction to the respondents to withhold the retiral benefits on the ground that the criminal proceedings are pending is to be decided in the present writ petition.

Hon'ble Supreme Court of India in **Union of India Vs. K.V. Jankiraman 1991(3) SCT 317** decided the question of law as to when a proceedings are deemed to be pending against an employee in respect of the departmental inquiry as well as in respect of the criminal proceedings so as to give jurisdiction to the department to withhold the benefits. Hon'ble Supreme Court of India held that it is only in case a charge-sheet is served upon a delinquent employee during the departmental proceedings, the departmental inquiry is stated to be pending against an employee, which will give right to the respondents to take an action against the employee in accordance with law. Similarly, 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 so as to give jurisdiction to the employer to take action against an employee. 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 chargememo/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.”*

In the present case, it is admitted by the learned counsel for the respondent that only an FIR No. 36 dated 06.06.2003 was pending against the petitioner at the time of his retirement, which was under investigation and the Challan was presented only on 25.06.2013 which was after the retirement of the petitioner. As no Challan was presented against the petitioner in FIR No. 36 dated 06.06.2003 upto the date of his retirement, it cannot be said that any criminal proceedings were pending against the petitioner on the date of his retirement so as to give jurisdiction to the respondent/State to withhold the gratuity of the petitioner.

This Court while deciding CWP No.3567 of 2006 decided on 09.10.2006 titled as Atam Bodh Sharma Vs. State of Haryana and Others held that mere pendency of an FIR without there being any Challan presented in the said FIR on the date of the retirement, there is no jurisdiction with the department to withhold the pensionary benefits of an employee. This Court relied upon the judgment in K.V. Jankiraman's case(supra) to direct the respondents to release the pensionary benefits of an employee, which were being withheld only due to the pendency of an FIR.

“4. A perusal of the Explanation 2(i) makes it evident that judicial proceedings would be deemed to have

been instituted on the date on which challan is submitted to a criminal Court. In the present case it is conceded position that challan has not been presented so far against the petitioner although he had retired on 31.3.2005 and the FIR was registered against him on 21.8.2003. The principle laid down in the aforementioned explanation has been fully supported by the judgment of Hon'ble the Supreme Court in the case of Union of India v. K.V. Jankiraman, 1991(3) SCT 317 (SC) : (1991) 4 SCC 101. The question before the Court was that whether for the purposes of sealed cover procedure mere contemplation of disciplinary inquiry of criminal proceedings could be deemed to be pending and it was held as under:-

“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 restored 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.....”
(Emphasis added)

5. There is another reason for us to accept the prayer made by the petitioner. A Division Bench of this Court has taken the view that respondent cannot invoke Rule 2.2(b) on the excuse that criminal case has been pending till the trial Court has declared the pensioner as guilty. It is only after the decision of the trial Court that a competent authority has to apply its mind and then to conclude whether any punishment under Rule 2.2(b) is to be imposed. After quoting Rule 2.2(b) and the proviso 1, a Division Bench of this Court in the case of Manohar Singh v. Punjab State Electricity Board, 2006(2) SCT 103 (P&H): 2006(2) RSJ 316, has observed as under:-

“12. A bare perusal of the aforesaid rule shows that it can be invoked if in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his services. In the present case, the enquiry proceedings had already concluded against the petitioner and he

*had been punished by orders dated 16.11.2000 (Annexure P-6) and 26.8.2002 (Annexure P-9). Therefore, the petitioner is correct in his submission that no departmental proceedings were pending against him at the time of his superannuation on 31.5.2003. In our opinion, the respondents cannot invoke Rule 2.2(b) on the ground that the case in FIR No.112 of 1999 is still pending against the petitioner. The sine quo non for invoking Rule 2.2(b) is that the pensioner has been found guilty in a departmental or judicial proceeding which had continued after the superannuation of the employee. This view of ours finds support from the judgment of the Supreme Court in the case of **High Court of Punjab and Haryana v. Amrik Singh, 1995 (2) SCT 613 (SC) : 1995(1) SLR 236.** In Para 4 of the aforesaid judgment, it is observed as follows:*

“4. Rule 2(2) of the Pension Rules, Clause (b) clearly mentions thus:

“2(2)(b) the Government further reserves to themselves the right to withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and right of ordering the recovery from the pension of the whole or part of any pecuniary loss caused to Government. If, in a departmental or judicial proceeding, the petitioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement.

A reading thereof clearly indicates that the disciplinary authority, consequent upon the result of the departmental or judicial proceedings, should record a finding whether the delinquent has committed grave misconduct or negligence during the period of his service including the service rendered upon re-employment after retirement.

6. In the present case also there is no conclusion of the trial. Even the challan has not been presented. Therefore, the respondents merely on the basis of registration of the FIR on 21.08.2003, are not within their rights to withhold the pension or pensionary benefits of the petitioner. Therefore, the impugned order dated 15/22.2.2006 (P-7) is liable to be set aside.”

In the present case, only the FIR was pending against

the petitioner and no Challan had been presented against the petitioner

upto the date of his retirement and therefore, the claim of the petitioner will be squarely covered by the judgment in **Atam Bodh Sharma's case (Supra)**. Learned counsel for the respondents has not been able to show any Rule or Regulation which gives the jurisdiction to the respondent/State to withhold the retiral benefits merely upon the registration of an FIR. The jurisdiction with the respondents is only to withhold the benefits in case of the pendency of the criminal proceedings and the criminal proceedings can only be deemed to be pending on the date when a Challan is presented against the accused. Hence, in the case of the petitioner withholding of their benefits by the respondents was beyond their jurisdiction.

Further, another employee, who was named in the same FIR No.36 dated 06.06.2003, namely Gurcharan Singh Sawhney, who retired in July 2008 i.e. after the petitioner, approached this Court claiming the release of the benefits after he had retired on attaining the age of superannuation. This Court, passed an order (P-3) in CWP No. 14584 of 2010 decided on 18.05.2012 filed by Gurcharan Singh Sawhney that the retiral benefits be released to petitioner-Gurcharan Singh Sawhney after taking indemnity bond from him. This Court held that as there is no Challan presented against the employee, the retiral benefits cannot be withheld. The relevant portion of the said order is as under:

'(1). The petitioner voluntarily retired from the respondent-Board as Sub Divisional Engineer w.e.f. 18.07.2008 vide order dated 29.07.2008. Non-payment of

retiral dues has led him to approach this Court.

(2). It is not in dispute that all the retiral benefits except Gratuity and the Board's share towards Contributory Provident Fund have not been deposited/paid. The above-stated two benefits have been withheld due to pendency of criminal case registered by the State Vigilance Bureau, Ludhiana against the petitioner and various other employees of the Board vide FIR No.36 dated 06.06.2003 u/S 7 & 13(2) of the Prevention of Corruption Act, 1988. There is no denial to the fact that till date no challan has been presented as there is an unending chain of correspondence between the Board and the Bureau. In these circumstances I am of the considered view that the petitioner cannot be deprived of payment of his retiral due for an indefinite period.

(3). The writ petition is accordingly allowed to the extent that the respondent-Authorities are directed to release the due amount of retiral due/benefits to the petitioner subject to his furnishing indemnity bond.

(4). The needful shall be done within a period of three months from the date of furnishing of the indemnity bond by the petitioner to the respondents.

(5). If the petitioner's suspension period has been regularized, the consequential benefits arising therefrom shall also be released in favour of the petitioner within the abovestated period.

(6). As regards interest, the same shall depend upon the outcome of the pending criminal case.

*(7). Ordered accordingly. **Dasti'***

The claim of the petitioner is also covered by the said order as the petitioner had retired prior to Sh. Gurcharan Singh Sawhney and was similarly situated as him on the date of the retirement.

Respondents have admitted that the benefits have already

been released to Sh. Gurcharan Singh Sawhney after getting the indemnity bonds from him.

Keeping in view of the above claim of the petitioner for the release of the gratuity and other benefits is allowed. The respondents are directed to release the gratuity and other benefits of the petitioner which have been withheld after their retirement due to the pendency of the FIR, within a period of three months from the receipt of the certified copy of this order.

It is made clear that this Court is not expressing any opinion about the investigation of the FIR No. 36 dated 06.06.2003 pending against the petitioner (CWP No. 21524 of 2012) and FIR No. 44 dated 18.04.2012 (CWP-1464 of 2017). In case, any action is required to be taken against the petitioner(s) after the conclusion of the proceedings in respect of said FIRs, if permitted under the Rules governing the service, the respondents will be at a liberty to do so in accordance with law.

Writ petitions are allowed in above terms.

[HARSIMRAN SINGH SETHI]
JUDGE

March 03, 2020
rashmi

Whether speaking/reasoned
Whether reportable?

yes/no
yes/no