

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

**CWP No.14355 of 2016 (O&M)
Date of decision : March 03, 2020**

Kulwant Kaur

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. R.K. Arora , Advocate for the petitioner.

Ms. Devki Anand Sullar, AAG, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present writ petition, the claim of the petitioner is that she is entitled for the grant of interest on the delayed release of the pensionary benefits.

As per facts mentioned in the writ petition, the petitioner joined as S.S. Mistress on 01.01.1990. Thereafter, she was promoted as Lecturer on 06.06.2008. While working as Lecturer, the petitioner was assigned additional charge of Drawing and Disbursing Officer from 27.01.2009 to 15.09.2010 and then again on 13.08.2010 to 16.05.2011. On attaining the age of superannuation on 28.02.2013, the petitioner was granted extension of one year and retired from service on 28.02.2014. It is the case of the petitioner that there was no charge-sheet pending against her on the date of retirement and therefore, she was entitled for the release of the pensionary benefits within a reasonable time of retirement, but the same were not released and a charge-sheet was served upon her on 09.04.2014

(Annexure P-1). On the basis of the said charge-sheet, the pensionary benefits of the petitioner were withheld and the same were released from June, 2014 onwards till February, 2016. The claim of the petitioner in the present writ petition is for the grant of interest on the delayed release of pensionary benefits.

Upon notice of motion, respondents have filed the reply. In the reply, the respondents have stated that before the retirement of the petitioner, a complaint was made against the petitioner, on which a fact finding enquiry was conducted. Though, the report of the fact finding enquiry had already come on 31.10.2013 but before any charge-sheet could be served upon the petitioner, petitioner retired from service on 28.02.2014. As per the reply, the charge-sheet was served upon the petitioner on 09.04.2014 and as the charge-sheet was pending against the petitioner, certain retiral benefits of the petitioner were withheld and she was being paid the provisional pension @ 90%. The respondents are defending their action on the ground that during the pendency of the proceedings, the Department is well within its jurisdiction to withhold the pensionary benefits of an employee.

I have heard learned counsel for the parties and have also carefully gone through the case file.

The only question, which arises for consideration before this Court is whether, when there was no charge-sheet pending against the petitioner when she retired from service on 28.02.2014, can the respondents withhold her pensionary benefits on the basis of a charge-sheet which is issued subsequent to her retirement?

This question of law has already been settled by a Co-ordinate Bench of this Court in CWP No.3493 of 1986 titled as “***L.R. Dhawan v State of Haryana and others 1996(3) S.C.T 11***” wherein it has been held that any charge sheet which has been issued after retirement, cannot be made ground for withholding the pensionary benefits of an employee.

The 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 case, the petitioner retired from service on 28.02.2014 whereas, the charge-sheet was served upon her on 09.04.2014. Therefore, keeping in view the settled principle of law laid down by a co-ordinate Bench of this Court in ***L.R. Dhawan's*** case (*supra*), the respondents could not have withheld the pensionary benefits of the petitioner due to the pendency of the charge-sheet, which was issued to her subsequent to her retirement.

This question again came up for consideration in "***Amarjit Singh v. Punjab State Civil Supplies Corporation Limited and another***", ***2016(4) PLR 191***, wherein, this Court after relying upon ***L.R. Dhawan's*** case (*supra*) 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 portion 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.

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.”

The same question was again decided by this Court while

deciding CWP No.13449 of 2014 titled as “**Hans Raj v Registrar, Cooperative Societies, Punjab and others**”, 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 of an employee.

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.”

By placing reliance upon the settled principle of law noticed above, this Court while deciding CWP No.8655 of 2016 on 22.10.2019 titled as “**Devender Singh v Uttar Haryana Bijli Vitran Nigam Limited and others**”, again held that withholding of the gratuity amount on the basis of a charge-sheet, which is issued to an employee after the retirement,

is impermissible and the direction was given to release the amount along with interest.

Learned counsel for the respondents is unable to distinguish the claim of the petitioner from the settled principles of law as noticed above. No distinguishable point has been raised by the learned counsel for the respondents so as to argue that in the present case, respondent were having jurisdiction to withhold the pensionary benefits after retirement of the petitioner even though as no disciplinary proceedings were pending against her at the time of her retirement.

That being so, the claim of the petitioner is squarely covered by the settled principle of law noticed above in ***L.R. Dhawan's*** case (*supra*), ***Amarjit Singh's*** case (*supra*), ***Hans Raj's*** case (*supra*) and ***Devender Singh's*** case (*supra*).

A Full Bench of this Court “***A.S. Randhawa v State of Punjab and others, 1997(3) SCT 468***” has held that the respondents are under an obligation to release the pensionary benefits of an employee within a reasonable time after the retirement, in case there is no impediment and the reasonable time fixed by the Full Bench is two months after retirement of an employee.

The relevant paragraph of the judgment passed in ***A.S. Randhawa's*** case (*supra*) is as under:

“Since a government employee on his retirement becomes immediately entitled to pension and other benefits in terms of the Pension Rules, a duty is simultaneously cast on the State to ensure the disbursement of pension and other benefits to the retiree in proper time. As to what is proper time will depend on the facts and circumstances of each case but normally it would

not exceed two months from the date of retirement which time limit has been laid down by the Apex Court in M. Padmanabhan Nair's case (supra). If the State commits any default in the performance of its duty thereby denying to the retiree the benefit of the immediate use of his money, there is no gainsaying the fact that he gets a right to be compensated and, in our opinion, the only way to compensate him is to pay him interest for the period of delay on the amount as was due to him on the date of his retirement."

In the present case, there was no impediment at the time of retirement of the petitioner, therefore, the respondents were under obligation to release the pensionary benefits of the petitioner within two months after the retirement.

Keeping in view of the above, as there is a delay in the release of the pensionary benefits of the petitioner and the respondents are responsible for the said delay as they withheld the pensionary benefits of the petitioner without there being any valid jurisdiction. As it is an admitted case of the parties that the payments have already been released, therefore, petitioner is entitled for the grant of interest @ 9% per annum from the date the amount became due till the actual release of the same.

Let the interest under this order be calculated by the respondents within a period of two months from the date of receipt of certified copy of this order and the amount so calculated will be released to the petitioner within a period of one month thereafter.

Petition is allowed in above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

March 03, 2020

sarita

Whether speaking / reasoned

Yes

Whether Reportable: Yes