220 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.10880 of 2017 (O&M)
Date of decision : March 12, 2020

Kusamjit Kaur .... Petitioner

Versus

The State of Punjab and another .... Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Manu K. Bhandari, Advocate for the petitioner.

Mr. Navdeep Chhbara, DAG, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present writ petition, the grievance of the petitioner is that though the petitioner retired from service on 31.03.2017 after availing extension for a period of two years after attaining the age of superannuation, but all the pensionary benefits for which the petitioner is entitled, have not been released to her. The prayer of the petitioner is for directing the respondents to release all the pensionary benefits of the petitioner to her forthwith alongwith arrears and interest.

As per the facts mentioned in the present writ petition, the petitioner was initially appointed as a Steno-Typist with the respondent-Department of Cultural Affairs Archeology and Museums, Government of Punjab, on 16.06.1976. Thereafter, she was promoted as a Senior Assistant on 16.10.1996 and continued working as such till 17.11.2008 when she was promoted to the post of Superintendent Grade-II. Thereafter, the petitioner was promoted as Superintendent Grade-I and she attained the age of superannuation on 31.03.2015. Thereafter petitioner was granted extension for a period of two years and ultimately she retired from service on 31.03.2017.

The grievance of the petitioner is that her pensionary benefits have not been released and that too without any valid justification. It has been averred by the petitioner that she is only getting 75% of the provisional pension and her gratuity amount has been withheld by the respondents, though there was no valid justification for the same.

Upon notice of motion, the respondents have filed the reply. In the reply, the respondents have stated that though, the petitioner had retired from service on 31.03.2017 but at that time a complaint against the petitioner was made by one Shri Manjit Singh to the Vigilance Bureau, Punjab, alleging certain irregularities. Copy of the said complaint has been attached as Annexure R-2 with the reply by the respondents. In the reply, the respondents have admitted that there are no departmental or criminal proceedings which were pending against the petitioner at the time of retirement or even up to now.

Learned counsel appearing on behalf of the respondents further states that the proposal to issue the charge-sheet to the petitioner is still under process and the same is likely to be issued in near future.

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

The prayer of the petitioner is for the release of the pensionary benefits along with arrears. Keeping in view the rules governing the services, the pensionary benefits such as leave encashment and the gratuity can be withheld by the respondents in case, there are any departmental or criminal proceedings pending against an employee at the time of retirement. In the present case, it has been admitted by the respondents that there were no departmental proceedings or criminal proceedings pending against the petitioner at the time of retirement and even now the position remains the same.

Learned counsel for the respondents argues that once there is a complaint which is pending before the Punjab Vigilance Bureau, the same has to be treated as departmental proceedings and the respondents have a valid justification as well as jurisdiction under the rules governing the service to retain the pensionary benefits of the petitioner.

A complaint made by a person against an employee which is still under investigation, cannot be treated as pending departmental proceedings. The complaint is only information about the allegations of irregularities. In case, the respondents find any substance in those allegations, they can issue a charge-sheet to hold the departmental proceedings against a serving employee or even against a retired employee, if permitted under the rules governing the service.

In the present case, the complaint on the basis of which the benefits of the petitioner have been withheld, is dated 06.03.2017. Said complaint was made before the petitioner retired. Even after the expiry of three years of the said complaint, no action has been taken by the respondents to issue any charge-sheet to the petitioner. In the absence of any charge-sheet, it cannot be said that any departmental proceedings are pending against an employee so as to grant jurisdiction to the respondents to withhold the pensionay benefits.

The law as to when it can be said that the departmental proceedings are pending against an employee, has been settled by Hon'ble the Supreme Court of India in ***Union of India Vs. K.V. Jankiraman***, 1991 (3) SCT 317, wherein it has been held that it is only in case a charge-sheet has been served upon an employee, it can be said that the departmental proceedings are pending against an employee. Similarly in the case of criminal proceedings, it is only when the challan is presented against a person, the criminal proceedings are to be treated as pending against the said person. The relevant paragraph of the judgment 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 finalize 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."*

In the present case, no charge-sheet was pending against the petitioner on the date of her retirement. Even up to now no charge-sheet has been served upon the petitioner. The petitioner has already retired from service approximately three years ago and therefore, once there is no charge-sheet pending against the petitioner on the date of retirement, it cannot be said that any departmental proceedings are pending against the petitioner at the time of retirement, which would give jurisdiction to the respondents to withhold the pensionary benefits of the petitioner.

In respect of the arguments of the learned counsel for the respondents states that the charge-sheet can be issued to the petitioner even as of now, this Court is not going into the said aspect as to whether, the respondents will be within their jurisdiction to issue a charge-sheet to the petitioner after retirement in respect of the allegations, which are more than four years old at the time of initiation of the said proceedings keeping in view the rules governing the service. But, a proposal to issue a charge-sheet, cannot be a ground to withhold the pensionary benefits of the petitioner as mere proposal to issue a charge-sheet does not give any right to the respondents to withhold the pensionary benefits, keeping in view the rules governing the service. No rule has been cited by the respondents to support the action of withholding of pensionary benefits merely on the proposal to issue charge-sheet to an employee.

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***" has held that even a charge sheet, which has been issued subsequent to the retirement, cannot be made a ground for withholding the pensionary benefits of an employee. Therefore, even if there is a proposal to issue a charge-sheet to the petitioner, the said proposal cannot be made a ground to withhold the pensionary benefits of the petitioner. The position is to be seen on date of the retirement and not subsequent to the said date.

The relevant paragraph of the judgment passed in ***L.R. Dhawan's*** case (*supra*) 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."*

Keeping in view the above, the withholding of the pensionary benefits of the petitioner by the respondents, is totally arbitrary, illegal and without jurisdiction. Merely on the basis of a complaint filed against the petitioner and that too before the Vigilance Bureau of Punjab, the benefits of the petitioner have been wrongly withheld by the respondents and she has been forced to litigate for the release of her pensionary benefits.

The present writ petition is allowed. The respondents are directed to release all the pensionary benefits of the petitioner forthwith.

Learned counsel for the petitioner prays that as the respondents have withheld the pensionary benefits of the petitioner beyond their jurisdiction, hence the petitioner be also compensated for the prejudice which has been caused to her due to the said illegal action on the part of the respondents by the award of interest.

Keeping in view the above facts, it is clear that the pensionary benefits of the petitioner have been withheld by the respondents without there being any jurisdiction under the rules governing the service. That being so, the action of withholding the pensionary benefits is void *ab initio.* The petitioner has not been able to use her pensionary benefits for a period of three years and not only this, she has been forced to approach this Court to claim the said benefits for which she was entitled under the law.

Keeping in view the above, the petitioner needs to be compensated for the delay which has been caused by the respondents in the release of the pensionary benefits. Petitioner is held entitled for the grant of interest @ 9% per annum from the date when the pensionary benefit to the petitioner became due till the same will be actually released to her. Let the amount for which the petitioner becomes entitled under this order be computed within a period of two months from the date of receipt of certified copy of this order and the amount so calculated be released to the petitioner within a period of one month thereafter.

(HARSIMRAN SINGH SETHI)
JUDGE

March 12, 2020
sarita
Whether speaking / reasoned Yes Whether Reportable: Yes