IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-15559 of 2016
Date of decision: 19.02.2020

Nirmal Kumar Dhir .... Petitioner

versus

State of Punjab and another ... Respondents

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ashish Goklaney, Advocate
for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

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HARSIMRAN SINGH SETHI, J.

The grievance which is being raised by the petitioner in the present writ petition is that the petitioner is being paid 75% of the total pension, for which the petitioner is entitled and that too on provisional basis which, according to the petitioner, is contrary to the settled principle of law settled by the Full Bench of this Court in LPA No. 113 of 2012 titled as **Punjab State Civil Supplies Corporation Limited and others vs. Pyare Lal** decided on 11.08.2014.

Prayer of the petitioner is for directing the respondents to release 100% provisional pension alongwith arrears.

As per the averments made in the present writ petition, while working on the post of Superintending Engineer, the petitioner attained the

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age of superannuation on 31.12.2014. Thereafter, the petitioner was granted extension in service up to 8.9.2015, on which date, the petitioner was relieved from service. Claim of the petitioner is that after his retirement, he has only been released provident fund and 75% of the provisional pension, which is contrary to the settled principle of law. Prayer of the petitioner is for issuance of direction to the respondents to release 100% of the provisional pension alongwith arrears.

Learned counsel appearing for the respondents argues that there are criminal proceedings pending against the petitioner, due to which, his gratuity and leave encashment has been withheld and petitioner is being paid 75% of the provisional pension, which according to the respondents is correct as per law.

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

The release of 100% pension though, provisionally is a right of an employee after his retirement, even if, proceedings are pending against him/her at the time of his/her retirement. Pendency of the proceedings entitles the respondents to withhold benefits of gratuity and leave encashment only but, full pension is to be paid to the employee concerned, though, provisional. In case, all the benefits of an employee are withheld including pension, it will be very difficulty for an employee to survive in his/her hard days and same will be violative of Article 21 of the Constitution of India which guarantees a person right to live a dignified life.

A Full Bench of this Court in **Pyare Lal's case (supra)** has held that Government has no right to withhold or postpone the payment of

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pension or payments on account of commutation of pension and an employee is entitled to receive 100% pension at the time of his retirement, though, it may be provisionally subject to the outcome of the proceedings pending against such employee. Relevant paragraph of the judgement is as under:-

> In Dr. Ishar Singh's case, the entire controversy was in respect of withholding or postponing of payment of pension and gratuity amount, during the pendency of the departmental inquiry. The Court considered Rule 2.2 and 9.9 of the Punjab Civil Service Rules Volume-II to hold that the gratuity can be withheld but State cannot withhold or postpone the payment of pension in anticipation of an enquiry nor can refuse to commute the pension, permissible under law. It concluded as under:-
>
> "68. In view of the observations made above, I am of the considered view that though the State has preserved its right of withholding or withdrawing compensation of affecting it as a whole partly, permanently or temporarily, yet the State cannot withhold or postpone the payment of pension in anticipation of an enquiry nor can refuse to commute the pension permissible under the law, of course, gratuity can be withheld."
>
> xxx xxx xxx
>
> 81. As a result of the above discussion, I would conclude as under:-
>
> (i) The Government has no right to withhold or postpone pension or the payment on account of commutation of pension. The State is bound to release 100 per cent pension at the time of superannuation, may be provisionally.
>
> (ii) The Government can withhold the gratuity or other retiral benefits except pension or postpone payment of the same during pendency of an enquiry.
>
> (iii) Pension cannot be adversely affected before a finding of guilt is returned.
>
> (iv) The Government can initiate departmental enquiry

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> after long lapse before retirement, rather there is no limitation for initiating departmental enquiry from the date of incident before retirement. The delay and the explanation for the same may reasonable be taken note of keeping in view its likelihood to cause prejudice to the delinquent if the enquiry is challenged in appropriate proceedings.
>
> (v) The enquiry proceedings cannot be quashed solely on the ground of long pendency.
>
> (vi) There is no effect of superannuation on the pendency of the enquiry proceedings.
>
> (vii) The recovery of the Government dues can be made from gratuity or other retiral benefits only."

Learned counsel for the respondents has not been able to point out any rule or law, which authorises the respondent-State to withhold the pension during the pendency of the proceedings or pay only 75% of the pension on provisional basis.

In the present case, it has been admitted by the learned counsel for the respondents that only 75% of the provisional pension is being paid to the petitioner. No reason or justification has been advanced to support the said action of the respondents, which admittedly is contrary to the settled principle of law settled by the Full Bench of this Court in **Pyare Lal's case (supra)** and no rule has been cited to support this action of paying 75% provisional pension. Keeping in view the fact that the grant of provisional pension @ 75% is contrary to the rules governing the service coupled with the law laid down by the Full Bench of this Court in **Pyare Lal's case (supra),** action of the respondents in paying 75% provisional pension to the petitioner is held to be bad.

Respondents are directed to release 100% provisional pension

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alongwith arrears to the petitioner, from the date, the petitioner retired till the proceedings against the petitioner are over, after which the respondents will have liberty to pass an appropriate order under the rules governing the service in case need so arises.

Let computation of arrears of pension, for which the petitioner is entitled under this order be carried out within a period of two months from the date of receipt of copy of this order and the payment so calculated be released to the petitioner within a period of one month thereafter.

The petition stands allowed in the above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

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1. Whether speaking/non-speaking? Yes/No
2. Whether reportable? Yes/No

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