

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(226)

CWP No. 28456 of 2017
Date of Decision : 05.02.2020

Bhushan Lal

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. S.K. Rattan, Advocate for the petitioner.

Mr. Mehardeep Singh, Additional Advocate General, Punjab.

Harsimran Singh Sethi, J. (Oral)

The claim of the petitioner in the present writ petition is for the grant of interest on the delayed release of the pensionary benefits. Petitioner claims that though, he retired on attaining the age of superannuation on 31.07.2009 but his pensionary benefits were only released in the year 2017 and, therefore, he is entitled for interest on the said delayed release of the pensionary benefits.

As per the averments made in the writ petition, petitioner joined as a Panchayat Secretary on 09.09.1974. In the year, 2005, an FIR No. 57 dated 17.11.2005, under Sections 409, 467, 468, 471-A, 120-B of the Indian Penal Code alongwith Sections 13 (1) (g) (d) read with Section 13(2) of the Prevention of Corruption Act was registered against the petitioner. The said FIR was pending against the petitioner when he attained the age of

superannuation on 31.07.2009. After the retirement, the cancellation report was submitted in the FIR twice and the said cancellation report was ultimately accepted by the Competent Court of law on 16.05.2016 after which, the pensionary benefits of the petitioner were released in July, 2017. The prayer of the petitioner is for the grant of interest on the delay in release of the pensionary benefits.

Upon notice of motion, respondents have filed the reply. In the reply, respondents have stated that on the date when the petitioner retired from service, there was an FIR pending against him due to which, the respondents were well within their jurisdiction to withhold the pensionary benefits of the petitioner on the ground that the criminal proceedings were pending against him and those criminal proceedings attained finality on 16.05.2016 after which, the benefits, for which the petitioner became entitled for after retirement, were released to him. The claim of interest is being contested by the respondent-State.

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

The first question which is to be examined by this Court is as to whether there was any criminal proceeding pending against the petitioner on the date of his retirement or not and will a registration of an FIR amounts to pendency of the criminal proceedings against an employee?

As per law laid down by the Hon'ble Supreme Court in **Union of India Vs. K.V. Jankiraman, 1991(4) SCC 109**, it is only when a charge-sheet is served in the departmental proceedings, it can be said that the departmental proceedings are pending and in respect of the criminal proceedings, until a challan is presented, it cannot be said that the criminal

proceedings are pending. The relevant paragraph of the said judgment is 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 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....”(Emphasis added).”

In the present case, though the FIR was pending against the petitioner but it is not disputed by the respondents that on the day when the petitioner retired or even thereafter, the charges were never framed in the said FIR and the cancellation report was accepted by the competent Court of law. That being so, it cannot be said that there was any criminal proceeding pending against the petitioner, which would entitle the respondents to withhold his pensionary benefits.

Further, a Division Bench of this Court while deciding CWP No.3567 of 2006 titled as 'Atam Bodh Sharma Vs. State of Haryana and others, decided on 09.10.2006, reported as 2006(4) S.C.T. 760, has clearly held that merely a registration of FIR will be no ground to deny or withhold the pensionary benefits. The relevant paragraph 6 of the said

judgment is as under: -

“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 21.8.2003, 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 also, there was only an FIR, which was pending against the petitioner without there being any charges framed therein or challan presented against the petitioner.

As per the settled principles of law noticed above, withholding of the pensionary benefits by the respondents was beyond their jurisdiction. As there is a delay in the release of the pensionary benefits and the said delay is attributable to the respondents only, petitioner will be entitled for interest @ 9% per annum on the retiral benefits from the date the amount became due till the actual release of the same.

Let the respondents calculate the amount of interest for which the petitioner becomes entitled for under this order 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.

Writ petition is allowed in above terms.

February 05, 2020
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking? Yes
Whether reportable? Yes