

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

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CWP-5216-2017

Date of Decision : February 10, 2020

MAJOR SINGH

.....Petitioner

VERSUS

STATE OF HARYANA AND ORS

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present : Mr. Aftab Singh Khara, Advocate for the petitioner.
Mr. Gaurav Jindal, Addl. AG, Haryana.

NIRMALJIT KAUR, J. (Oral)

The prayer in the present petition is for quashing of the order dated 24.8.2016 vide which respondent No.4 has withheld the gratuity and leave encashment of the petitioner only on the ground that there is a pending criminal Appeal No.CRMA-1278-MA of 2015 tilted as Naseeb Vs. Shamsher Dahiya and others in the Punjab and Haryana High Court and that it is only after the decision of the criminal appeal that the gratuity and leave encashment shall be released.

Reply has been filed. As per the said reply, the petitioner while posted at District Jail, Bhiwani, was placed under suspension with immediate effect by Director General of Prisons, Haryana vide order No. 32440 D.G. Jails/2010/A.6 dated 17.9.2010 for being involved in causing hurt, torturing with ulterior motive and threatening to a prisoner namely Rajbir @ Raju @ Dhandu s/o Bhim Singh. In this regard, a complaint case 186-1 of 2009 titled Naseeb Kaur Vs. Shamsher Singh Dahiya & Ors

U/s 327/323/506 IPC was registered on the request of the wife of the prisoner in the Ld. Court of CJM, Bhiwani against Sh. Shamsher Singh Dahiya, the then Superintendent, District Jail, Bhiwani Subhash Chander, Dy. Supdt., District Jail, Bhiwani, Sh. Satpal Kasnia Dy. Supdt. (Security), Sh. Jagsher Singh, Asstt. Supdt. and Major Singh, Head Warder of District Jail, Bhiwani. However, Hon'ble Punjab and Haryana High Court in Crl. Misc. No.M-34961 of 2010 vide order dated 22.12.2010 stayed the operation of above judgment dated 8.9.2010 passed by Ld. Court of Additional Chief Judicial Magistrate, Bhiwani. In view of the Hon'ble High Court order dated 22.12.2010, Sh.Major Singh, Head Warder i.e. petitioner was re-instated in service by Director General of Prisons, Haryana vide order dated 31.3.2011. All accused of this case including the petitioner were acquitted by Ld. Court of Chief Judicial Magistrate, Bhiwani vide order dated 12.3.2015. Complainant-Naseeb Kaur, wife of the prisoner, further filed an appeal CRM-24311 of 2015 in CRM A-1278-MA of 2015 in the Hon'ble High Court against order/judgment dated 12.3.2015 passed by Ld. Court of Chief Judicial Magistrate, Bhiwani. During the pendency of above criminal appeal, Sh.Major Singh, Head Warder i.e. petitioner stands retired from service on 31.1.2014 after attaining the age of 58 years on superannuation. The departmental proceedings are still pending against this retired official in the above matter. The gratuity and leave encashment of the employee has been withheld till the decision of the Hon'ble High Court in appeal CRM-24311 of 2015 in CRM-A 1278-MA of 2015 filed by the complaint party i.e. Naseeb Kaur wife of the prisoner which is fixed for 12.9.2017.

Learned counsel for the parties were heard at length.

It is settled proposition of law that mere pendency of criminal proceedings is not sufficient to withhold the retiral benefits. In the present case, the petitioner stands acquitted. The retiral benefits have since been released. Now the only question is with respect to withholding of gratuity and leave encashment.

Rule 2.2(a) of the Punjab Civil Services Rules, reads as under:-

“Future good conduct is an implied condition of every grant of a pension. The (competent authority) reserve to itself the right of withholding or withdrawing a pension or any part of it if the pensioner be convicted of serious crime or be guilty of grave misconduct.

The decision of the (competent authority) on any question of withholding or withdrawing the whole or part of pension under this rule shall be final and conclusive.”

While dealing with Punjab Civil Services Rules, Vol. II Rule 2.2(b), this Court in the case of **Darshan Singh Vs. State of Punjab and others**, 2011(3) PLR 584 after relying on the judgments rendered in the cases of **Manohar Singh Vs. Punjab State Electricity Board**, 2006(2) SCT 103 and **Atam Bodh Sharma Vs. State of Haryana**, 2006(4) SCT 760 held that in case the offences as mentioned in the FIR are neither related to the service and the allegations do not involve causing of any financial loss to the Government nor any misconduct against the petitioner and the petitioner stands re-instated, his retiral benefits including gratuity cannot be withheld. No doubt, in the present case, his misconduct appears to be related with the service. However, as per the

judgment rendered in the case of Charanjit Singh Chawla Vs. Punjab School Education Board and anr. 2016(4) PLR 352, the gratuity and leave encashment can be withheld only in case there is any financial loss or it is apprehended that there is a likelihood of financial loss in case the enquiry is taken up to its logical conclusion. The observations made in the judgment rendered in the case of Charanjit Singh Chawla (supra) as relevant here read as under:-

“6. In the absence of a finding of fact recorded of financial loss caused to Board or an apprehended likelihood of financial loss having been caused by specific acts, the amounts cannot be withheld. The provisions of Rule 8.21 (aa) of Punjab Civil Services Rules Vol.II too cannot be invoked by the Board to withhold the amount of gratuity and terminal benefits or for the Board to take undue advantage of its own wrongs in acting against the petitioner without due legal sanction of law. Every executive action must be supported by legislative sanction. The petitioner's valuable right is to property which is protected by Article 300A of the Constitution which provision guarantees that persons would not be deprived of property save by authority of law. No law has been cited to defend the impugned action.

7. For the reasons recorded above, the writ petition is allowed. A writ of mandamus is issued to the respondents to release the unpaid amount of gratuity and commutation of pension. Gratuity will be paid with interest at the rate of 9% till realization. The delay in payment of other dues [as above] will also earn interest @ 9% per annum from the date of superannuation till they were actually paid. The petitioner is also held entitled to personal costs assessed at Rs.25,000/- towards litigation

expenses. The aforesaid amounts be paid together with interest within 6 weeks from the date of receipt of a certified copy of this order.”

In the present case, the allegations do not pertain to any financial loss. Therefore, the gratuity and leave encashment cannot be withheld. If at all, it would be a question of misconduct. In case it is a case of misconduct, then the punishment, if any, passed subsequently in pursuance to the departmental enquiry would have an impact on the pension and the pension has already been released to the petitioner and rightly so as the petitioner stands acquitted in the criminal case vide order and judgment dated 6.11.2013 Annexure P-9.

Thus, in view of the petitioner having been acquitted, the allegations not pertaining to any financial loss and in the absence of any apprehension that the same shall result in a finding of financial loss, in case the appeal is allowed or the petitioner is held guilty in the departmental enquiry, it would be highly unjust and unfair to withhold the gratuity and leave encashment.

Accordingly, the present writ petition is allowed and the respondents are directed to release the gratuity and leave encashment to the petitioner forthwith.

However, it is clarified that in case the appeal filed by the complainant is allowed, the department shall be at liberty to proceed in accordance with law, if so advised.

February 10, 2020
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(NIRMALJIT KAUR)
JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No