

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

(Proceedings conducted through video conferencing)

CWP No.27203 of 2019(O&M)

Date of decision: 23.12.2020

Chand Singh Dhull

.....Petitioner

VERSUS

State of Haryana and others

.....Respondents

CORAM: **HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Gurminder Singh, Senior Advocate with
Mr. Rohan Markanda, Advocate for the petitioner.

Ms. Kirti Singh, DAG, Haryana.

Mr. Tevar Sharma, Advocate for respondents No.2 to 4.

REKHA MITTAL, J.

Challenge in the present petition under Article 226 of the Constitution of India is against order dated 16.07.2019 (Annexure P-12) issued by respondent No.4, whereby regular pension and other retiral benefits of the petitioner have been withheld. The petitioner has prayed for issuance of writ of certiorari quashing the order aforesaid and writ of mandamus directing the respondents to sanction regular pension and grant pensionary benefits and other attendant benefits with interest for delayed payment from the date of entitlement to the date of actual payment.

The precise issue involved in the present case is, whether the respondents have rightly withheld gratuity and commuted value of pension under Rule 81(1)(a) of the Haryana Civil Services (Pension) Rules, 2016 (in short 'the Rules'), relied upon in the impugned order dated 16.07.2019.

Before adverting to the aforesaid question in the light of rival submissions made by counsel for the parties, a brief reference to certain admitted facts would be relevant.

The petitioner was appointed as a Lecturer in the Department of Ophthalmology in PGIMS Rohtak on 08.02.1984. He was promoted as Professor in the said Department on 08.09.1994. He was appointed as a Medical Superintendent of Pandit B.D. Sharma, PGIMS, Rohtak on 17.04.2006 and worked on the said post till 01.03.2009. He was appointed as Director of Pandit B.D. Sharma, PGIMS, Rohtak on 02.03.2009. Terms and conditions of service of petitioner on the aforesaid post were determined vide memo dated 16.06.2009. The petitioner completed his probation as Director of Pandit B.D. Sharma, PGIMS, Rohtak on 19.03.2012. Dr. R.B. Singh made a complaint against the petitioner and filed COCP No.2411 of 2014 against the petitioner before the High Court. The petitioner resigned as Director, Pandit B.D. Sharma, PGIMS, Rohtak and his resignation was accepted by the Governor of Haryana on 14.01.2015. Dr. Rohtash Kanwar Yadav was appointed as Officiating Director, PGIMS Rohtak. The petitioner assumed the charge of Senior Professor and Head, Regional Institute of Ophthalmology, PGIMS, Rohtak on 15.01.2015. Dr. R.B. Singh made complaints on 31.12.2018 and 15.01.2019 against the petitioner to the authorities. The petitioner submitted reply to the aforesaid complaints. He superannuated from service and was relieved of his duties on 31.01.2019. Petitioner filed Civil Writ Petition No.11353 of 2019 before the High Court expressing grievance against non-release of pensionary benefits and the same was disposed of vide order dated 02.05.2019 with direction to respondent No.2

therein for deciding representation dated 05.04.2019 (Annexure P-11 therein) by passing a speaking order within stipulated period. In pursuance of the directions issued by the High Court, representation dated 05.04.2019 was disposed of vide order impugned. A relevant extract therefrom reads as follows:-

“As the departmental proceedings are pending against Dr. Chand Singh Dhull, before the date of his retirement i.e. 31.01.2019, the provisional pension equal to the maximum pension which was admissible on the basis of qualifying service up to the date of his retirement has already been released except gratuity and commuted value of pension as per the provision made in the Haryana Civil Services (Pension) Rule, 2016, 81-1(a) which states as under:-

81.(1) (a) in respect of a Government employee against whom departmental or judicial proceedings are pending at the time of retirement, the Principal Accountant General (A&E), Haryana shall authorize the provisional pension equal to the maximum pension which shall have been admissible on the basis of qualifying service up to the date of retirement of the Government employee, or if he was under suspension on the date of retirement, upto the date of immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorised by the Principal Accountant General (A&E), Haryana during the period commencing from the date of retirement up to and including the date on which, after the concluding of

departmental or judicial proceedings. Final orders are passed by the competent authority.

(c) No gratuity and commuted value of pension shall be authorised to the Government employee until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.

Note. - This provision shall also be applicable where—

(i) the departmental proceedings under Rule 8 of Haryana Civil Services (Punishment & Appeal) Rules, 2016 involving the financial loss to Government are pending at the time of retirement.

(ii) any complaint against the Government employee pertaining to his dishonesty is pending in State Vigilance Bureau, Lok Ayukta or in any Government Investigation Agency at the time of retirement.

(2) Payment of provisional pension made under sub-rule (1) (a) shall be adjusted against final pensionary benefits sanctioned to such Government employee upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.”

Counsel for the petitioner would argue that as no departmental or judicial proceedings were pending against the petitioner at the time of retirement nor any such proceedings have been initiated till date, invoking Rule 81(1)(a) of the Rules to deny regular pension and gratuity cannot

stand the test of judicial scrutiny, thus, entitle the petitioner to press for issuance of writ of mandamus as prayed for after quashing the order impugned. It is argued with vehemence that filing of complaint by Dr. R.B. Singh or conducting of a preliminary inquiry by Sh. R.P. Bhasin, former District and Sessions Judge, Haryana, by no stretch of imagination, can be covered within the purview and ambit of expression “departmental or judicial proceedings” used in Rule 81(1)(a) of the Rules. He would argue that even till date, no departmental proceedings have been initiated against the petitioner in respect of the allegations raised in the complaint of Dr. R.B. Singh when otherwise since those allegations pertain to the period when the petitioner was working as Director, Pandit B.D. Sharma, PGIMS, Rohtak, the post from which the petitioner resigned on 12.12.2014, thus, relate to an incident which is more than 4 years old reckoned with effect from today, no departmental proceedings otherwise can be initiated against the petitioner under Rule 12(2)(b) of Chapter III of the Rules. It is further argued that the respondents have withheld pensionary benefits of the petitioner without any justifiable reason and the petitioner is entitle to be paid pensionary benefits along with interest, ascertained by this Court.

Counsel for respondents by relying upon Rule 81(1)(a), reproduced in the impugned order, has justified action of the respondents in withholding gratuity and commuted value of pension. He would inform that the provisional pension has already been sanctioned in accordance with Rules whereas the petitioner has also been paid G.P.F. and encashment of leave, as per Rules.

I have heard counsel for the parties, perused the paper-book particularly various annexures appended with the petition and relevant rules relied upon by counsel for the parties.

Rule 81 (1) (a) of the Rules is extracted hereinbefore while taking out an extract from the impugned order (Annexure P-12). A plain but careful reading of the aforesaid Rule leaves no manner of doubt that provisional pension can be allowed to a government employee against whom departmental or judicial proceedings are pending at the time of retirement. No gratuity and commuted value of pension shall be authorized to such a government employee until conclusion of departmental or judicial proceedings and issue of final orders thereon. Indisputably, no criminal or civil proceedings have been initiated against the petitioner and as such no judicial proceedings stand instituted against him. Under Rule 12 (5) (a) of the Rules, departmental proceedings shall be deemed to be instituted on the date on which statement of charges is issued to the Government employee or pensioner, or if the Government employee has been placed under suspension from an earlier date, on such date. In the case at hand, no statement of charges has been issued to the petitioner till date much less before his retirement on 31.01.2019. The mere fact that on the basis of complaint made by Dr. R.B. Singh, a preliminary inquiry was conducted by Sh. R.P. Bhasin, by no stretch of imagination, can be construed as pendency of departmental proceedings against the petitioner. That being so, Rule 81(1)(a) of the Rules cannot be attracted to deny gratuity and commuted value of pension.

Under Rule 12(2)(b) of the Rules, departmental proceedings, if not instituted while the Government employee was in service, whether

before his retirement or during his re-employment shall not be instituted save with sanction of the Government and in respect of an event which took place more than four years before such institution. In the instant case, the allegations raised by Dr. R.B. Singh against the petitioner are in respect of irregularities committed by him during his tenure as Medical Superintendent and Director, PGIMS, Rohtak which came to an end with his resignation on 12.12.2014 and acceptance thereof on 14.01.2015 when Dr. Rohtash Kanwar Yadav was made officiating Director of PGIMS, Rohtak. The alleged irregularities committed by the petitioner pertain to a period more than 4 years as till date no statement of charges has been issued by the respondents.

A conjoint reading of Rule 81(1)(a) and 12 of the Rules leaves no manner of doubt that neither any departmental proceedings are pending against the petitioner before his retirement on 31.01.2019 nor any departmental proceedings have been initiated against him till date in respect of an event which took place within 4 years before such institution. In the given circumstances, action of the respondents in withholding gratuity and commuted value of pension is totally unjustified and cannot be allowed to sustain. As a natural corollary, the petitioner becomes entitle to all retiral benefits, in accordance with law, subsequent to his retirement on superannuation on 31.01.2019.

The respondents have released certain benefits like GPF and leave encashment but the same also appears to have been released after filing of the instant petition. In the given circumstances, the petitioner shall be entitle to interest at the rate of 7% w.e.f. 01.04.2019 till actual realisation of retiral benefits including GPF and leave encashment etc. It is

clarified that interest on GPF would be payable if it is not calculated till actual payment.

With the aforesaid observations, the petition is allowed. Impugned order dated 16.07.2019 (Annexure P-12) is set aside. The petitioner shall be paid his retiral benefits in accordance with Rules, with interest at the rate of 7% w.e.f. 01.04.2019 till actual realization. No order as to costs.

DECEMBER 23, 2020

‘D. Gulati’

Whether speaking/reasoned

Whether reportable

:

:

yes/no

yes/no

(REKHA MITTAL)

JUDGE