

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

CWP No.11705 of 2007 (O&M)

Date of decision: 08.03.2021

Dr. Kuldeep Singh

.....Petitioner

V/s.

Chandigarh Administration, U.T. Chandigarh and others

.....Respondents

CORAM: - HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Harparteek Singh Sandhu, Advocate, for the petitioner.

Mr. Deepak Malhotra, Standing Counsel for
U.T. Administration.

Dr. B.M. Singh, Advocate, for respondent No.2.

Mr. Gaganeshwar Walia, Advocate, for respondent Nos. 3 to 5.

Jasgurpreet Singh Puri , J.

The present writ petition has been filed by the petitioner who was working as Principal, Sri Guru Gobind Singh College, Sector-26, Chandigarh challenging his order of transfer dated 28.07.2007 (Annexure P-14) as well as the order of reliving Annexure P-15 of the same date. By the impugned order the petitioner was transferred as Principal, Sikh National College, Qadian, District Gurdaspur, Punjab with immediate effect.

On 02.08.2007 this Court stayed the orders Annexures P-14 and P-15 subject to a rider that the petitioner may continue as Principal but shall remain non-functional and shall particularly be restrained from

handling files relating to the financial irregularities that have been alleged against him in the proceedings of the Executive Committee held on 28.07.2007. Thereafter on 17.12.2007 the writ petition was admitted and it was directed that the interim order dated 02.08.2007 is made absolute.

The petitioner filed an application for early hearing as the petitioner was on the verge of retirement on 31.10.2020 and, therefore, this Court vide order dated 12.10.2020 directed that the matter be finally adjudicated. On 02.11.2020, the learned counsel for respondent Nos. 3 to 5 apprised the Court that the petitioner had retired on 31.10.2020 on attaining the age of superannuation and since the subject matter of the present case pertains to challenge to the order of transfer of the petitioner, as such, with the retirement of the petitioner the controversy in the present case is now academic in nature as the subject matter has become redundant. However, the learned counsel for the petitioner had submitted that the petitioner was entitled to all the retiral benefits and other benefits including pay and allowances along with the interest. He further pointed out that the petitioner has been detected with Cancer and he is admitted in Hospital and is undergoing chemotherapy and so far as the financial retiral benefits are concerned, the same may be paid to him at the earliest. Therefore, in view of the fact that the petitioner was undergoing chemotherapy treatment due to Cancer, it was directed that respondent Nos. 3 to 5 (College) shall file an affidavit with regard to the status of the benefits which are to be released to the petitioner in accordance with law.

An affidavit dated 01.12.2020 was filed by the Joint Secretary, Sikh Educational Society. Sector-26, Chandigarh on behalf of respondent

Nos. 3 to 5 in which it was stated that the petitioner has been paid his entire salary along with DA, HRA, Provident Fund, increments as admissible to him under the rules and as per his entitlement from time to time. Para 6 of the affidavit is reproduced as under:-

'6. That it is respectfully submitted that during the pendency of the writ petition from the year 2007 onwards the petitioner has been paid his entire salary alongwith DA, HRA, Provident Fund, Increments as admissible to him under the rules and as per his entitlement from time to time. The last salary certificate of the petitioner for the month of October, 2020 is hereby attached as Annexure A-1. A perusal of the same would specifically reveal that his gross salary for the month of October, 2020 was 2,38,500/- and he was paid the benefits i.e. DA, HRA, PF, CCA and other allowances. Furthermore a tabulation showing the increase in pay scale and increments as granted to the petitioner from the year 2007 onwards is appended to this application as Annexure A-2 and the salary for the sessions 2018-19, 2019-20 and 2020-21 are attached herewith as Annexure A-3. Thus, it is respectfully submitted that the petitioner has been granted all allowances and benefits during his tenure as per his entitlement in accordance with law as per his entitlement though he has not even performed his duties during the said 13 years'.

Another Affidavit dated 27.01.2021 was filed by the Joint Secretary, Sikh Educational Society, Sector-26, Chandigarh in which it was stated that the respondent management had decided to withhold the retiral benefits of the petitioner i.e. the leave encashment and gratuity till the finalization of the disciplinary proceedings pending against him and that the

said decision/order has already been conveyed to the petitioner which has not been challenged by him till now and that the said decision/order of the management has to be challenged afresh by the petitioner in accordance with law before the appropriate forum. It has been further stated in the affidavit that his provident fund amount which forms the major chunk of his retiral benefits has already been processed by the respondent college and intimation has been sent to the Provident Fund Authorities which can release the same to him directly on his application. Para 7 and 12 of the affidavit are reproduced as under:-

'7. Thus, the respondent management had decided to withhold the retiral benefits of the petitioner i.e. the leave encashment and gratuity till the finalization of the disciplinary proceedings pending against him in which he has been held guilty and with regard to negligence in performing duties and also his role in the said scam has been made out. The said decision/order has already been conveyed to the petitioner which has not been challenged by him till now. Thus, it is respectfully submitted that the said decision of the management/order have to be challenged afresh by the petitioner in accordance with law before appropriate Forum and no decision/direction can be issued in the present writ petition for examining the said decision without firstly amending the writ petition or by challenging the said impugned action afresh. It is submitted that the scope of the present writ petition cannot be enlarged beyond the prayers and pleadings and hence the present writ petition is liable to be dismissed having been rendered infructuous.

12. That it is respectfully submitted the petitioner is entitled to release of the benefits of Provident Fund, Gratuity and

leave encashment which are subject to the finalization of the disciplinary proceedings against him. His Provident Fund amount which forms the major chunk of his retiral benefits have already been processed by the respondent college and intimation has been sent to the Provident Fund Authorities which can release the same to him directly on his application'.

The learned counsel for the petitioner has submitted that he may be granted liberty to file separate petition challenging the orders of the respondent Nos. 3 to 5 withholding the retiral benefits.

The petitioner had filed the present writ petition in the year 2007 challenging the orders of his transfer vide Annexure P-14 and P-15. The transfer order was stayed by this Court subject to a rider that the petitioner may continue as Principal but shall remain non-functional and shall be restrained from handling files relating to the financial irregularities that have been alleged against him. During the pendency of the present petition the petitioner had already retired on 31.10.2020. Therefore, in fact the subject matter of the present petition has become more or less academic in nature and, therefore, no further action is required in the present writ petition as the relief claimed has become redundant.

Since it was informed to this Court that the petitioner was undergoing chemotherapy treatment due to detection of Cancer, this Court had asked the respondent college to consider payment of his admissible pay/allowances and other retiral benefits. In the affidavit filed by the respondent college, it has been stated that so far as the pay/allowances till the retirement of the petitioner are concerned, they have already been paid

to the petitioner. So far as the provident fund of the petitioner is concerned, the respondent college has already processed the same and sent to the Provident Fund Authorities which can be released to him directly on his application. So far as the other retiral benefits of the petitioner are concerned, the respondent college has taken a stand that the same have been withheld by passing an order and the order has been conveyed to the petitioner. The respondent college has taken a stand that the said order withdrawing retiral benefits has not been challenged in the present writ petition and constitutes a fresh cause of action for challenging the same. The learned counsel for the petitioner has also sought liberty to challenge this order by filing a separate petition.

Another submission has been made by the learned counsel for the petitioner that in the order dated 02.08.2007 it was directed that the petitioner may continue as Principal but shall remain non-functional would be detrimental for the purpose of his future employment and that the said part of the order may be modified accordingly. However, this Court is of the view that once the writ petition has been finally adjudicated and the interim order dated 02.08.2007 has also become in-effective particularly when the petitioner has already retired on 31.10.2020, it cannot be said that the direction with regard to the petitioner remaining non-functional in the order dated 02.08.2007 can be detrimental to the petitioner in any manner for his future employment. Therefore, no such modification is required in this regard.

In view of the above, the present petition is disposed of with a liberty to the petitioner to challenge the orders of respondent Nos. 3 to 5

withholding the retiral benefits of the petitioner by filing a separate petition in accordance with law.

08.03.2021
rakesh

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No