IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.14029 of 2020
Date of Decision: 16-03-2021

Shanti Nandan
...Petitioner

Versus

State of Punjab & Others
...Respondents

Civil Writ Petition No.14493 of 2020

Ajmer Singh
...Petitioner

Versus

State of Punjab & Others
...Respondents

(Heard through Video-Conferencing)

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Mr. Amit Sharma Advocate,
for the petitioner(s).

Mr. N.K.Banka, DAG, Punjab,
for respondents No.1 and 2.

Mr. Naresh Gopal Sharma, Advocate for
Mr. Mehardeep Singh, Advocate,
for respondents No.3 & 4 in CWP No.14029 of 2020.

Mr. Tripjeet Singh Sidhu, Advocate,
for respondents No.3 & 4 in CWP No.14493 of 2020.

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MEENAKSHI I. MEHTA, J.

Vide this single judgment, both the above-mentioned writ petitions are being disposed of together as the identical question of law is involved therein.

2. The petitioners, in both these petitions, have sought the indulgence of this Court for issuance of a writ in the nature of mandamus directing the respondents to ensure the payment of all the retiral dues to them, along-with interest thereon @ 18% per annum, from the date of accrual till the actual payment thereof with a further prayer for issuing an interim direction to respondent No.4 to take a final decision on the enquiry report dated 05.12.2018 in respect of the charge-sheets dated 10.03.2017 as served to them.

3. For the sake of precision and brevity and also to avoid the repetition of facts, it would be expedient to cull out the common facts as canvassed by both the petitioners in their respective petitions. The petitioners had remained employed with the respondent-Federation and have already superannuated. The services of the employees of the respondent-Federation are governed by the Punjab State Co-operative Supply and Marketing Federation Employees (Common Cadre Service) Rules, 1990 (here-in-after referred to as "the Service Rules") and the Punjab State Co-operative Supply and Marketing Federation Employees (Punishment and Appeals) Rules, 1990 (here-in-after referred to as "the Punishment and Appeal Rules"). They were issued separate charge-sheets dated 10.03.2017 with the allegations of having caused monetary loss to the respondent-Federation and in pursuance of the same, an enquiry had also been conducted against them. The Enquiry Officer, vide his report dated 05.12.2018, held that the charges, levelled against them, stood proved. However, the decision qua the said disciplinary proceedings has not yet been taken whereas the said proceedings in respect of some of the similarly placed employees have already been finalized. The respondents have withheld their retiral dues, i.e the amounts of gratuity and

leave encashment and have, thus, wrongly deprived them of their said dues, as admissible to them on their retirement and they are suffering financial hardship on account of the delay on the part of the respondents in taking the final decision qua the said disciplinary proceedings as pending against them.

4. Respondents No.1 and 2 have filed their reply in both the petitions, by way of the affidavits of Mr. Baljinder Singh, Joint Registrar-2, Cooperative Societies, Punjab, wherein he has deposed that no interest of the State is involved in these petitions as the actual dispute lies between the petitioners and respondents No.3 and 4 because the petitioners have sought the afore-claimed relief from these respondents only and the respondent-Federation, being a body corporate under the Punjab Cooperative Societies Act, 1961, has its own independent legal existence.

5. It is worth-while to mention here that in pursuance of the order as passed by this Court in both these petitions on 14.01.2021 whereby respondents No.3 and 4 were directed to explain the delay caused in completion of the disciplinary proceedings against the petitioners, these respondents have placed the affidavits of the Law Officer of the respondent-Federation on the record and the depositions, as made by him therein, shall be discussed and dealt with while discussing the merits of both these writ petitions separately in the later part of this judgment.

6. I have heard Mr. Amit Sharma, learned counsel for the petitioners, Mr. N.K.Banka, learned Deputy Advocate General, Punjab; Mr.Naresh Gopal Sharma, Advocate for Mr. Mehardeep Singh Advocate and Mr. Tripjeet Singh Sidhu, Advocate, learned counsel for respondents No.3 and 4 in these petitions and have also perused the files thoroughly.

7. At the very outset, learned counsel for the petitioners has conceded that the respective amounts of the retiral benefits have already been released to both the petitioners during the pendency of these petitions. It being so, it is explicit that the sole dispute, that now survives between the parties for adjudication by this Court, is qua the claim of the petitioners for the grant of interest on their retiral dues on account of the alleged delayed payment thereof.

8. Learned counsel for the petitioners has contended that after the submission of the report by the Enquiry Officer on 05.12.2018, though vide the letter dated 28.12.2018, the respondents had supplied the copies thereof to the petitioners and had directed them to file their reply in respect thereof and the petitioners had also filed the same but however, no decision had been taken in respect of the disciplinary proceedings as carried out against both the petitioners and their retiral dues have also been withheld by the respondents on account of the pendency of the said proceedings whereas the petitioners were entitled to the release of the said dues, i.e the amounts of gratuity and leave encashment, with effect from the respective dates of their superannuation and on account of this unjustifiable delay on the part of the respondents in payment/release of these dues, the petitioners are entitled to the interest on the same.

9. However, learned counsel for respondents No.3 & 4, in both the petitions, have argued that the respondent-Federation was well within its rights to withhold the payment of the retiral dues of the petitioners in view of the departmental/disciplinary proceedings as were pending against them at the time of their superannuation and since several other employees of the respondent-Federation had also been charge-sheeted along-with the petitioners, therefore, the Punishing Authority deemed it appropriate to finalize the disciplinary proceedings

against all such employees simultaneously and thus, there is no unreasonable delay on the part of the respondents in releasing the payment of the said dues to the petitioners and therefore, they are not entitled to claim any interest on the said amounts.

10. Admittedly, the services of the petitioners were governed by the Service Rules. Rule 5.7 of the said Rules specifically provides as under:-

> "*If these Rules are silent on any issue or no provision has been made on any specific point, the Punjab Government Rules/instructions on that issue will apply.*"

The Service Rules do not define the term "gratuity" and are also silent on the point of release or withholding of the retiral benefits of an employee against whom the disciplinary proceedings were initiated during the tenure of his service/ before his superannuation. In view of the afore-cited Service Rule, the provisions of the Punjab Civil Services Rules (here-in-after referred to as the 'PCS Rules'), as applicable to the employees of the State of Punjab, are required to be looked into to deal with such a situation.

11. Rule 2.45(b) of the PCS Rules, Vol.I Part I defines the term "pension" as under:-

> *"Except when the term, "pension" is used in contradistinction to "Gratuity", pension includes Gratutity."*

The above-discussed definition makes it quite clear that gratuity is one of the retiral benefits and unless otherwise intended, it is included in the term "pension". It being so, the benefit of Gratuity can safely be construed to be analogous to the benefit of pension admissible under the PCS Rules as undisputedly, the benefit of Pension is not admissible to the employees of the respondent-Federation.

Rule 2.2 (b) of the PCS Rules Vol.II provides as under:-

"x x x x x x

The Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if, in a departmental or judicial proceedings, the pensioner is found guilty of grave mis-conduct or negligence during the period of his service, including service rendered upon re-employment after retirement:-

Provided that-

(1) Such departmental proceedings, if instituted while the officer was in service, whether before his reteirement or during his re-employment, shall after the final retirement of the officer, be deemed to be a proceeding under this article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service;

(2) x x x x x x x "

Further, the explanation as appended to Proviso 3 of the said Rule is as under:-

" (a) a departmental proceeding shall be deemed to be instituted on the date on which the statement of charges is issued to the officer or pensioner, or if the officer has been placed under suspension from an earlier date, on such date; and

(b) x x x x x x "

In view of the above-mentioned Rules, it further becomes explicit that since the charge-sheets had been issued to both the petitioners during the tenure of their employment/re-employment with the respondent-Federation, therefore the respondent-Federation was well within its rights to withhold the amount of gratuity, as payble to the petitioners, till the conclusion of the disciplinary proceedings launched against them.

12. Moreover, it has, recently, been observed by a three Judges' Bench of the Hon'ble Supreme Court in ***"Chairman-cum-Managing Director, Mahanadi Coalfields Limited vs. Sri. Rabindranath Choubey" 2020(2) SCT 554*** that *"where the disciplinary proceedings were initiated before the superannuation of an employee, the payment of gratuity could be withheld till the proceedings were concluded*". In the light of these observations also, it becomes crystal clear that the respondents could withhold the amounts of the Gratuity of the petitioners, against whom the disciplinary proceedings had, admittedly, been initiated before their superannuation, till the conclusion of the disciplinary proceedings carried out against them.

13. Further, the Service Rules are also silent qua the payment of the leave encashment amount to an employee retiring in the above-discussed circumstances. However, Rule 8.21 (aa) of the PCS Rules Vol.I Part I provides as under:-

> "*(aa) Notwithstanding anything contained in sub-rule (a), the authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of Government employee, who retires from service on superannuation while under suspension or while disciplinary or criminal proceedings are pending against him, if in the opinion of such authority, there is a possibility of some money becoming recoverable from*

> *him on conclusion of the proceedings against him and on conclusion of the proceedings, he shall become eligible to the amount so withheld after adjustment of Government dues, if any."*

Thus, the above-said Rule also provides for withholding the leave encashment amount of an employee superannuating during the pendency of the disciplinary proceedings initiated against him/her till the finalization of such proceedings and the same would be applicable to the case of the petitioners also in view of Rule 5.7 of the Service Rules as discussed earlier.

14. Now, as regards the interest as claimed by both the petitioners on the above-said retiral dues, the same shall be discussed separately in case of each petitioner in view of the different factual position qua their respective claims.

15. **CWP No.14029 of 2020** :- Petitioner-Shanti Nandan was due to retire on 30.09.2016 but in view of his request for extension in service as well as the relevant instructions of the Government in this regard, the period of his service was extended for one year w.e.f. 01.10.2016 to 30.09.2017. After having been charge-sheeted on 10.03.2017, he was retired from the service on 31.03.2017 vide the order Annexure P-4. Thereafter, vide Annexure P-5, i.e the copy of letter dated 28.12.2018, he was supplied the copy of the enquiry report dated 05.12.2018 pertaining to his said charge-sheet and was also intimated to move representation within 15 days. However, the petitioner has not placed any document on the record to show that he had so represented within the above-mentioned stipulated period. Rather, Annexure P-6 is the copy of letter dated 22.08.2019 as shown to have been addressed by the petitioner to respondent No.4 with a request to drop the charges levelled against him and to release his retiral dues.

16. As deposed by the Law Officer of the respondent-Federation in his afore-referred affidavit, the petitioner had appeared for personal hearing on 22.08.2019 but however, the fact remains that order Annexure R-1 qua the finalization of the disciplinary proceedings and thereby, awarding the punishment to the petitioner, has been passed on 31.12.2020, i.e about one year four months thereafter. Though, the said Law Officer has also deposed in his affidavit that some of the delinquent employees, who were issued charge-sheets, had not appeared for personal hearing on the afore-said date and they had, rather, been personally heard on 19.12.2019 and thereafter, lockdown was imposed and hence, the said disciplinary proceedings could not be finalized but this explanation does not seem to be plausible at all so as to justifiably explain the afore-said delay caused in the decision/finalization of the disciplinary proceedings against the petitioner. After giving personal hearing to the petitioner on 22.08.2019, the Punishing Authority, at the most, could be presumed to be requiring time upto 30.09.2019 to take the final decision in respect of these proceedings. In these circumstances, it is held that the petitioner is entitled to the interest on his said retiral dues w.e.f. 01.10.2019 till the actual payment of the same, on account of the said inordinate delay in the release thereof to him.

Resultantly, the present petition is hereby allowed to the extent that the respondents are liable to pay the interest to the petitioner on the amount of his retiral benefits @ 7.5% per annum for the above-said period.

17. **CWP No.14493 of 2020** :- Petitioner-Ajmer Singh had superannuated on 31.03.2020 vide order Annexure P-6. Admittedly, the disciplinary proceedings were still pending against him at that time despite the facts that as deposed by the said Law Officer in his affidavit, he (petitioner) had appeared for personal hearing

on 19.12.2019 and thus, the competent authority had more than three months' time till his superannuation, to take the final decision regarding the disciplinary proceedings carried out against him meaning thereby that the same should have been decided well before his retirement. However, he has also been awarded the punishment vide order dated 31.12.2020 (Annexure R-1). In the normal course of events, a period of three months after the superannuation is to be taken as reasonable enough for releasing the retiral benefits to an employee and it being so, the petitioner should have been paid his retiral dues, in any case, upto 30.06.2020. Therefore, he is also entitled to the interest on his retiral dues w.e.f. 01.07.2020 till the actual payment thereof.

Resultantly, this petition is also allowed to the effect that the respondents are liable to pay the interest to the petitioner on the amount of his said retiral benefits @ 7.5% per annum for the afore-mentioned period.

Both the instant petitions stand allowed accordingly.

(MEENAKSHI I. MEHTA)
JUDGE

16.03.2021.
seema

Whether speaking/reasoned?	*Yes/No*
Whether Reportable?	*Yes/No*