

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

CWP 18922 of 2019

Date of Decision: September 03, 2021

Ganesh Raj ...Petitioner
Versus
State of Punjab and another Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. K.L. Arora, Advocate
for the petitioner.

Ms. Simran Grewal, AAG, Punjab
for respondent No. 1.

Mr. Amandeep Singh Manaise, Advocate
for respondent No.2.

FATEH DEEP SINGH, J. (Oral)

The matter has been taken up through video-conferencing on account of outbreak of pandemic COVID-19.

The present civil writ petition by the aid of Articles

226/227 of the Constitution of India by petitioner Ganesh Raj, an XEN with the respondents now under conviction seeks by way of this invocation, directions to the respondents seeking leave encashment, 14 years of Assured Career Progression (ACP) w.e.f. 12.12.2009 and to award him revised pensionary benefits with entire arrears and interest @ 18% per annum from 12.12.2009 till date.

The undisputed facts that emanates from the pleadings are that the petitioner was initially employed as a Junior Engineer on 21.05.1977 with Punjab Water Supply and Sewerage Board (PWSSB) and vide orders dated 24.09.1993 was transferred to Municipal Corporation-respondent No.2.

The allegations are that during the course of discharge of his official duties by the petitioner he got prepared false, fabricated and forged bills purported to have been issued in the year 1991. It is consequent thereupon FIR No. 49 dated 28.06.1997 was registered by the Vigilance Bureau against the

petitioner under Sections 420, 467, 468, 471, 120-B IPC read with Section 13(2) of Prevention of Corruption Act, 1988. It is consequent thereupon the petitioner was found guilty and convicted by the Court of learned Special Judge, Amritsar vide judgment dated 19.03.2010.

It is the admitted stance that an appeal against this judgment of conviction is pending before this Court. However, it is fairly conceded by the two sides that as on date there is no stay on his conviction.

The Principal Secretary to Government of Punjab, Local Government Department vide order dated 30.06.2010 summarily dismissed the petitioner. The Secretary Local Government Punjab Chandigarh vide order dated 29.03.2011 dismissed his service appeal and, thus, upholding the earlier orders.

It is by another quirk of fate, the Government of Punjab, Department of Local Government while hearing the

appeal of the petitioner upholding his dismissal, the then Local Government Minister vide orders dated 21.04.2011 modified the orders passed in the service appeal as follows:-

“The ends of justice demands that the final view with regard to release of the retiral benefits to the petitioner may be taken after the appeal filed by the appellant/petitioner is decided by the Hon'ble High Court.” Accordingly, the impugned order dated 09.07.2010 is modified to the extent that till the appeal filed by the petitioner against his conviction is decided by the Hon'ble High Court and in view of the undertaking dated 13.04.2011 given by the petitioner that during the pendency of the appeal in Hon'ble High Court and in view of the undertaking dated 13.04.2011 given by the petitioner that during the pendency of the appeal in Hon'ble High Court, the appellant/petitioner shall not

claim any other retiral benefit, the appellant/petitioner may be sanctioned provisional pension @ 75% of the pension emoluments, which the petitioner would have claimed had the petitioner not convicted by the petitioner”....

From the same, it is emphatically clear that a bar had been laid by the said authority that decision regarding release of retiral benefits to the petitioner shall be taken after the criminal appeal of the petitioner by the High Court is decided.

How and by what means, the petitioner in spite of having accepted this order apparently to escape the ignominy of dismissal had after 8 years on 01.07.19 filed the instant civil writ petition claiming all these retiral benefits when there was a clear embargo and he was only given provisional pension of 75% of pension emoluments.

As has been the stand of the State in their pleadings

that the order of dismissal of the petitioner from service has only been put in cold freezer and his conviction still holds good. Reliance has been sought to be placed on Punjab Civil Service Rules Vol. 1 (Part I) [Chapter VIII] to hold out that under Rule 8.21, the petitioner is not entitled to encashment of leave and that the claim of ACP in respect of 14 years service does not crystallizes in the light of his conduct and conviction as well as the fact the Local Government Minister had sought to place the order of dismissal in hibernation.

Though on behalf of the petitioner Mr. Arora has sought to seek support from Full Bench View of this Court laid down in the case of **A.S. Randhawa Vs. State of Punjab 1997(3) SCT 468**. However, it is contended that the ACR's of the petitioner for the last 5 years prior to the dismissal order had been varying from "Very Good" and "Outstanding" and therefore he needs to be rewarded with Assured Career Progression for having put in 14 years of continuous

uninterrupted service.

On behalf of the State of Punjab Ms. Simran Grewal, AAG and Mr. A.S. Manaise strong resistance has been put that the petitioner by virtue of his political connection has managed to put an embargo on his dismissal and that his conviction still holds good as the Hon'ble High Court has not stayed the judgment of conviction and therefore the petitioner is not entitled to any benefit as claimed in the petition.

The very object and purpose of ACP is purely with a view to ward off stagnation and is purely placing of an employee in the next higher pay-scale by granting special financial benefit which is purely on personal basis without having much relevance to the seniority and it is simplicitor on the basis of "performance of an employee" which is guiding star for grant or denial of such an benefit. Since non-award of 14 years ACP would not affect the normal or regular promotion of an employee and, therefore, has nothing to impact in the ranking of the

promotional avenue. The State Governments before the award of such ACP considers the case of each employee by the Screening Committee. Such pay scales are matters where decision is taken by the government based on the recommendations of the screening committee where the Court should be slow to substitute its views. Since in the present case there are serious criminal charges resulting in conviction of the petitioner over the allegations of corruption criminal breach of trust forgery etc and which judgment of conviction still holds good it would be too preposterous for the petitioner to have ventured into this claim of seeking 14 years of ACP which is the sole prerogative of the respondents and the Court need not interfere in the same unless and until prima facie it is a case of gross miscarriage of justice.

Reverting back to the instant case, the petitioner has been found guilty for serious charges by the Courts and therefore puts the Court on its guard to scrutinize the case of

the petitioner with more care and caution. Moreover, in the departmental appeals, the petitioner has been dismissed from service. Apparently the petitioner is trying to misuse to his advantage the order of the Local Government Minister dated 21.04.2011 and under which the petitioner cannot claim release of his retiral benefits till the decision on his criminal appeal is another distressing feature for the petitioner. Moreover, being a case involving moral turpitude by a senior functionary of the respondent who is not only held to be guilty of forgery, fabrication of records as well as embezzlement of public funds and misappropriating the same to his personal advantage such like employees certainly do not deserve any element of concession/sympathy from the Courts. The petitioner is already getting 75% of provisional pension and, thus, cannot claim vagrancy and destituteness.

In the light of the foregoing discussion, this Court holds that the instant petition is without merits and as such

stands dismissed.

September 03, 2021
amit rana

(FATEH DEEP SINGH)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No