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

**CWP 23068 of 2018 (O&M)
Date of Decision: November 30, 2021**

Darshan Singh ...Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Pradeep Kumar, Advocate
for the petitioner.

Ms. Harsimrat Rai, DAG, Punjab
for the respondents.

FATEH DEEP SINGH, J. (Oral)

Petitioner Darshan Singh who at the relevant time was working as a Assistant Sub Inspector in Punjab Police was to retire on 31.03.2016. It was vide order dated 04.01.2016 one year's extension was given to the petitioner in line with the policy of the State Government. During the course of events, an FIR bearing No. 12 dated 19.05.2016 under Sections 7, 13 (2)

Prevention of Corruption Act, 1988 read with Section 120-B IPC was registered with Police Station Vigilance Bureau Bathinda on the allegations that in the recorded conversation between two business partners there is mention of having given bribe of Rs.1 lac to the petitioner. It was subsequently on the basis of these allegations vide order dated 01.06.2016, the order of extension given to the petitioner was recalled and he was retired w.e.f. 19.05.2016.

The instant civil writ petition under Articles 226/227 of the Constitution of India has come about by way of writ of *certiorari* seeking quashment of order dated 06.06.2018 (Annexure P-4) whereby the Senior Superintendent of Police Mansa had ordered providing of provisional pension, GPF to the petitioner. The premise on the basis of which the challenge has been laid is that orders passed by the Senior Superintendent of Police, Mansa were in utter violence of the rules and regulations and sought quashment of the said orders alongwith directions for fixation of pension of the petitioner and release of the same alongwith gratuity and other retiral benefits alongwith interest @ 15% per annum.

The respondents in their response besides taking usual pleas of preliminary objections took stand that upon attaining age of 58 years one year's extension was granted to the petitioner but subsequently the FIR in question has been registered with police station Vigilance Bureau Bathinda and that departmental inquiry was pending. It is averred that the following pensionary benefits have already been given to the petitioner:-

S.No.	Detail of Benefit	Amount	Bill No. & Date	TV No. and date
1.	GPF	20,53,591/-	392/4.8.2016	11/2.11.2016
2.	GPF	15,000/-	461/23.9.2016	35/2.12.2016
3.	Leave Encashment	5,45,310/-	331/20.7.2016	19/11.1.2017
4.	Welfare Fund	10,000/-	29.10.2016	29.10.2016

It is further submitted that the petitioner has knowingly and intentionally twisted the true facts and has refused to accept notices sent to him and, thus, frustrated the endeavours of the respondent department to grant provisional pension to the petitioner and instead has filed the instant writ petition.

Appreciating the arguments of the two sides, it is not in any manner differed that during the course of extension of tenure granted to the petitioner a criminal case under the Prevention of Corruption Act was got registered against him which as has been submitted is still pending trial. It is also matter of record that the petitioner had earlier filed CWP No. 5004 of 2018 and which was disposed off vide order dated 01.03.2028 by this Court directing the respondents to pass speaking order on the similar claim laid by the petitioner. The speaking order Annexure P-4 in pursuance of the same which stands unrebutted is reflective of the fact that the respondent department had made payments of GPF, leave encashment for which they have duly given details in their response. The department in the light of this order had sent a written intimation calling upon the petitioner to file written application for grant of provisional pension vide letter No. 5928-B/C.R.C. dated 18.05.2018 through concerned SHO and the petitioner intentionally refused to take the memo and subsequently through another letter Department had sought consent of the petitioner for release of provisional pension and even to that request the petitioner did not respond and as a consequence of which his provisional pension could not be processed.

The petitioner is covered by the Punjab Civil Services Rules and **Rule 9.9-Provisional Pension** is reproduced as below to lay emphasis:-

> *(1) The various stages of action laid down in rule 9.4 shall be strictly followed by the Head of Office. There may be an isolated case where, in spite of following the procedure laid down in rule 9.4, it may*

not be possible for the Head of Office to forward the pension papers referred to in Rule 9.6 to the Accountant-General, Punjab within the period prescribed in sub-rule (4) of that rule, or where the pension papers have been forwarded to the Accountant-General, Punjab within the prescribed period but the Accountant-General, Punjab, has returned them to the Head of Office for eliciting further information before issue of pension payment order and order for the payment of gratuity and if the Head of Office in such a case is of opinion that the Government employee is likely to retire before his pension or gratuity or both, can be finally assessed and settled in accordance with the provisions of these rules, he shall without delay, take steps to determine the qualifying years of service and the emoluments qualifying for pension *after making the summary investigation carefully for this purpose, he shall,-*

(i) rely upon such information as may be available in the official records; and

(ii) ask the retiring government employee to file an affidavit on plain paper stating the total length of qualifying service including details of emoluments drawn during the last ten months of service but excluding the breaks and other non-qualifying period of service

(2) The Head of Office shall thereafter determine the qualifying years of service and the emoluments qualifying for pension in accordance with the information available in the official records and the information obtained from the retiring Government employee under sub-rule (1). He shall then, determine the amount of pension and the amount of

death-cum-retirement gratuity.

(3) After the amount of pension and gratuity has been determined under sub-rule (2), the Head of Office shall take further as as follows:-

(a) He shall issue a sanction letter addressed to the employee endorsing a copy thereof to the Accountant-General, Punjab authorizing-

(i) hundred per cent pension as determined under sub-rule (2) as provisional pension: and

(ii) hundred per cent of gratuity as determined under sub-rule (2) as provisional gratuity withholding ten per cent of gratuity or (Thirty thousand rupees,] which ever is less.

(b) he shall indicate in the sanction letter the amount recoverable from the gratuity under sub-rule (1) of rule 9.8. After issue of the sanction letter he shall draw-

(i) the amount of provisional pension; and

(iii) the amount of provisional gratuity after deducting there from the amount mentioned in sub-clause (ii) of clause (a) and the dues, if any, mentioned in rule 9.16 in the same manner as pay and allowances of the if establishment are drawn by him.

(4). The amount of provisional pension and gratuity payable under sub-rule (3) shall , if necessary, be revised on the completion of the detailed scrutiny of the records.

(5) (a) the payment of provisional pension shall not be made beyond a period of six months from the date of retirement of the Government employee. If the amount of final pension and amount of final gratuity have been determined by the Head of Office in consultation with Accountant General,

Punjab before the expiry of the said period of six months, the Accountant-General Punjab, shall issue the pension payment order and order for the payment of gratuity accordingly after adjusting the outstanding Government dues, if any, and provisional payments already made.

(b) If the final amount of pension and gratuity have not been determined by the Head of Office in consultation with the Accountant-General, Punjab within the period of six months referred to in clause (a), the Accountant-General, Punjab shall treat the provisional pension and gratuity as final and shall issue pension payment order and order for the payment of gratuity accordingly immediately on expiry of the said period of six months.

(c) The payment of the amount withheld from the gratuity shall be authorised after deducting there

from the amount, if any, outstanding against the Government employee which may have come to the notice of the Head of Office after the authorisation of provisional gratuity.

6 (a) If the amount of provisional pension disbursed to a Government employee under sub-rule (3) on its final assessment under sub-rule (4), is found to be in excess of the final pension assessed by the Accountant General, Punjab, it shall be open to the Accountant-General, Punjab to adjust the excess amount of pension in the gratuity withheld under sub-clause (ii) of clause (a) of sub-rule (3) or recover the excess amount of pension in installments by making short payments of pension payable in future.

(b) If the amount of gratuity so disbursed proves to be larger than the amount finally assessed the

retired Government employee shall not be required to refund the excess amount actually disbursed to him.

(c) The Head of Office shall ensure that chances of disbursing the amount of gratuity in excess of the amount finally assessed are minimized and officials responsible for the excess shall be accountable for the over-payment.

These provisions provide for grant of provisional pension and which was duly made to the petitioner who refused to abide by it and submit necessary documents and who earlier as per the details given above has been given service benefits to which he was entitled at that juncture.

It is own accord of the petitioner his claim to provisional pension could not be processed and had he not evaded the request sent to him through Annexure P-4 the authorities would certainly have processed the claim. What one can decipher from the averments of the petition is that the petitioner has filed the instant petition for a motivated cause to seek interest on the amount which he could not receive by his own volition and, therefore, debarred him from seeking relief on account of the same. The petitioner was expected to move the authorities and abide by the rules submitting necessary documents to enable the respondents to process his claim for provisional pension. The petitioner cannot take benefit of his own wrong and must suffer for his own intentional acts of omission and commission.

Thus, in the light of what has been discussed and detailed above, this Court does not feels that there is any merit in the instant petition. The same, as such, stands dismissed.

November 30, 2021 **(FATEH DEEP SINGH)**
amit rana **JUDGE**

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