

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

CWP-464-2020

Date of decision: 30.05.2022

SUDAGER SINGH

...Petitioner

versus

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Baltej Singh Sidhu, Senior Advocate with
Mr. Chandan Singh, Advocate,
For the petitioner.

Ms. Rukhsaar Dhindsa, AAG, Punjab.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of mandamus directing the respondents to release Retiral benefits, arrears and delayed payment of GPF along with interest @18% p.a.

2. Succinct facts first. Petitioner was appointed as Conductor in Punjab Roadways on 30.10.1987. He was later appointed as Legal Assistant in Respondent Department of Rural Development and Panchayats through proper channel by way of transfer in the year 1999 and retired as Law Officer on 30.04.2017. In the interregnum, petitioner was implicated in a case FIR No.7 dated 30.05.2016 registered at Police Station Vigilance Bureau, Phase I, Mohali. Police submitted untraced report in the Court of Special Judge, SAS Nagar on 22.03.2017. Complainant moved an application on 03.05.2017 and also suffered statement before the learned special judge that he has no objection in case the cancellation report is accepted. On 19.03.2019, Vigilance Bureau informed that in the said criminal case untraced report has

been submitted in the Court as there was no motive for commission of the offence. Petitioner submitted a representation on 23.09.2019 seeking release of his retiral benefits, but same was accepted since acceptance of cancellation report is still pending. Hence, the instant petition.

3. I have heard learned counsel for the parties and gone through the case file.

4. Position in this respect is *notres integra*. Reference may be had to a judgment dated 18.01.2019 rendered by my learned brother Harsimran Singh Sethi, J. in CWP No.29015 of 2017 wherein speaking for this Court held as below:

*“With regard to the prayer of the petitioner for release of the gratuity, in my opinion, the same is liable to be allowed. As per the admitted facts, only an FIR was registered on 06.06.2014 and the investigating agency has already recommended for cancellation of the FIR. It is settled principle of law that mere the pendency of an FIR without there being a challan, cannot be a valid ground to deny the benefit of gratuity. The respondents have the right to withhold the gratuity in case the departmental or the criminal proceedings are pending against an employee. The pendency of the departmental proceedings or the criminal proceedings have been clarified by Hon’ble the Supreme Court in the case of **Union of India Vs. K.V.Jankiraman, 1991 (3) SCT 317**, wherein it has been clarified that it is only when a charge-sheet is issued to an employee in the departmental proceedings, it can be stated that the departmental proceedings are pending against an employee. In respect of the criminal proceedings, it was held that unless and until a challan is presented, it cannot be said a criminal proceeding is pending against an employee. The relevant paragraph(s) of the said judgment are reproduced hereunder:-*

XXX XXX XXX

From the above, it is clear that in the present case, there is no challan which has been filed against the petitioner in respect of the FIR No.96 dated 06.06.2014 and therefore, it cannot be said that any criminal proceedings is pending against the petitioner, which would entitle the respondents to withhold the gratuity for which the petitioner became entitled for after retirement on 16.09.2015.

Further, the investigation agency has already filed a cancellation report as far back as in January, 2016. Non-approval of the same cannot cause prejudice to the petitioner for non-release of his pensionary benefits.

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Keeping in view the above, the writ petition is allowed. The respondents are directed to release the gratuity of the petitioner as well as the regular pension within a period of two months from the date of receipt of certified copy of this order. Further, the petitioner is held entitled for interest @9% per annum on the delayed payments from the date it became due till the release of the same. Let the amount be calculated within the abovesaid period of two months and be released to the petitioner within a period of three months thereafter. It is made clear that as the criminal proceedings are pending, the interest of the State will be secured in case a direction is given to the petitioner to submit indemnity bond to the State that the petitioner will indemnify the State in case he is found guilty by the learned Judicial Magistrate. Let the petitioner submit the indemnity bond duly executed as per law with the respondents within three weeks from today.

The writ petition stands allowed in the above terms.”

6. In the premise, the instant writ petition is also disposed of on the same terms as per directions given in CWP No.29015 of 2017 *ibid*.
7. Needful exercise be carried out within a period of 3 months.

(ARUN MONGA)
JUDGE

May 30, 2022

Vandana

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No