

CM No. 3547-CWP-2022 in/and
CWP No. 1491 of 2020 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(113) CM No. 3547-CWP-2022 in/and
CWP No. 1491 of 2020 (O&M)
Date of Decision : 15.03.2022

Balbir Singh

...Petitioner

Versus

State of Haryana

...Respondent

(Through Video Conferencing)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Joy Preet Meelu, Advocate for the petitioner.

Mr. Raman Kumar Sharma, Addl. Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

CM-3547-CWP-2022

Present application has been filed for preponing the date of hearing of the main petition i.e. CWP No. 1491 of 2020, which stands adjourned to 05.05.2022.

Notice of the application to the counsel opposite.

Mr. Raman Kumar Sharma, learned Addl. Advocate General, Haryana, who has joined the proceedings through video conference, accepts notice on behalf of respondent-State and raises no objection for the grant of prayer as raised in the present application.

Keeping in view the above, application is allowed and the

hearing of the main petition i.e. CWP No. 1491 of 2020 is preponed from 05.05.2022 to today.

CWP No. 1491 of 2020

The present petition has been filed for quashing of order dated 26.12.2019 (Annexure P-6) passed by the respondents by which, the prayer of the petitioner for the grant of amount of General Provident Fund (in short 'GPF') and General Insurance Scheme (in short 'GIS') has been declined.

As per the averments made in the writ petition, petitioner was recruited as Sub Divisional Officer in the year 1993. Thereafter, he was promoted as Executive Engineer in the said department on 22.07.1998. Petitioner was to attain the age of superannuation on 30.09.2017 but a day before the same, he was dismissed from service on the ground that he had obtained appointment on the basis of a fake document. The said order challenging the dismissal is already a subject matter of allegation in CWP no. 23298 of 2017.

In the present petition, the prayer of the petitioner is that even the GPF amount, which was deposited by the petitioner during his service and the amount of GIS, which are lying with the respondents, being declined to the petitioner on the ground that the GPF, which was deposited by him, was out of the salary, which he got in pursuance to the appointment obtained by him on the basis of fake documents.

Learned counsel for the petitioner submits that it is not disputed that the petitioner had discharged his duties from the date of appointment till the date of dismissal and the amount, which was deducted from his salary, is his amount and, therefore, the same is liable to be paid to the

petitioner and cannot be retained by the respondents on the ground that the petitioner obtained the appointment by playing fraud. Learned counsel for the petitioner further submits that even in the dismissal order, the respondents have mentioned that petitioner can be made liable for the proceedings to recover the amount of salary paid to the petitioner while in service but as no such proceedings have ever been initiated against the petitioner by the respondents for the last five years, retaining the amount of GPF and GIS is not at all warranted and the directions needs to be issued to the respondents to release the same to the petitioner forthwith.

Learned counsel appearing on behalf of the respondents submits that once the petitioner had obtained the appointment fraudulently, though he might have worked on the post, but the salary paid to him was liable to be recovered though, as of now, the State has not instituted any proceeding for the said act. Learned counsel further submits that the GPF amount though, deposited by the petitioner but the same was deposited out of the salary, which he was getting on the basis of the appointment, which he had obtained by using fraudulent means, hence the prayer of the petitioner was rightly declined by the respondents vide impugned order dated 26.12.2019 (Annexure P-6).

I have heard learned counsel for the parties and have gone through the record with their able assistance.

This Court is not opining upon the merits of the case whether, the petitioner obtained service in a fraudulent manner or not for the reason that the same is already a subject matter of CWP No. 23298 of 2017. The outcome of the same will bind the parties. As the petitioner had worked with

the respondents and was being paid salary and concededly, nothing has been produced that any proceeding has been initiated by the department to recover the said salary, it does not lie with the respondents to retain the GPF (Employee's Contribution) amount deposited by the petitioner with them after being deducted from the salary of the petitioner.

Learned counsel for the petitioner has undertaken before this Court that in case, any adverse order is passed by this Court while adjudicating CWP No. 23298 of 2017 even with regard to the salary being paid to the petitioner or any amount to be refunded, the petitioner will comply with those directions.

Further, learned State counsel has not been able to cite any rule, which would entitle the respondents to withhold the GPF (Employee's Contribution), even if a person is dismissed from service. That being so, retaining the GPF amount (Employee's Contribution) is not permissible.

Keeping in view the above, a direction is issued to the respondents to release the GPF amount (Employee's Share) within a period of two months from today.

Present petition is allowed in above terms.

CM No. 2474-CWP-2021

As the main petition is disposed of, the present application is also stands disposed of.

March 15, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No