

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

CWP No.13628 of 2021 (O&M)

Date of Decision.04.05.2022

Bhupender Sharma

...Petitioner

Vs

State of Haryana and others

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Pawan Kumar, Senior Advocate with
Mr. Shalender Mohan, Advocate
Mr. Surya Kumar, Advocate
for the petitioner.

Ms. Upasana Dhawan, AAG, Haryana.

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JAISHREE THAKUR J. (ORAL)

Status report filed by on behalf of respondents No.1, 2, 4 & 5 in
the court today is taken on record.

The present writ petition has been filed for issuance of an
appropriate writ, order or direction especially in the nature of certiorari for
quashing of impugned order dated 31.05.2021 (P-22) by which retiral
benefits of the petitioner have been ordered to be withheld.

Mr. Pawan Kumar, Senior Advocate assisted by Mr. Shalender
Mohan and Mr. Surya Kumar, Advocates appearing for the petitioner would
contend that the petitioner joined the Haryana Police Department as
Constable in the year 1981 and promoted upto the rank of Inspector.
During the course of performing his duties in the police department, he was
awarded more than 207 appreciation certificates. On account of the diligent
work that the petitioner did, each of the complaints that were made against
the petitioner, was investigated and the petitioner was found to be innocent.

An FIR bearing No.234 dated 26.04.2018 was registered against the petitioner under Sections 7, 12, 13, 49, 88 of the Prevention of Corruption Act read with Section 166 IPC at Police Station Civil Lines, Hisar and as on date, even challan has not been presented. The petitioner, in fact, was to retire on 31.10.2020, however, keeping in account his good service record, he was allowed extension of one year. The petitioner has approached this Court by way of CWP No.4315 of 2020 titled as *Bhupinder Sharma Vs. State of Haryana and others* in which he has challenged the illegal action of the respondents in initiating enquiries against him from time to time. The impugned order stands stayed by this Court and the writ petition is pending consideration. The application for vacation of stay also stands dismissed.

It is contended that on being superannuated on 31.10.2021 after having served on an extension period of one year, the Superintendent of Police, Nuh has passed order dated 31.05.2021 withholding the pension/pensionary benefits by invoking Rule 12 of the Haryana Civil Services (Pension) Rules, 2016 i.e. right of appointing authority to withhold or withdraw pension, pensionary benefits if departmental proceedings involve any financial loss to government.

Learned senior counsel for the petitioner would argue that departmental proceedings that have been initiated against the petitioner are primarily on the basis of complaints of private parties and have nothing to do with the petitioner causing any loss to the State exchequer. It is further argued that civil writ petition has already been preferred in this Court as mentioned above, in which an order has been passed staying the departmental proceedings. It is further argued that the order has been passed by Superintendent of Police, Nuh, who would not be competent

person to pass order in this regard. It is submitted that in case of an Inspector, it would be DIG, Police, who would be competent person to offer him the appointment. Reliance has been placed to Rule 12 of the Haryana Civil Services (Pension) Rules, 2016, which pertains to right of appointing authority to withhold or withdraw pension, which has been quoted in the notice issued on 31.05.2021. It is contended that as per the Rule, it is only the appointing authority, which has right to withhold or withdraw pension and therefore, the impugned order having been passed by the Superintendent of Police is not sustainable.

Learned counsel appearing on behalf of the respondent-State would argue that it is on account of various departmental enquiries pending against the petitioner that the impugned order has been passed. It is further argued that the petitioner herein is trying to take benefit of having obtained the order from this Court, which does not permit the enquiries to be concluded and in case pension and other benefits are released, there would be financial loss to the Government.

I have heard learned counsel for the petitioner and the respondent-State as well as perused the impugned order dated 31.05.2021 and Rule 12 of the Haryana Civil Services (Pension) Rules, 2016. A perusal of Rule 12 as relied upon in the impugned order would clearly reflect that it is only the appointing authority, which has right of withholding or withdrawing pension or any part thereof, if any financial loss is caused by the petitioner to the government or is found guilty of grave misconduct or negligence during his service including service rendered on extension after retirement. The admitted fact here would be that the petitioner has retired from the rank of Inspector and his appointing authority in terms of Rule 12

itself, would be Deputy Inspector General of Police whereas the impugned order stands passed by the Superintendent of Police, Nuh, who is not a competent person to pass any order withholding pension of the petitioner, who has superannuated on 31.10.2021 and that too, after having successfully completed his extension period of one year. The matter regarding whether the petitioner has been harassed unnecessarily by filing complaints and various departmental enquiries have been initiated against him, is already pending consideration in CWP No.4315 of 2020 and is not subject of consideration before this Court. Consequently, finding that the impugned order is unsustainable, the same is quashed. The writ petition is allowed, leaving the respondent-State to take appropriate action, if it is so advised, in accordance with law.

At this stage, learned senior counsel appearing for the petitioner would submit that having superannuated on 31.10.2021, the petitioner is entitled to all his retiral benefits. This Court is not in a position to pass that order at the present moment, however, a direction is issued to the respondents herein to take a decision afresh regarding release of pensionary benefits of the petitioner, while also considering whether in all the FIRs that have been registered against the petitioner, any monetary loss is being caused to the department at the instance of the petitioner. Let this exercise be completed within a period of three weeks from the date of receipt of certified copy of this order.

(JAISHREE THAKUR)
JUDGE

May 04, 2022

Pankaj*

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No