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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CM-11994-CWP-2021 in/and
CWP-17006-2020
Date of Decision: 21.03.2022

Labhu Ram Uppal

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.V.S. Chugh, Advocate,
for the applicant/petitioner.

Mr. Kannan Malik, AAG, Punjab.

(Through Video Conference)

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HARSIMRAN SINGH SETHI J. (ORAL)

CM-11994-CWP-2021:

For the reasons mentioned in the application, the same is allowed and the documents, being Annexures P-8 to P10, are taken on record, subject to all just exceptions.

CWP-17006-2020:

The present petition has been filed for release of the pensionary benefits admissible to the petitioner after he retired from the services on 31.05.2019.

Learned counsel for the petitioner submits that though approximately three years have already elapsed but only due to registration of FIR against the petitioner, being FIR No.247, dated 14.09.2019, under Sections 166, 167, 409 & 420 of the IPC and Section 13(1) of the Prevention of Corruption Act, at Police Station Sardulgarh (Mansa), gratuity of the petitioner has not been released to him so far. Learned counsel for the petitioner further submits that on the date when the petitioner attained the age of superannuation, i.e. on 31.05.2019, no proceedings were pending against him so as to give jurisdiction to the respondents to withhold his pensionary benefits.

Learned counsel for the petitioner argues that even otherwise, in the above said FIR No.247, dated 14.09.2019, after completion of investigation, the petitioner was found innocent and a cancellation report has already been submitted, which is pending consideration before the competent Court of law, therefore, there is no jurisdiction with the respondents to withhold the gratuity of the petitioner for which he is entitled for after his retirement.

Learned State counsel submits that action of the respondents in withholding the pension of the petitioner is perfectly valid and legal as there was a judicial proceeding pending against him in the form of FIR No.247, dated 14.09.2019, and though a cancellation report has already been submitted, as the petitioner was found innocent in the investigation, but the said report is yet to be accepted by the competent Court of law.

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

First of all, the question which arises for consideration by this

Court is that whether there was any criminal proceeding pending against the petitioner at the time when he retired, i.e. on 31.05.2019, or not as only the proceedings, which are pending against an employee at the time of retirement, can be taken into consideration for withholding the pensionary benefits of an employee.

The first question which arises for consideration by this Court is that in the facts and circumstances of this case, can it be said that the criminal proceedings were pending against the petitioner at the time of his retirement, so as to give the jurisdiction to the respondents to withhold his pensionary benefits, or not. The said question of law already stands decided by the Hon'ble Supreme Court of India in its judgment passed in the case of ***"Union of India Vs. K.V. Jankiraman", 1991(3) S.C.T. 317***. In the said case, the Hon'ble Supreme Court of India has held that with regard to the departmental proceedings, the date of serving of the charge-sheet is to be treated as initiation of departmental proceedings against the accused and with regard to the criminal proceedings, the date when the charges were framed against the accused is to be treated as initiation of criminal proceedings against him as the Court takes cognizance of the proceedings at the time of framing of the charge. The relevant paragraph of the said judgment is as under:-

> *" - x - x -*
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> *16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a chargesheet in a criminal prosecution is issued to the employee that it can be said that the*

> *departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. ....*
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> *- x - x -"*

By applying the said settled principle of law by the Hon'ble Supreme Court of India in its judgment passed in **Union of India Vs. K.V. Jankiraman's case** (supra), it is taken into account that on the date when the petitioner was retired, i.e. on 31.05.2019, no FIR was even registered against him. Further, the question of framing of charges against him does not arise as he was found innocent during the investigation and the cancellation report has already been submitted, which is pending consideration with the competent Court of law. That being so, it cannot be said that any proceedings were pending against the petitioner at the time of his retirement, so as to give the jurisdiction to the respondents to withhold his pensionary benefits.

As per the judgment of the Full Bench of this Court passed in ***"A.S. Randhawa Vs. State of Punjab and others", 1997(3) SCT 468***, the pensionary benefits are to be released to an employee within a period of two months from the date of superannuation, in case there is no impediment. By applying ratio of the said judgment, even if there is any impediment and the same is cleared at a later stage then also within a period of two months of clearing of the said impediment, an employee has to be given all the pensionary benefits.

Keeping in view the settled principle of law laid down in **A.S. Randhawa's case** (supra), since no proceedings were pending even within the two months of retirement of the petitioner, during which period, the respondents were to release his pensionary benefits, therefore, an FIR which was registered after four months of his retirement will not come to the aid of the respondents to withhold the pensionary benefits of the petitioner as, in case the petitioner is found guilty in the criminal proceedings, there are provisions in the Punjab Civil Services Rules to take appropriate action with regard to the pension being granted to the petitioner.

Further, as per the judgment passed by the Hon'ble Supreme Court of India in **Union of India Vs. K.V. Jankiraman's case** (supra), decided on 27.08.1991, only in case when the charges have been framed against an accused, the criminal proceedings can be stated to be pending against him. In the present case, the petitioner has been found innocent in the investigation and a cancellation report has already been submitted but still his pensionary benefits are being withheld, contrary to the settled principle of law, only by stating that there is a judicial proceeding pending against the petitioner. The judicial proceedings can only be treated to be pending when a cognizance is taken by the competent Court of law after the investigation report is submitted by the Investigating Agency. As the petitioner in the present case has been found innocent in the investigation and a cancellation report has been submitted, there is no justifiable reason with the respondent to withhold the gratuity of the petitioner.

Therefore, the respondents are directed to release the gratuity of the petitioner without any further delay.

Learned counsel for the petitioner argues that keeping in view the delayed payment of pensionary benefits to the petitioner, he is entitled for the grant of interest on the said delayed release of the payments.

In the facts and circumstances of this case, the petitioner is not entitled for the grant of interest of the said delayed release of the payment for the reason that there was a charge-sheet pending against him at the time when he retired, i.e. on 31.05.2019, and it was only on 17.02.2020, the said charge-sheet was decided, wherein the petitioner was found guilty and a punishment of 5% cut in the pension has been imposed.

That being so, keeping in view the said pendency of the disciplinary proceedings against the petitioner, it cannot be said that withholding of the pensionary benefits of the petitioner at that time was beyond the jurisdiction of the respondents.

That being so, no ground is made out to grant petitioner the interest on the delayed release of payments upto the date when the proceedings in respect of the above said charge-sheet were pending against him. Since the gratuity of the petitioner is still being withheld, therefore, the petitioner is entitled for the grant of interest at the rate of 6% per annum on the delayed payment of gratuity starting from 01.04.2020 till the same is released to him.

Let the calculation of the interest under this order be done within a period of two months and the amount so calculated be released to the petitioner within a period of four weeks thereafter.

21.03.2022 **(HARSIMRAN SINGH SETHI)**
Apurva **JUDGE**

1. Whether speaking/reasoned : Yes
2. Whether reportable : Yes