IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

213 **CWP-23513-2016**
Date of Decision : April 05, 2022

Banarsi Dass **.. Petitioner**

Versus

Uttar Haryana Bijli Vitran Nigam and others **.. Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr.B.S.Sidhu, Advocate
for the petitioner.

Mr. Arjun Dosanj, Advocate for
Mr. C.S.Bakshi, Advocate
for the respondents.

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HARSIMRAN SINGH SETHI J. (ORAL)

The present petition has been filed seeking the release of gratuity and computation of pension, which the petitioner has become entitled for after superannuation from service on 31.01.2016.

Learned counsel for the petitioner submitted that the petitioner retired from service on 31.01.2016 but he was not released his pensionary benefits and after six months of the retirement, the petitioner was issued two charge sheets by the respondents dated 15.07.2016 and 11.08.2016 (Annexures P-1 and P-2). On the basis of the said charge-sheets, the benefits of gratuity and commutation of pension was withheld by the respondents. A further prayer of the petitioner is that even while calculating the qualifying service, the work charge service which the petitioner has rendered continuously from 01.11.1979 till 12.05.1988, had not been taken into account for computing the pensionary benefits which is contrary to the settled principles of law as settled by the Full Bench of this Court in ***Kesar Chand vs. State of Punjab and others, AIR 1988 Punjab 265 .***

After notice of motion, respondents have filed reply wherein, it has been mentioned that though the petitioner has rendered the daily/work charge service from 1979 to 1988 but after his services were regularised, the petitioner never made any effort to deposit his contribution for the said period so as to include the same as qualifying service for computing the pensionary benefits. With regard to withholding the pensionary benefits, the reliance is being placed upon the two charge sheets, which have been served upon the petitioner in July/August 2016.

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

For withholding the pensionary benefits, the impediment in the release of those pensionary benefits should be present at the time of retirement. As per the settled principles of law settled by the Full Bench of this Court 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 the retirement, in case there is no impediment.

In the present case, the petitioner retired on 31.01.2016 and even within a period of two months, during which the respondents were supposed to be released the pensionary benefits, if there was no impediment there was no charge-sheet pending against him so as to entitle the respondent to withhold the pensionary benefits. That being so, the pensionary benefits of the petitioner could not have been withheld as the charge-sheets were served upon the petitioner after six months of retirement.

Further, the said question of law has already been settled by this Court while passing order in CWP No.26406 of 2015 decided on 06.11.2019, titled as "Subha Chand vs. State of Haryana and another" wherein, it has been held that where no proceedings were pending against the retired employee on the date of retirement, the pensionary benefits cannot be withheld. The relevant paragraph of the judgment is as under :-

> "It is an admitted fact that on the day when the petitioner attained the age of superannuation and retired in the year 2015, there was no charge sheet pending against him and the position for releasing the pensionary benefits to an employee is to be seen on the date of retirement of the employee and not subsequently. Once on 01.03.2015, there was no impediment in the release of the pensionary benefits of the petitioner, the respondents could not have withheld his pensionary benefits. It is the settled principle of law settled by this Court in CWP No.3493 of 1986 titled as **L.R. Dhawan vs. State of Haryana and others 1996(3) S.C.T 11** wherein, it has been held that any charge sheet which has been issued after retirement, cannot be made ground for withholding the pensionary benefits of the employee. Relevant paragraph of the judgment is as under:-
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> "Gratuity due to an employee is payable to him on the date of retirement. Payment of the gratuity can be deferred in a case where the employee is under cloud at the time of his

retirement, namely, in a case where he is facing departmental inquiry or judicial proceedings. If no inquiry or judicial proceedings is pending on the date of retirement of the employee, the Government/employer does not have any authority to withhold the payment of gratuity. Similarly, full pension payable to an employee can be withheld during the pending of the departmental inquiry or judicial proceedings. The Government is also possessed with the power to withhold the pension or a part thereof or recover any pecuniary loss caused to the Government from the pension payable to an employee in case such Government servant is found guilty of grave misconduct or negligence in the discharge of his duties during the course of service. Deduction from the pension can be made even on the basis of an inquiry which may be initiated against the employee after his retirement but subject to the fulfilment of the conditions enumerated in proviso to Rule 2.2(b). However, proceedings initiated against an employee under proviso to Rule 2.2 (b) cannot be made a ground for withholding of death-cumretirement gratuity or the pension payable to an employee on the date of his retirement. In the case in hand, no inquiry was pending against the petitioner on the date of his retirement. The proceedings have been initiated against him after over three years and nine months of his retirement from service. That may ultimately lead to the withholding of the pension or part thereof or recovery therefrom in terms of Rule 2.2(b) but there does not appear to be any legal justification for withholding of death-cum-retirement gratuity payable to the petitioner on the ground that inquiry has been initiated against him under Rule 2.2(b) with the issue of notice dated 26.12.1986."

This question again came up for consideration in **Amarjit Singh Vs. Punjab State Civil Supplies Corporation Limited and another, 2016(4) PLR 191,** wherein, this Court after relying upon **L.R. Dhawan's case (supra)** held that the retiral benefits can only be withheld on the basis of a charge-sheet, which has been issued prior to the date of the retirement of an employee. The relevant part of the said judgment is as under: -

"To the extent gratuity is claimed by the petitioner, this petition must succeed. To claim such benefit, learned counsel for the petitioner relies appropriately on the case law in Narinder Dev Sharma Vs. State of Punjab & another, 1996 (1) SCT 623; L.R.Dhawan Vs. State of Haryana & others, 1996 (3) SCT 11 and Ram Narain Dua Vs. Dakshin Haryana Bijli Vitran Nigam Ltd. & others, 2007 (1) SCT 161. This is because the respondents admit that no charge-sheet was served on the petitioner prior to his retirement and therefore, gratuity could not have been withheld. Neither can gratuity be withheld by initiating inquiry under Rule 2.2 (b) of the Punjab Civil Services Rules, Volume II after employee retires and departmental proceeding were not contemplated during service. This is for the reason that gratuity is a one-time payment which falls due and payable on the date of retirement and is not a recurring right like pension. However, an enquiry based on a charge-sheet issued after retirement under Rule 2.2(b) can be conducted and concluded. The charge-sheet was issued in this case on 02.04.2013 for an incident of alleged misconduct which occurred during the period 2009-10, while the petitioner retired from service on 30.04.2011. To that extent no court directions are called for in this petition to draw the curtains on the departmental proceedings.

For the foregoing reasons, this petition is allowed while setting aside the impugned decision withholding gratuity for no rhyme or reason. Since the amount of gratuity has been withheld for the wrong reason, the petitioner would be entitled to interest on delayed payment @ 8.7% p.a. i.e. the rate payable on long term fixed deposits sitting invested in nationalized Banks."

Thereafter, while deciding CWP-13449-2014 titled as **'Hans Raj Vs. Registrar, Cooperative Societies, Punjab and others',** on 24.05.2017, this Court once again held that the gratuity cannot be withheld on the basis of the charge-sheet, which has been served after the retirement of an employee. The relevant portion of the judgment is as under: -

"Now, the further question would arise as to whether the gratuity of the petitioner could be withheld or not? The petitioner retired from service on 30.9.2012. Charge sheet was served upon him on 11.4.2014 i.e. after more than one and half years of the said retirement. The gratuity is otherwise required to be released immediately on the retirement. It goes to show that the gratuity of the petitioner was probably not released immediately on account of the impending charge sheet. Petitioner is getting provisional pension and if the department finds that the charges are proved, they are always at liberty to impose a cut in the pension. However, the gratuity of the petitioner cannot be withheld for indefinite period on the basis of the charge sheet which is issued after more than one and half years of his retirement.

Accordingly, the present writ petition is partly allowed to the extent that the gratuity of the petitioner is ordered to be released with interest @ 9% per annum starting three months from the date of retirement till the date of actual payment."

Also the Division Bench of this Court in **'Ram Narain Dua Vs. Dakshin Haryana Bijli Vitran Nigam Ltd. and others, 2007(1) S.C.T. 161**, has held that gratuity payable to an employee cannot be withheld on account of allegations which have emanated after the date of retirement of the employee. The relevant paragraph of judgement is as under: -

"2. Having heard the learned Counsel for the parties, we are of the considered view that the respondents could not have withheld any amount of gratuity payable to the petitioner on account of allegation which have been emanated after the date of his retirement. Such a course is not available to the respondents. In some what similar circumstances, this Court has earlier also in the case of Hans Raj Sharma v. Uttar Haryana Bijli Vitran Nigam Limited and Ors. 2004(4) SCT 117 (P&H), Civil Writ Petition No. 152 of 2004, decided on October 28, 2004 had allowed the writ petition by following the judgment of Hon'ble the Supreme Court in P.R. Naik v. Union of India, AIR 1972 SC 554. It has been laid down in the aforementioned judgment that issuance of charge-sheet for initiation of departmental enquiry is a sine qua non.

3. In view of the above, we allow the writ petition and quash the impugned order dated March 1, 2005 (P-15). We further direct the respondents to release the 100% pension, arrears of pension, gratuity and commutation of pension amount to the petitioner within a period of one month from the date a certified copy of this order is presented to the respondents. In case, the needful is not within one month, then the petitioner shall be entitled to interest at the rate of 6% per annum from the date the amount is payable till its actual payment."

In the present case, it is a conceded position that no charge sheet was pending against the petitioner on the date of retirement, hence, withholding the gratuity and the commutation of pension by respondents is beyond their jurisdiction. Hence, the respondents are directed to relase the same forthwith.

With regard to the inclusion of the daily wage work services, which the petitioner has rendered starting from the year 1979 onwards till

1988, the said fact is not disputed by the respondents. The only objection taken is that the petitioner has not paid his share of contribution for the said period and therefore, till the same is done by the petitioner, the same cannot be taken into consideration.

Leared counsel for the petitioner has accepted that the petitioner is ready to deposit his share of contribution along with interest for the relevant period and therefore, keeping in view of the settled principles of law as settled by the Full Bench of this Court in ***Kesar Chand's case (supra)*** while interepreting Section 3.17 A of the Punjab Civil Services Rule as applicable to Haryana which is also applicable upon the respondent-Corporation, the adhoc service rendered prior to the regularisation of the service of an employee is to be treated as qualifying service for computing the pensionary benefits.

Learned counsel for the respondents has not been able to distinguish the case of the petitioner so as to deny the benefit of adhoc service daily wage/work charge service to be treated as qualifying service or computing the pensionary benefits if petitioner deposits the contribution for the said pension along with interest.

As, the respondents have withheld certain pensionary benefits of the petitioner without any valid justification and did not extend the benefit of work charge service rendered by the petitioner towards his pensionary benefits despite the settled principles of law, and the petitioner is still waiting for the release of some of his pensionary benefits including commutation of the pension. As the benefits which petitioner is entitled for under the settled principles of law was not released to him and rather some of his pensionary benefits were withheld by the respondents contrary to the the settled principles of law, petitioner is held entitled for the interest on the delayed release of the pensionary benefits,

and other pensionary benefits, the amount which the petitioner will become entitled for upon refixation of his service, refixation of his pensionary benefits as well as the amount of gratuity and comutation of pension which has been held by the respondents, the same will also carry interest @ 6% per annum from the date the petitioner retired from service till the same is actually released in favour of the petitioner.

Let the computation be done within a period of two months from the receipt of the copy of this order and the payment so computed be made in favour of the petitioner within a period of one month thereafter.

The writ petition is allowed in above terms.

April 5, 2022 **(HARSIMRAN SINGH SETHI)**
anju **JUDGE**

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