

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 17.11.2022

+ W.P.(C) 3137/2019
SANJAY SHARMA

..... Petitioner

Through: Ms.Avnish Ahlawat, SC, GNCTD
with Mr.N.K.Singh, Ms.Laavanya Kaushik &
Ms.Aliza Alam, Advs.

versus

GOVERNMENT OF PUNJAB AND ORS. Respondents
Through: Ms.Supriya Manan, AAG

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The petitioner, who was working at the respondent organisation as a General Manager, has approached this Court seeking quashing of the order dated 27.03.2018 passed by the respondent no.1 vide which it has refused to issue a 'No Objection Certificate' (NOC) in favour of the petitioner so as to enable him to get his full pension after his superannuation on 31.10.2017. The petitioner also seeks to assail the order dated 27.06.2018 passed by the respondent no.1 vide which it has refused to release the leave encashment and gratuity payable to him.

2. Ms.Avnish Ahlawat, learned counsel for the petitioner, submits that the petitioner who had joined the service of the respondent in 1984 and was due to superannuate on 31.10.2015, was based on his excellent work, granted two years' extension, and finally superannuated on 31.10.2017 as

the General Manager, Punjab Bhawan, New Delhi. However, despite his repeated requests, he has been granted only part of his GPF amount, and has been sanctioned 75% pension. He has also been denied the benefit of computation of 40% pension, which is available to all superannuated employees. She submits that the only reason on which the petitioner has been denied his terminal benefits and full pension, is that, in a Special Audit conducted for the Punjab Bhawan, for the period between 2002-2003 and 2003-2004, some irregularities were pointed out.

3. By placing reliance on Rule 2.2(b) of the Punjab Civil Service Rules, she submits that the petitioner having superannuated more than five years ago, no departmental proceeding can be initiated against him at this belated stage. She, therefore, contends that in the light of the admitted position, that till date, neither any departmental proceedings nor any criminal proceedings have been initiated against the petitioner, he is entitled to forthwith receive all his terminal benefits and full pension.

4. The petition is opposed by Ms. Supriya Manan, learned counsel for the respondent, who contends that, once the Special Audit conducted in the year 2006 found gross financial and administrative irregularities, with a loss of Rs.1,72,65,629/- to the government, the respondent is justified in refusing to sanction full pension to the petitioner, and also to release his other terminal dues. She submits that no action could be taken on this Audit report, as the file pertaining to the aforesaid audit conducted in 2006, was misplaced, and was traced out only in May 2017. Consequently, some of the findings given in the audit report still need to be settled, and it is only when action on these pending issues is completed that steps will be taken to make recoveries from the concerned persons, including the petitioner. She, therefore, prays that the

writ petition be dismissed.

5. Having considered the submissions of learned counsel for the parties and perused the record, I am unable to appreciate the stand taken by the respondents. Once it is an admitted position that, even after five years since the petitioner's superannuation neither any criminal proceedings, nor any departmental proceedings, have been initiated against him, there is absolutely no justification on the part of the respondents in withholding the petitioner's terminal dues. An employee after rendering long years of service, especially like the petitioner, who was even granted extension after he reached the prescribed age of superannuation and worked at the respondent organisation for 33 years, looks forward to receiving his terminal benefits and pension which would give him some succour in his old age. It is expected of an employer to take expeditious steps to ensure that the terminal benefits and pension due to its employees, are released in time, unless there are justifiable reasons to withhold the same. In the present case, however, it is the respondent's own case that some objections were raised in the report pertaining to the Special Audit conducted in 2006, and the relevant file which formed the basis for raising allegations on the petitioner's conduct, was, according to the respondents, misplaced and resurfaced again in May 2017. There is no explanation by the respondents as to why, once the file, even as per the respondents, resurfaced in May, 2017, no finality has been given to the Special Audit Report. There is absolutely no justification on the part of the respondents in not completing the exercise regarding the Special Audit to arrive at a final decision in respect of the petitioner, even after a period of five years since his superannuation.

6. Learned counsel for the petitioner has relied on rule 2.2(b) of the

Punjab Civil Service Rules to contend that no departmental action can be taken against him at this stage. It may, therefore, be apposite to note the relevant extracts of rule. 2.2(b), which reads as under:

"Rule 2.2 (b)

Rule (2) Such departmental proceedings, if not instituted while the officer was in service, whether before his retirement or during his re-employment -

(i) shall not be instituted save with the sanction of the Government;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the officer during his service."

7. In the light of the aforesaid, the petitioner, who is already in the evening of his life, cannot be left to wait endlessly for the respondents to complete their purported Special Audit exercise, and that too when even as per the own stand of the respondents, the audit report was furnished in 2006 itself. The writ petition, therefore, deserves to be allowed and is, accordingly, allowed, by quashing the orders dated 27.03.2018 and 27.06.2018 passed by the respondents, with directions to release the differential amount payable to the petitioner towards his pension, with interest @ 6% p.a, and also issue the necessary NOC to him, so that all his other terminal dues are released to him. The amounts in terms of this order

be issued in favour of the petitioner, within a period of eight weeks. However, in order to safeguard the interest of the respondents, the petitioner is directed to file before this Court within two weeks, an affidavit undertaking to pay any amount as may be found recoverable from him as per law, subject to any appellate remedy as may be available to him. An advance copy thereof be supplied to the respondents.

8. The writ petition, alongwith all pending applications, is accordingly, allowed in the aforesaid terms.

(REKHA PALLI)
JUDGE

NOVEMBER 17, 2022

kk