

CWP-16723-1998 (O&M)

. 2023:PHHC:114839

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-16723-1998 (O&M)

Date of Decision :-01.09.2023

R.D. Kamboj

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: None for the petitioner.

Mr. Harish Rathee, Senior DAG, Haryana.

Ms. Himani Jian, Advocate for Mr. H.S. Oberoi, Advocate
for applicant-respondent No.2.

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Harsimran Singh Sethi, J. (Oral)

Present petition has been filed by the petitioner seeking interest on the delayed release of the amount of gratuity. No one appears on behalf of the petitioner, hence, present petition is being decided on the basis of the facts/pleadings already on record.

As per the petition, the petitioner retired on attaining the age of superannuation on 30.04.1997 but the payment of gratuity was made to the petitioner much after the said date due to which fact, a claim has been raised for the grant of interest on the said delayed release of payment of gratuity.

In reply to the petition, the respondents have stated that at the time when the petitioner retired from service, a chargesheet was pending against the petitioner which was issued to him on 17.05.1996 and as the said charge sheet was pending consideration with the respondent-department, payment of gratuity was withheld by them keeping in view the rules

governing the service. As per the reply, the petitioner made a request to the respondent-department that in case, any order is passed in the enquiry proceedings, he will abide by the same and hence, by taking a lenient view, his gratuity was released by the respondent-department in the month of October, 1997 despite the pendency of the disciplinary proceedings against him even at that stage.

Keeping in view the fact that the disciplinary proceeding were pending against the petitioner on the date when he retired from service and was pending even on the date when the payment of gratuity was released on the request of the petitioner, the claim of the petitioner for the grant of interest on the delayed release of the payment of gratuity is not justifiable. As per the rules governing the service and the settled principle of law settled by the Full Bench of this Court in *LPA No.113-2012* titled as ***Punjab State Civil Supplies Corporation Limited vs. Pyare Lal*** decided on 11.08.2014 in case at the time of retirement, the disciplinary proceeding are pending against an employee, the respondent-department is well within its jurisdiction to withhold the amount of gratuity. The relevant paragraphs of the said judgment are as under:-

09. In view of thereof, we find that the ratio laid down in the said judgments cannot be extended in respect of the claim of leave encashment governed by the Punjab Civil Service Rules or the analogous Rules. In fact, in terms of the conclusion (i) in para No.81 of the judgment in Dr. Ishar Singh's case (supra), the State Government has no right to withhold or postpone pension or the payment on account of commutation of pension. The State is bound to release 100% pension at the time of superannuation. It is conclusion No. (ii) which permits the Government to withhold gratuity or other retirement benefits. The pension is to be paid, may be provisionally, during the pendency of the enquiry. Similarly, conclusion (vii) provides recovery of Government dues from

gratuity and other retiral dues. Therefore, the judgment in Dr. Ishar Singh's case (supra), is applicable only DALBIR SINGH 2014.08.12 12:57 I attest to the accuracy of this document High Court Chandigarh LPA No. 113 of 2012 (O&M) [6] in respect of payment of provisional pension pending disciplinary or criminal proceedings and has no applicability in respect of withholding of other retiral benefits. The payment or withholding of other retiral benefits is subject matter of applicable Rules, if any. Since in the present case, Rule 8.21(aa) provides for withholding of leave encashment, the same cannot be released to an employee, as the amount, if any, could be recovered from such benefits.

10. In fact the above view gets support from the recent Supreme Court Judgment reported as [State of Jharkhand v. Jitendra Kumar Srivastava](#), (2013) 12 SCC 210, wherein the court held as under:-

"16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognised as a right in "property". [Article 300-A](#) of the Constitution of India reads as under:

"300-A. Persons not to be deprived of property save by authority of law.--No person shall be deprived of his property save by authority of law."

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the constitutional mandate enshrined in [Article 300-A](#) of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.

17. It hardly needs to be emphasised that the executive instructions are not having statutory character and, therefore, cannot be termed as "law" within the meaning of the aforesaid [Article 300-A](#). On the basis of such a circular, which is not having force of law, the appellant cannot withhold even a part of pension or gratuity. As we noticed above, so far as statutory Rules are concerned, there is no provision for withholding pension or gratuity in the given situation.

11. In view thereof, since the right to withhold leave encashment is part of the Statutory Rules, it satisfies the test laid down by the Supreme Court. Thus, we approve the judgment in Harbhajan Singh Riar's case while overruling the view taken in Gurdial Singh's case (supra). The judgments in two other cases i.e. B.S. Gupta's case (supra) and Dayal Singh's case (supra), pertain to Haryana. Since, the Rules applicable to Haryana, have not been brought to our notice, we leave the said matter open, to be adjudicated at an appropriate stage.”

Keeping in view the above, no ground is made out for interference by this Court.

Dismissed.

Civil miscellaneous application pending, if any, is disposed of.

September 01, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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