

239
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-22199-2020(O&M)
Date of Decision: 01.03.2023

Manjit Singh

....Petitioner(s)

Versus

State of Punjab and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Vijay Lath, Advocate, for the petitioner.

Ms. Jasleen Kaur, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

The present is a petition filed under Articles 226/227 of the Constitution of India seeking a writ in the nature of *Mandamus* directing the respondents to release General Provident Fund of the petitioner lying with the respondents.

Learned counsel for the petitioner has submitted that in the present case the petitioner was working as a Constable in the Police Department and during his service, an inquiry was conducted against him and he was dismissed from service on 14.03.2014. Thereafter he filed an appeal which was dismissed and thereafter even review filed by him was also dismissed. Thereafter the petitioner had also filed a civil suit seeking declaration that his termination is bad, which is still pending.

Learned counsel for the petitioner has submitted that the only

subject matter of the present petition is pertaining to non-release of GPF of the petitioner after he was dismissed from service and after the dismissal order had attained finality on the departmental side. He further submitted that by no authority of law can a GPF be withheld in view of the fact that the GPF is the property of the concerned employee and there is no provision of withholding or forfeiting the GPF and it cannot be treated at par with the other retiral benefits. He further submitted that vide Annexure P-1, the petitioner had rather written a letter to the Commandant, 13th Battalion, Punjab Armed Police, Chandigarh for making a request for disbursement of GPF to which he was entitled under the law and had rather has given his bank account. The aforesaid letter is dated 07.09.2020. This letter was replied by the Commandant, 13th Battalion, Punjab Armed Police, Chandigarh on 14.09.2020 vide Annexure P-2 in which it has been so stated that there are discrepancies in his application and the discrepancy has also been referred in the aforesaid letter. It is so stated in the letter that the petitioner must give an affidavit/undertaking duly attested from Magistrate/Notary by specifically stating that he will not file any appeal/Court case for reinstatement of his service. The aforesaid letter is reproduced as under:

“From,

*Commandant,
13th Battalion PAP,
Chandigarh*

To

*Manjit Singh (Ex. Constable No :13/351)
Son of Sh. Kartar Singh, Resident of Quarter No.11,
Sadar Police Quarters, Kotkapura Road,
Muktsar, District Sri Muktsar Sahib,*

*Presently resident of village Lodhi Majra,
Tehsil and District Rupnagar.*

No.25409/G.P.F, dated 14/09/2020

*Subject: Regarding last payment of G.P.F amount to Ex Constable
Manjit Singh Number 13/351 from G.P.F Account Number
78987.*

Reminder Letter

Regarding the above mentioned subject it is written that you have been dismissed from the Government Service on dated 14/03/2014, now you have sent your case to this office for payment of your G.P.F fund. After perusal same it is found to be incomplete. Therefore your original application has been returned back and it is written to you that in the application there are discrepancies as given below and same be rectified and you can visit this office on any working day, so that case for payment of G.P.F can be prepared.

1. Affidavit/undertaking duly attested from Magistrate/Notary in which it is specifically in clear terms be mentioned that you will not file any appeal/Court case for reinstatement in the services.

Enclosed : As mentioned above.

Sd/-

For Commandant,

*13th Battalion PAP,
Chandigarh*

Learned counsel for the petitioner submitted that such kind of coercive method for giving undertaking in the form of an affidavit that he will not file a Court case or appeal is not only unconscionable but also void ab initio in terms of the Contract Act and otherwise also, such kind of affidavit and undertaking cannot be taken from the employee because it is not supported by any statutory rule or any other authority of law and therefore the aforesaid reasoning given was illegal in clear terms. He further submitted that when the respondent had filed reply by way of an affidavit, a letter has been attached as Annexure R-1 dated 09.12.2014 in which it has

been rather specifically stated by the Finance Department that when an employee has been dismissed even then the GPF is to be paid. However, a rider was added that before that an affidavit must be taken from the dismissed employee that he will not apply for extension in service if the verdict of the Court is decided in his favour. Learned counsel submitted that dehors the aforesaid letter which was otherwise without the authority of law but in the present case the undertaking/affidavit which was required from the petitioner was that he will not seek his legal remedy by filing appeal/Court case which is totally illegal and such a coercive kind of action cannot be taken against the petitioner for release of GPF at least.

Ms. Jasleen Kaur, learned DAG, Punjab has submitted that it was only to avoid further frivolous litigation that such a condition was imposed vide Annexure P-2. During the course of arguments, this Court had directed during the pre-lunch session that some officers from the respondent-State dealing with the GPF Branch in the Punjab Police should assist this Court as well today and after the post-lunch session, an officer has come from the office of Commandant, 13th Battalion, Punjab Armed Police, Chandigarh and stated that he is dealing with the GPF Branch.

A query was raised to the aforesaid officer that as to how and under what circumstances such a condition was added, which is void ab initio, to which he stated that as a practice this thing is going on and if an employee is dismissed from service such kind of affidavit is taken that he will not file any appeal/Court case for reinstatement of his service.

I have heard the learned counsel for the parties.

The grievance of the petitioner that he was dismissed from service on 14.03.2014 and against which a statutory appeal was filed and even review was filed which was also dismissed but his civil suit for declaration assailing the order of dismissal is still pending. The subject matter of the present petition is only for the release of GPF. A perusal of Annexure P-2 as reproduced above would show that such kind of condition has been imposed for release of GPF that the employee should give an affidavit that he will not seek any remedy including judicial remedy that he will not file appeal/Court case for reinstatement of his service. It is very surprising to see that how such kind of undertaking is taken from a dismissed employee, which is not supported by any statutory law or any other instructions etc. which otherwise could not have been issued. The more important thing which is disturbing for this Court is that an officer who is present in the Court has stated that from large number of persons who have been dismissed from service, such kind of undertaking was taken. On the face of it, the practice adopted by the respondent-Police Department is oppressive, coercive, illegal and unconscionable. It is not expected from a disciplined force of the State of Punjab to use such oppressive and coercive measures for the purpose of releasing the GPF of an employee to which otherwise he is legally entitled.

It is not the case of the State nor it has been so stated in the reply nor argued by learned State counsel that the petitioner was not entitled for the release of the GPF under any provisions of law but the only reason which is stated is that he was to furnish an affidavit that he will not file any case for his reinstatement.

In view of the above, the present petition is allowed. The respondents are directed to release the amount of GPF to which the petitioner is entitled from the date it accrued to him i.e. after his dismissal alongwith interest at the rate of 6% p.a. The aforesaid amount shall be paid within a period of three months from today and in case the aforesaid amount is not paid within a period of three months, then the petitioner shall be entitled for future rate of interest @ 9% per annum instead of 6%.

Since the action of the respondents was ex-facie illegal and rather shocking, the petitioner shall also be entitled for costs of Rs.25,000/-. The costs shall also be paid within the aforesaid period of three months. As a first instance the costs shall be paid by the respondent-State to the petitioner and thereafter the State shall be at liberty to recover the same from the concerned officer after fixing accountability by following the procedure in accordance with law.

At this stage, this Court would also like to note that as per the officer who is present in the Court has stated that in a large number of cases such kind of thing has happened where undertaking/affidavit was taken from large number of employees who were dismissed from service and such practice is still in continuance, the Chief Secretary of the State of Punjab or the Principal Secretary, Department of Home Affairs will look into the matter and will take corrective and remedial measures in this regard.

List for compliance after three months.

01.03.2023

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)
JUDGE

: Yes/No
: Yes/No