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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**CWP-952-2017**
**Date of decision : 15.02.2023**

Mahesh Kumar Tayal ....Petitioner

Versus

State of Punjab and others ...Respondents

**CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. P.K. Goklaney, Advocate
for the petitioner.

Mr. Rajesh Mehta, Addl. A.G. Punjab.

Mr. A.S. Chadha, Advocate for
Mr. Gaurav Rana, Advocate
for respondent Nos.3 & 4.

**PANKAJ JAIN, J. (ORAL)**

The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of direction in the nature of Mandamus directing the respondents to release the payment of Rs.7,60,810/- on account of encashment of unavailed P. leave along with interest @ 12%.

Admittedly the petitioner retired on 30.09.2016 and the charge-sheet was issued only on 20.02.2017, meaning thereby, that on the day, the petitioner retired, there was no charge-sheet pending. Power to withhold retiral benefits is in terms of Clause 2.14 of the Punjab State State Cooperative Milk Producers Federation Employees Service (Common Cadre) Rules 1980. The same reads as under:-

*"2.14 RETIREMENT*

*(a) Every employee appointed to the service shall ordinarily retire on attaining the age of 58 years (w.e.f. 28.7.06).*

*Provided that in the case of pendency of any criminal or disciplinary proceedings against any employee on the date of attaining the age of 58 years, such proceedings shall continue beyond the said date of superannuation and he or she shall be subject to the decision thereof. Provided that the disciplinary proceedings going on against an employee at the time of retirement shall be completed preferably within a period of six months from the date of retirement. Provided further that the disciplinary proceedings can be initiated even after the retirement of an employee on superannuation in respect of a cause of action which arose or an event which took place within a period of four years prior to the retirement of after the completion of the re-employment.*

*(b) Notwithstanding anything contained in Clause (a) above, any employee may be required by the Appointing Authority or permitted at his own request to retire from the service on attaining the age of 50 years or after 20 years of service.*

*(c) Notwithstanding anything in Clause (a) & (b) the Appointing Authority shall if it is of the opinion that it is in the interest of the Institution to do so, have the absolute right, by giving an employee prior notice in writing to retire that employee on the date on which he completes twenty years of service or attains 50 years of age or any date thereafter to be specified in the notice.*

*Provided that the period of such notice shall not be less than three months. Provided further that where atleast three months notice is not given or notice for a period less than three months is given, the employee should be entitled to claim remuneration equivalent to the* *amount of his pay and allowances at the same rates at which he was drawing than immediately before the date of his retirement for a period of three months or for the period by which such notice falls short of three months as the case be."*

Law w.r.t. commencement of disciplinary proceedings is well clearly stated in ***'Union of India Vs. K.V. Janki Raman (1991), 4 SCC 109'***. The proceedings commence only on the date of issue of chargesheet. In the **Union of India's case (supra)** the Apex Court held as under :-

> "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. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many-cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of

the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/chargesheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy. It was then contended on behalf of the authorities that conclusions nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows:

> "(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;
>
> (2) ...............................................
>
> (3) ................................................
>
> (4) the sealed cover procedure can be resorted only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before;"

17. There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion no. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions."

Learned counsel for the respondent is not in a position to dispute the fact that on the date of superannuation, no chargesheet was pending against the petitioner and thus, the power as contained in Rule 2.14 ought not have been resorted to.

Resultantly, the impugned action of respondent is held to be not sustainable. The writ petition is allowed.

Respondents are directed to release the retiral benefits as payable to the petitioner within a period of eight weeks from the date of receipt of certified copy of this order along with interest calculated @ 6% per annum for the period commencing from 01.01.2017 till the date of actual realization.

**15.02.2023** **(PANKAJ JAIN)**
*ps-I* **JUDGE**

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