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

CWP-20018-2023

Date of Decision: 21.12.2023

DHARAMBIR SINGH YADAV

...Petitioner

Vs.

STATE OF HARYANA AND OTHERS

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rajinder Singh Malik, Advocate
for the petitioner.

Mr. Harish Rathee, Senior DAG, Haryana.

HARSIMRAN SINGH SETHI, J. (Oral)

In the present petition, the grievance of the petitioner is that though the petitioner had already retired on attaining the age of superannuation on 31.01.2018, but, the pensionary benefits have not been given to him and that too without any valid justification.

2. Learned counsel for the petitioner argues that there is no impediment in the release of the pensionary benefits and, therefore, the respondents be directed to release the same along with interest.

3. Upon notice of motion, the respondents have filed the reply wherein, the respondents have mentioned in paragraph No.3 of the reply that there is criminal case registered against the petitioner under Section 409, 420, 467, 468, 471 & 120-B IPC as well as under Section 13(1) (d) of the Prevention of Corruption Act, 1988 bearing FIR No. 17 dated 20.08.2009, wherein the petitioner has been named as one of the accused. Therefore, once

the criminal proceedings are pending against the petitioner, release of all the pensionary benefits is not admissible and some of the benefits have rightly been withheld by the Department.

4. Learned counsel for the petitioner rebut the contention of the respondents and submits that in the present case, with regard to the same FIR No. 17, granting the sanction to prosecute has already been denied by the respondent vide order dated 19.07.2021 (Annexure P-3) and hence, once there is no sanction to prosecute the petitioner, it cannot be said that any criminal proceedings are pending against the petitioner so as give jurisdiction to the Department to withhold the pensionary benefits.

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

6. From the facts which has been stated hereinbefore it is clear that there is an FIR No.17 dated 20.08.2009 registered against the petitioner which is pending wherein the petitioner was also named as one of the accused. The question which arises for adjudication is whether the pendency of the said FIR No.17 dated 20.08.2009 will give the jurisdiction to the respondents to withhold the pensionary benefits of the petitioner or not.

7. The question as to on which date it can be said that the criminal proceedings are pending against the employee has already been settled by the Supreme Court of India in **Civil Appeal No. 4379 of 1990, Union of India and others Vs. K. V. Janakiraman and others** wherein it has been held that it is only on the date when the charges are framed in pursuance to the FIR against the accused, the criminal proceedings can be treated to be pending and mere registration of FIR is not be treated as a pendency of the

criminal proceedings. The relevant paragraph of the judgment is reproduced as follows:

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 charge-sheet 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/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it would 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 chargememo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions.

8. In the present case, though the FIR has been registered where the petitioner has been named, but, keeping in view the fact that the sanction to prosecute has already been denied by the same Department, non-release of the pensionary benefits by the same Department, is not understandable. On the one hand the same Department is on record to say that the petitioner is not guilty of the allegations alleged in the FIR so as to grant the sanction to prosecute the petitioner in the FIR No. 17 dated 20.08.2019 whereas, for the release of the pensionary benefits, a totally different view has been taken by taking shelter behind the same FIR No. 17 dated 20.08.2019. The different stand being taken by the Department is deplorable.

9. Further, once the sanction to prosecute has been declined and concededly no charges have been framed against the petitioner with regard to FIR No. 17 dated 20.08.2019, when the settled principle of law settled by the Supreme Court of India in **K. V. Janakiraman (supra)** is applied in case of the petitioner, it cannot be said that there is any impediment in the release of the pensionary benefits of the petitioner so as to say that criminal

proceedings are pending on the date when he retired. What to talk of the pendency of the criminal proceedings on the day when the petitioner retired on 31.01.2018, even after expiry of more than 5 ½ years, the charges have not yet been framed against the petitioner, that being so, the withholding of the pensionary benefits by the respondents is totally arbitrary, illegal and contrary to the settled principle of law.

10. No rule giving the jurisdiction to the respondent to withhold the pensionary benefits merely on the registration of the FIR, has been brought to the notice of this Court so as to justify the action of the respondents.

11. Keeping in view the above, the present petition is allowed and the respondents are directed to release the pensionary benefits of the petitioner.

12. Learned counsel for the petitioner also claimed interest on the delayed release of the pensionary benefits. He submits that as per the judgment of the Full Bench of this Court in **CWP No. 2883 of 1997 titled as A.S. Randhawa Vs. State of Punjab decided on 16.05.1997** vide which the Department is under obligation to release the pensionary benefits of an employee, within a period of two months in case there is no impediment and in the present case, it has already come on record that there was no impediment in the release of the pensionary benefits therefore, the petitioner is entitled for the grant of interest. Leaned counsel submits that once the eligibility of the petitioner to get the pensionary benefits is being decided the petitioner cannot be denied interest *qua* the grant of interest to the petitioner, the same is covered by the Full Bench judgment of this Court in **A.S. Randhawa (Supra)**, the relevant paragraph is reproduced as follows:

“Since a Government employee on his retirement becomes immediately entitled to pension and other benefits in terms of the Pension Rules, a duty is simultaneously cast on the State to ensure the disbursement of pension and other benefits to the retiree in proper time. AS to what is proper time will depend on the facts and circumstances of each case but normally it would not exceed two months from the date of retirement which time limit has been laid down by the Apex Court in M. Padmanabhan Nair's case (Supra). If the State commits any default in the performance of its duty thereby denying to the retiree the benefit of the immediate use of his money, there is no gainsaying the fact that he gets a right to be compensated and, in our opinion, the only way to compensate him is to pay him interest for the period of delay on the amount as was due to him on the date of his retirement.”

13. Not only this, a Coordinate Bench of this Court in **CWP No. 15867 of 2001, J.S. Cheema Vs. State of Haryana and others** has held that where an amount belonging to an employee has been retained and used by the Department, the employee becomes entitled for the interest. Relevant paragraph is reproduced as follows:

“The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.”

14. Keeping in view the above stated settled principle of law, the petitioner is also entitled for interest @ 6% per annum from the date the pensionary benefits which were withheld, became due till they are actually release.

15. Let the order be complied within a period of two months from the date of receipt of the certified copy of the order.

(HARSIMRAN SINGH SETHI)
(JUDGE)

21.12.2023
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No