IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-34754-2019 (O&M)
Date of Decision: 01.05.2023

Jatinder Pal Singh

....Petitioner(s)

Versus

State of Punjab and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Jatinder Pal Singh, petitioner in person.

Mr. Arun William, AAG, Punjab.

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<u>JASGURPREET SINGH PURI, J. (Oral)</u>

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking a writ in the nature of *Certiorari* for quashing the impugned order dated 26.07.2019 (Annexure P-13) whereby the Principal Secretary, Department of Water Resources, Punjab has not granted interest to the petitioner on the delayed payments of some of retiral benefits and also his Death-cum-Retirement Gratuity (DCRG) and leave encashment has been withheld till the final conclusion of the FIR pending against the petitioner and his claim in the legal notice was rejected. A further prayer has been made to grant interest on the delayed payments to the petitioner.

<u>Factual Matrix</u>:-

2. The brief facts of the present case are that the petitioner retired as Chief Engineer, Planning, Chandigarh from the respondent-State on

31.12.2017 after attaining the age of superannuation vide Annexure P-1. In the aforesaid order of retirement, there was a condition attached with the retirement order that the orders would be without prejudice to any pending departmental/vigilance investigation or any case pertaining to miscellaneous advance and that the investigation will continue and on the basis of result of the investigation, action against him will be taken as per rules. Thereafter, the petitioner was granted provisional pension to the extent of 100% which was sanctioned on 02.08.2018 and was paid on 16.08.2018. The General Provident Fund was sanctioned on 22.02.2018 and was paid on 07.07.2018. The GIS was also paid to the petitioner on 20.08.2018. Apart from the above, another amount was pertaining to the period from 14.07.2017 to 16.08.2017 (34 days) which was treated as compulsory waiting period under Rule 2.16 (b) of the Punjab Civil Services Rules, Volume-I, Part-I and sanction was granted by the competent authority on 31.10.2018 vide Annexure P-4 but the same was paid to the petitioner in the month of March, 2019. Apart from the above payments, no other payment has been made to the petitioner. The grievances of the petitioner are divided into three parts. Firstly, claim for grant of interest on the aforesaid delayed payments. Secondly, wrongful withholding of gratuity, leave encashment and commutation of pension till date regarding which the impugned order (Annexure P-13) has been passed. Thirdly, that the petitioner has been granted provisional pension although of 100% but since the State does not have any right to not grant the regular pension to the petitioner, his provisional pension be also regularised as a regular pension.

<u>Submissions by the petitioner</u>:-

3. The petitioner is appearing in person and has argued his case at

length. He submitted that he was appointed as Temporary Engineer (directly recruited Sub Divisional Officer) in the year 1982 through an open competition and was recruited by the Punjab Public Service Commission. Thereafter, he was promoted as Executive Engineer on 21.02.2006 and was further promoted as Superintending Engineer on 07.12.2012. Thereafter, he was further promoted as Chief Engineer and joined as such on 30.05.2016 and his last posting was as a Chief Engineer, Planning, Chandigarh from where he retired on 31.12.2017 after attaining the age of superannuation. He submitted that he has an unblemished record and throughout his service career, there was neither any FIR nor any criminal case nor any disciplinary proceedings at all whatsoever against the petitioner and he had been totally dedicated to his service. He submitted that however in the year 2017 just a few months before his retirement, an FIR was lodged against him on 24.06.2017 bearing FIR No.7 dated 24.06.2017, under Sections 409, 420, 467, 468, 471, 120-B IPC and Section 13(1) of Prevention of Corruption Act 1988 which was because of professional rivalry in the department. The allegations in the FIR which has been attached as Annexure P-6 was pertaining to wrongful execution of work in pursuance of a tender in which the allegations against the petitioner were that he wrongly granted the sanction.

4. The petitioner submitted that thereafter investigation in the FIR started and he retired on 31.12.2017 whereby the retirement order Annexure P-1 was passed by which a condition was imposed that the order of retirement was without prejudice to any pending departmental/vigilance investigation and on the basis of result of the investigation, action against him will be taken as per rules. He submitted that such a condition imposed

was a superfluous condition because such a condition could not have been imposed by the Principal Secretary, Government of Punjab because after the retirement of an employee, the benefits pertaining to pension and retirement benefits are governed by the Statutory Rules and it is only by exercising a power under the Statutory Rules which are the Punjab Civil Services Rules that any action can be taken in accordance with law. Therefore there was no occasion for imposing such a condition and even otherwise also, it is insignificant in case the rights of an employee are protected under the Statutory Rules or under any other law.

5. The petitioner further submitted that when he retired there were neither any disciplinary proceedings nor any criminal proceedings nor any other proceedings under the law pending against him. The mere pendency of investigation in an FIR cannot be termed as any proceeding under the law for the purpose of withholding of pension and pensionary benefits because the right to receive the pension and pensionary benefits is governed under the Statutory provision of the Punjab Civil Services Rules and there is no provision under any provision of law that the pendency of an FIR can become a ground for withholding or forfeiting of any pension or pensionary benefits of an employee. He further submitted that when he was not granted pension and pensionary benefits, then he was constrained to file a civil writ petition before this Court since even his legal notice was not decided at that point of time. The aforesaid writ petition bearing No.25718 of 2018 was disposed of by this Court vide Annexure P-11 on 06.10.2018 whereby a direction was issued to the respondents to dispose of the legal notices issued by the petitioner with speaking decisions within three months. However, when the aforesaid legal notices were not decided despite

the orders passed by this Court, he was constrained to file a contempt petition before this Court which was ultimately disposed of since speaking order had already been passed vide Annexure P-13. He submitted that now it is a third round of litigation by the petitioner wherein he has assailed the impugned order (Annexure P-13) whereby his lawful rights have been rejected without any cogent reason and in violation of the Statutory Rules.

6. The petitioner further submitted that so far as his first grievance pertaining to the grant of interest on the delayed payments is concerned, he is entitled to grant of interest in view of a Full Bench judgment of this Court in ***A.S. Randhawa Versus State of Punjab and others, 1997(3) SCT 468*** because there was no justification for the respondent-State to have delayed the payments since there were neither any disciplinary proceedings nor any criminal proceedings nor any other proceedings against him at the time of his retirement. He submitted that although he had submitted the pension papers in the month of November, 2017 but thereafter some of the amounts were sanctioned by the Government and despite sanction the same were not paid and for the intervening period after the sanction etc. till the date of payment, he is entitled for the grant of interest on the same. The bifurcation of the same is as follows:-

Sr.No.	Particulars	Amount sanctioned	Amount paid
1.	GPF	22.02.2018	07.07.2018
2.	GIS	---	20.08.2018
3.	Provisional pension of 100%	02.08.2018	16.08.2018
4.	Salary for the period from 14.07.2017 to 16.08.2017	31.10.2018	March, 2019

7. The petitioner submitted that so far as the second prayer with

regard to wrongful withholding of leave encashment, commutation of pension and gratuity is concerned, a perusal of the impugned order (Annexure P-13) would show that the reasoning which has been so given by the competent authority was totally in violation of the provisions of the Punjab Civil Services Rules, Volume-II and contrary to the law laid down by this Court and the Hon'ble Supreme Court in plethora of judgments. He submitted that in fact there had been a wholesale violation of Rule 2.2 of the Punjab Civil Services Rules. Volume-II in this regard and therefore he is entitled for the release of the aforesaid three components i.e. leave encashment, commutation of pension and gratuity. Furthermore grant of provisional pension instead of regular pension was also without any justification and violative of Rules.

Submissions by the learned Assistant Advocate General, Punjab:-

8. On the other hand, Mr. Arun William, learned Assistant Advocate General, Punjab while referring to the reply filed by the State submitted that so far as the first prayer of the petitioner with regard to interest on the delayed payments is concerned, the same cannot be given to the petitioner in view of the fact that he had submitted the pension papers just one month prior to his retirement which he ought to have submitted at least six months prior to his retirement for which there is no fault of the State and therefore he is not entitled for the grant of interest on the aforesaid delay. He further submitted that so far as the second grievance of the petitioner is concerned, the benefits of leave encashment, commutation of pension and gratuity were withheld by the impugned order (Annexure P-13) because an information was sought from the State Vigilance Department who informed that an FIR under the provisions of Prevention of Corruption

Act is pending against the petitioner and the order of retirement was also a conditional order and since the allegations against the petitioner in the FIR were grave in nature involving crores of rupees, the aforesaid benefits have been rightly withheld. He further submitted that so far as the pension is concerned, the petitioner has already been sanctioned his 100% provisional pension and therefore no pecuniary loss is caused to the petitioner in this regard.

Analysis of submissions:-

9. I have heard the petitioner in person and the learned Assistant Advocate General, Punjab.

10. The petitioner retired as Chief Engineer from the Department of Water Resources, Punjab on 31.12.2017. As per the petitioner throughout his service career he had an unblemished record and there were neither any disciplinary proceedings nor criminal proceedings nor any proceedings whatsoever against him. The aforesaid fact has not been controverted by learned State counsel nor anything has come out in the reply filed by the State. Just before a few months before the retirement of the petitioner, an FIR was lodged against him under Sections 409, 420, 467, 468, 471, 120-B IPC and Section 13(1) of P.C Act, 1988. While the investigation was still going on, the petitioner attained the age of superannuation on 31.12.2017 and vide Annexure P-1, an order was passed retiring him. The petitioner has laid three claims in the present petition. Firstly, for grant of interest on the delayed payments which have been already paid to him. Secondly, wrongful withholding of leave encashment, commutation of pension and gratuity and thirdly, the petitioner has been granted provisional pension although of 100% but since the State does not have any right to not grant the regular

pension to the petitioner, his provisional pension be also regularised as a regular pension.

11. This Court would therefore deal with all the three grievances of the petitioner individually. First grievance is with regard to grant of interest on the delayed payments which have already been paid to the petitioner. Before dealing with all the components of delayed payments individually it would be appropriate to note here that the petitioner had submitted his pension papers just one month before his retirement whereas as per the instructions of the State Government, the pension papers ought to have been submitted at least six months before the retirement. During the course of arguments, on a query being raised to the petitioner who is appearing in person as to why he had submitted the pension papers just one month before his reitrement and not six months before his retirement to which he replied that in fact he had filed an application for grant of extension of service in terms of the instructions issued by the Government for extension of one year or two years which was still pending and in case the extension was to be granted to him, then the pension and pensionary benefits were to be postponed and therefore he did not submit the pension papers six months before his retirement. The aforesaid reasoning given by the petitioner does not seem to be proper for the purpose of his claim for the grant of interest on the delayed payments. Once the pension papers are completed after completion of various formalities and submission of various forms, the process then takes considerable long time and that is the reason as to why a period of six months has been provided that the pension papers should be submitted six months prior to the retirement. The mere fact that the petitioner had applied for extension does not mean that

such a delay in submission of the pension papers can entitle the petitioner for grant of interest on the delayed payments. However, during the course of arguments it was so pointed out by the petitioner and the learned Assistant Advocate General, Punjab that regarding some amounts, sanction was granted and even after the sanction, there had been a delay.

12. So far as the GPF is concerned, the same was sanctioned on 22.02.2018 and the payment was actually made to the petitioner on 07.07.2018 and therefore there has been a delay of 4-5 months even after the sanction for which no justification has come forth from the State and therefore the petitioner is entitled for the grant of interest on the aforesaid GPF from the date of sanction till the date of actual payment.

13. So far as the amount of GIS is concerned, the same was paid to the petitioner on 20.08.2018. This GIS amount is an amount to be paid under group insurance scheme for which there has been a delay of 8 months. Such a delay of 8 months is also unreasonable even if the pension papers were submitted just one month before the retirement and therefore the petitioner is entitled for the grant of interest on the delayed payment of GIS after adding two months from the date of retirement i.e. from 01.03.2018 till 20.08.2018 when he was paid.

14. So far as the component for grant of salary for the period from 14.07.2017 to 16.08.2017 which was treated as compulsory waiting period vide Annexure P-4 is concerned, a perusal of Annexure P-4 would show that the same was sanctioned on 31.10.2018 and as per the petitioner, it was paid in March, 2019 and therefore after the sanction, the amount ought to have been paid immediately but the same was not paid for six months and therefore on this component as well, the petitioner is entitled

for interest from the date of sanction i.e. 31.10.2018 till the date of its actual payment.

15. So far as the component of grant of provisional pension is concerned, although it has been paid to the extent of 100% but the same was paid on 16.08.2018 with a delay of about 7 ½ months from the date of retirement i.e. 31.12.2017. Although it is the duty of the State to complete all the pension papers prior to the retirement of an employee but in the present case the formalities in filling up of form etc. were completed by the petitioner and the documents even as per the petitioner were submitted just one month before retirement, the entire delay therefore cannot be attributable to the State. Therefore this Court is of the view that the petitioner would be entitled for interest on the delayed payment after adding two months from the date of retirement and on this component as well, he is entitled for interest w.e.f. 01.03.2018 till the date of payment i.e. on 16.08.2018 on the component of arrears of provisional pension.

16. So far as the second grievance of the petitioner pertaining to withholding of leave encashment, commutation of pension and gratuity is concerned, the stand of the petitioner is that at the time of retirement, there were neither any disciplinary proceedings nor any criminal proceedings nor any other proceedings whatsoever against the petitioner and even at the time of the passing of the impugned order (Annexure P-13) which is dated 26.07.2019 no such proceedings were pending against the petitioner. The petitioner argued that the State has acted arbitrarily and the aforesaid three amounts have been withheld without the authority of law and also in violation of Rule 2.2 of the Punjab Civil Services Rules, Volume-II. It is also the case of the petitioner that the reasoning given in the impugned

order (Annexure P-13) is without any basis and rather contrary to law. However, the stand of the State so far as this claim of the petitioner is concerned, is that it was only because of pendency of vigilance case against the petitioner in the nature of investigation in the FIR that such three components were withheld. The law with regard to right to withhold or even to forfeit the pension and pensionary benefits is governed by the provisions of the Punjab Civil Services Rules itself. Rule 2.2 deals with the provisions where the pension and gratuity can be withheld or forfeited. Rule 8.21 deals with the right to withhold leave encashment. So far as the commutation of pension is concerned, the same is also covered in the component of pension. Rule 2.2. consists of three parts: Clause (a), Clause (b) and Clause (c). All the three Clauses are reproduced as under:-

> *"**2.2. Recoveries from pensions**.–**(a)** Future good conduct is an implied condition of every grant of a pension. The Government reserve to themselves the right of withholding or withdrawing a pension or any part of it if the pensioner be convicted of serious crime or be guilty of grave misconduct.*
>
> *In a case where a pensioner is convicted of a serious crime, action shall be taken in the light of the judgment of the court relating to such conviction.*
>
> *In a case not covered by the preceding paragraph, if the Government considers that the pensioner is prima facie guilty of grave misconduct, it shall before passing an order,–*
>
> *(i) serve upon the pensioner a notice specifying the action proposed to be taken against him and the grounds on which it is proposed to be taken and calling upon him to submit, within sixteen days of the receipt of the notice or such further time not*

exceeding fifteen days, as may be allowed by the pension sanctioning authority, such representation as he may wish to make against the proposal; and

(ii) take into consideration the representation, if any, submitted by the pensioner under sub-clause (i).

Where a part of pension is withheld or withdrawn the amount of such part of pension shall not ordinarily exceed one-third of the pension originally sanctioned nor shall the amount of pension left to the pensioner be ordinarily reduced to less than three thousand five hundred rupees per month, having regard to the consideration whether the amount of the pension left to the pensioner, in any case, would be adequate for his maintenance.

In a case where an order under clause (i) above is to be passed by the Government, the Public Service Commission shall be consulted before the final order is passed.

The decision of the Government on any question of withholding or withdrawing the whole or any part of the pension under this rule shall be final and conclusive.

***Explanation**.–In this rule, the expression "serious crime" includes crime involving, an offence under the Official Secrets Act, 1923 (19 of 1923); and the expression "grave misconduct" includes the communication or disclosure of any secret, official code or pass-word or any sketch, plan, model, article, note, document or information such as is mentioned in section 5 of the Official Secrets Act, 1923 (19 of 1923) (which was obtained while holding office under the Government) so as to prejudicially affect the interests of the general public or the security of the State.*

***Note**.–A claim against the Government employee may* *become known and the question of making recovery may arise:–*

(a) when the calculation of pension is being made and before the pension is actually sanctioned; or

(b) after the pension has been sanctioned.

The claim and the recovery may be one or other of the following categories:–

(1) Recovery as a punitive measure in order to make good loss caused to Government as a result of negligence or fraud on the part of the person concerned while he was in service.

(2) Recovery of other Government dues such as over issues of pay, allowances or leave salary, or admitted and obvious dues such as house-rent, Postal Life Insurance premia, outstanding motor car, house building, travelling allowance or other advances.

(3) Recovery of non-Government dues.

1. In cases falling under (a) above, none of the recoveries mentioned in (1) to (3) above may be effected by a reduction of the pension about to be sanctioned except in the following circumstances:–

(i) Omitted.

(ii) When the pensioner by request made or consent given has agreed that the recovery may be made. If such request is not made or consent is not given by the pensioner, even sums admittedly due to Government such as houserent, outstanding advances, etc., may not be recovered from pension. In such cases, however, the executive authorities concerned would have to consider whether they should not try to effect the recovery otherwise than from pension, for example, by going to a court of law, if necessary.

2. In cases falling under (b) above, none of the recoveries described in clauses (1) to (3), may be effected by the deduction from a pension already sanctioned except at the request or with the express consent of the pensioner. Under rule 2.2(a), of this Volume, future good conduct is an implied condition of every grant of a pension and a pension can be withheld or withdrawn in whole or in part if the pensioner is convicted of serious crime or is guilty of grave misconduct. This, however, refers only to crime or misconduct occurring after the pensioner has retired from service, and the rule would not, therefore, cover a reduction of pension made for the purpose of retrieving loss caused to Government as a result of negligence or fraud on the part of the pensioner occurring before he had retired from service.

In cases where the pensioner does not agree to recovery being made even of sums admittedly due to Government, the concluding remarks made under 1(ii) above, will also be applicable.

Heads of offices should see that the last pay or leave salary prior to retirement shall not be paid until it is clear that a retiring Government employee has no outstanding dues to Government. Sometimes, it may not be practicable to ascertain in time all the outstanding dues, while sometimes dues may exceed the amount of last pay or leave salary. In such cases, it is the duty of the heads of offices (in consultation with Treasury officers and Accountant-General, Punjab in the case of Group "A" or Group "B" officers), to bring promptly to the notice of the Accountant-General, Punjab, all the outstanding amounts by a separate communication, stating in detail the nature of recovery and why it has not been possible to effect it from last pay or leave salary.

The outstanding amounts should also be clearly and completely noted in the last pay certificates in sufficient detail with reference to the previous correspondence with the Accountant-General, Punjab, and if the recovery is to be effected from pension, it should be clearly recorded on the last pay certificate itself that the request or express consent of the pensioner in writing to the recovery from his pension has been obtained.

***Note** 1.–Although compassionate allowance is of the nature of an ex-gratia payment it is really a form of pension and, therefore, recoveries from it, once it is sanctioned, should be governed by the above orders.*

Direct recovery of Government dues from Compassionate Allowance is not permissible, under these orders, but recovery may be made indirectly (before the allowance is sanctioned) by reducing the allowance either permanently or as a temporary measure.

***Note** 2.–Strictly speaking under the orders no recovery of amount is permissible from pension but if final recovery has been made it need not be refunded to the pensioner concerned.*

***(b)** The Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if, in a departmental or judicial proceeding, the pensioner is found guilty of grave mis-conduct or negligence during the period of his service, including service rendered upon re-employment after retirement:-*

Provided that–

(1) Such departmental proceedings, if instituted while the

officer was in service, whether before his retirement or during his re-employment, shall after the final retirement of the officer, be deemed to be a proceeding under this article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service;

(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.

(3) No such judicial proceedings, if not instituted while the officer was in service, whether before his retirement or during his re-employment shall be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution; and

The Public Service Commission should be consulted before final orders are passed.

***Explanation**.–For the purpose of this rule–*

(a) a departmental proceeding shall be deemed to be instituted on the date on which the statement of charges is issued to the officer or pensioner, or if the officer has been placed under suspension from an earlier date, on such date; and

(b) a judicial proceeding shall be deemed to be

instituted–

(i) in the case of a criminal proceeding, on the date on which the complaint or report of the police officer on which the Magistrate takes cognizance, is made; and

(ii) in the case of a civil proceeding, on the date of presentation of the plaint in the court.

***Note**:–As soon as proceedings of the nature referred to in the above rule are instituted, the authority which institutes such proceedings should without delay intimate the fact to the Accountant-General. The amount of the pension withheld under clauses (b) should not ordinarily exceed one-third of pension originally sanctioned, including any amount of pension to be so withheld, regard should be had to the consideration whether the amount of the pension left to the pensioner in any case would be adequate for his maintenance.*

***(c)(1)** Where any departmental or judicial proceeding is instituted under clause (b) of rule 2.2 or where a departmental proceeding is continued under clause (i) of the proviso thereto against an officer who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceedings, final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service up to the date of retirement or if he was under suspension on the date of retirement up to date immediately preceding to the date on which he was placed under suspension; but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceedings and of final orders thereon.*

The gratuity, if allowed to be drawn by the competent authority on the conclusion of the proceedings will be deemed to have fallen due on the date of issue of final orders by the competent authority:

Provided that where Departmental proceedings have been instituted under rule 10 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 for imposing any of the penalties specified in clauses (i), (ii) and (iv) of rule 5 of the said rules, the payment of gratuity or death-cum-retirement gratuity, as the case may be, shall not be withheld.

(2) Payment of provisional pension made under sub-clause (1) shall be adjusted against the final retirement benefits sanctioned to such officer upon conclusion of the aforesaid proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

***Note**.–The grant of pension under this rule shall not prejudice the operation of rule 6.4 ibid when final pension is sanctioned upon conclusion of the proceedings."*

17. As per Rule 2.2(a), the State has a right to withhold a pension in future also. Future good conduct is an implied condition of every grant of pension and the government reserves to themselves the right to withholding or withdrawing a pension or any part of it if the pensioner is convicted of serious crime or be guilty of grave misconduct. In case the pensioner is convicted of a serious crime, action shall be taken in the light of the judgment of the Court relating to such conviction and in case it is not

covered by above and if the Government considers that the pensioner is prima facie guilty of grave misconduct, then it shall before passing an order comply with the procedure as stated in the aforesaid Rule.

18. Rule 2.2(b) deals with a situation where the Government further reserves to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering of the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if, in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service. In cases where an employee has already retired, then with regard to the proceeding which can be so undertaken thereafter has been so stated in the proviso contained to 2.2 (b). Proviso 1 and 2 deal with the departmental proceedings but in the present case there were no departmental proceedings at all against the petitioner and therefore proviso 3 which pertains to judicial proceedings will be relevant in the present case. Proviso 3 provides that no such judicial proceedings, if not instituted while the officer was in service, whether before his retirement or during his re-employment shall be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution and thereafter it has been also provided that the Public Service Commission should be consulted before final orders are passed. In the explanation appended to the aforesaid Rule the nature and scope of the two expressions i.e 'Departmental proceedings' and 'Judicial proceedings' has been so defined. So far as the scope and nature of the expression 'Judicial proceedings' is concerned, it has been so defined by way of a deeming fiction to state that a judicial proceeding shall be deemed to be instituted in

the case of a criminal proceeding on the date on which the complaint or report of the police officer on which the Magistrate takes cognizance is made. In the present case admittedly there was no disciplinary proceeding against the petitioner. The only ground which has been taken by the State for withholding the aforesaid three benefits was the pendency of vigilance case against the petitioner which was at the stage of investigation of the FIR. As per the definition of the aforesaid judicial proceedings, the criminal proceedings would be deemed to be instituted on the date when the complaint or report of the police officer on which the Magistrate takes cognizance is made. In the present case, the challan/report under Section 173 of the Code of Criminal Procedure has been presented before the learned Magistrate on 01.07.2021. So far as the date of the presentation of the aforesaid challan is concerned, there is no dispute with regard to the same and rather a specific query was also raised to the learned Assistant Advocate General, Punjab during the course of arguments to which he submitted on instructions that the aforesaid report was presented on 01.07.2021. The FIR in the present case was dated 24.06.2017 and thereafter even assumingly that cause of action arose on the date of FIR (although allegations in the FIR pertains to prior period), even then the period of four years would expire on 24.06.2021 and therefore the challan/report under Section 173 Cr.P.C was presented after a period of four years and therefore it cannot said that any judicial proceedings were pending against the petitioner. Apart from the above, even when the impugned order (Annexure P-13) was passed on 26.07.2019, on that date there was no judicial proceeding in view of the aforesaid express provisions of Rule 2.2 (b). Therefore in nutshell so far as the provisions of Rule 2.2 (b) is concerned, there was neither any disciplinary proceeding nor any judicial proceeding nor any other proceeding of any kind against the petitioner and the same cannot be deemed to be there even till date for the purpose of effecting pensionary benefits in view of the aforesaid explanation by which the expression judicial proceeding has been defined by way of a deeming fiction.

19. Apart from the above, even otherwise also under Rule 2.2 (b) it has been provided that the right of withholding or withdrawing a pension or any part of it can be done only when a pensioner is found to be guilty of grave misconduct or negligence. However till date there is neither any findings of any grave misconduct nor any negligence by any authority of law or by any competent authority of the State. Even a perusal of the impugned order (Annexure P-13) would show that there is no such finding or any observation recorded in this regard by stating that the petitioner is guilty of grave misconduct or of negligence and it is only stated that the amount of DCRG and leave encashment is withheld till the final conclusion of the FIR against the petitioner. This Court is of the view that the aforesaid conclusion by the authority was totally contrary to the aforesaid provisions of Rule 2.2 (b).

20. So far as the provisions of Rule 2.2.(c) is concerned, it so provides that where any departmental or judicial proceeding is instituted under clause (b) of rule 2.2 or where a departmental proceeding is continued under clause (i) of the proviso, then the employee shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceedings, final orders are passed, a provisional pension not exceeding the maximum pension which would have been

admissible on the basis of his qualifying service up to the date of retirement or if he was under suspension on the date of retirement up to date immediately preceding to the date on which he was placed under suspension but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceedings and of final orders thereon.

21. A perusal of the Rule 2.2(c) would show that even for the purpose of grant of provisional pension there has to be some disciplinary or judicial proceeding which is so provided under the preceding rule 2.2(b) in which the expression judicial proceeding has been defined and a period of limitation has been laid down under proviso 3 of Rule 2.2(b) which is a period of four years. Since there was no judicial proceeding or disciplinary proceeding against the petitioner, there was no occasion for the State to have granted only provisional pension to the petitioner under the aforesaid rule. Even the gratuity could not have been withheld because of the aforesaid reason. In the impugned order it has been so stated that it has been withheld but without assigning any reason and the only probable reason for the same could be that in view of Rule 2.2 (c) it has been so withheld whereas it could not have been withheld because the condition precedent which is *sine qua non* for invoking the aforesaid Rule 2.2 (c) was not fulfilled.

22. So far as the component of leave encashment is concerned, the same can be withheld only in view of Rule 8.21(aa) and the same is reproduced as under:-

> *"Rule 8.21 (aa). Notwithstanding anything contained in sub-rule (a), the authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of Government employee, who retires from service on superannuation while under suspension or while disciplinary or*

criminal proceedings are pending against him, if in the opinion of such authority, there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him and on conclusion of the proceedings, he shall become eligible to the amount so withheld after adjustment of Government dues, if any".

23. A perusal of the same would show that leave encashment can be withheld by an authority of law only when the conditions which are so stated in the aforesaid Rule are satisfied. One of the essential conditions *sine qua non* for invoking the aforesaid Rule is that the competent authority has to form an opinion that some money is recoverable from the pensioner whereas in the present case there is neither any opinion formed nor any order has been passed by any authority whatsoever and therefore it was wrongful on the part of the State to have invoked the aforesaid provisions of Rule 8.21(aa) of the Punjab Civil Services Rules, Volume-II *ex facie*.

24. So far as the component of commutation of pension is concerned, the commutation of pension is a part of pension and it is a benefit which is given to the pensioner at the time of his retirement.

25. A Full Bench of this Court in ***Dr. Ishar Singh Vs. State of Punjab and another [1993(3) PLR 499]***, also discussed this issue as to whether a part of the commutation of pension can be withheld or not and it was so observed that the State has no authority to withhold a part of the commutation of pension and has to commute the pension to the extent of 100%. Therefore petitioner is held entitled for commutation of pension. The relevant portion of the aforesaid judgment is reproduced as under:-

57. *As a result of the above discussion, I would conclude as under:-*

> *(i) The 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 per cent pension at the time of superannuation, may be provisionally.*
>
> *(ii) The Government can withhold the gratuity or other retiral benefits except pension or postpone payment of the same during pendency of an enquiry.*
>
> *(iii) Pension cannot be adversely affected before a finding of guilt is returned.*
>
> *(iv) The Government can initiate Departmental enquiry after long lapse before retirement, rather there is no limitation for initiating the departmental enquiry from the date of incident before retirement. The delay and the explanation for the same may reasonably be taken note of keeping in view its likelihood to cause prejudice to the delinquent if the enquiry is challenged in appropriate proceedings.*
>
> *(v) The enquiry proceedings cannot be quashed solely on the ground of long pendency.*
>
> *(vi) There is no effect of superannuation on the pendency of the enquiry proceedings.*
>
> *(vii) The recovery of the Government dues can be made from gratuity or other retiral benefits only."*

26. The law with regard to right to receive pension and pensionary benefits which are not a bounty of the State is also required to be considered in the present case. Way back in the year 1971, a Constitution Bench of Hon'ble Supreme Court in "***Deokinandan Prasad Vs. State of Bihar***", ***1971(2) SCC 330***, held that pension is not a bounty of the State and is rather

a Fundamental Right under Article 31(1) of the Constitution of India. However, later on by virtue of 44th Amendment of the Constitution of India, Right to Property became a Constitutional Right under Article 300-A of the Constitution of India instead of a Fundamental Right The relevant portion portion of the aforesaid judgment is reproduced as under:-

> "31. *The matter again came up before a Full Bench of the Punjab and Haryana High Court in* ***K.R. Erry v. The State of Punjab, ILR (1967)1 Punj and Har 278 (FB)****. The High Court had to consider the nature of the right of an officer to get pension. The majority quoted with approval the principles laid down in the two earlier decisions of the same High Court, referred to above, and held that the pension is not to be treated as a bounty payable on the sweet-will and pleasure of the Government and the right to superannuation pension including its amount is a valuable right vesting in a Government servant. It was further held by the majority that even though an opportunity had already been afforded to the officer on an earlier occasion for showing cause against the imposition of penalty for lapse or misconduct on his part and he has been found guilty, nevertheless, when a cut is sought to be imposed in the quantum of pension payable to an officer on the basis of misconduct already proved against him, a further opportunity to show cause in that regard must be given to the officer. This view regarding the giving of further opportunity was expressed by the learned Judges on the basis of the relevant Punjab Civil Service Rules. But the learned Chief Justice in his dissenting judgment was not prepared to agree with the majority that under such circumstances a further opportunity should be given to*

an officer when a reduction in the amount of pension payable is made by the State. It is not necessary for us in the case on hand, to consider the question whether before taking action by way of reducing or denying the pension on the basis of disciplinary action already taken, a further notice to show cause should be given to an officer. That question does not arise for consideration before us. Nor are we concerned with the further question regarding the procedure, if any, to be adopted by the authorities before reducing or withholding the pension for the first time after the retirement of an officer. Hence we express no opinion regarding the views expressed by the majority and the minority Judges in the above Punjab High Court decision, on this aspect. But we agree with the view of the majority when it has approved its earlier decision that pension is not a bounty payable on the sweet-will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant.

32. This Court in State of ***Madhya Pradesh v. Ranojirao Shinde and another, 1968-3 SCR 489*** *had to consider the question whether a "cash grant" is "property" within the meaning of that expression in Articles 19(1)(f) and 31(1) of the Constitution. This Court held that it was property, observing "it is obvious that a right to sum of money is property".*

27. The Hon'ble Supreme Court in another authoritative judgment passed in "***State of Jharkhand and others Vs. Jitendra Kumar Srivastava and another***", ***2013(12) SCC 210*** again discussed the entire law pertaining to the valuable rights pertaining to the grant of pensionary benefits. Para

Nos.8 and 16 of the aforesaid judgment is reproduced as under:-

> *"8. It is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and un-blemished service. Conceptually it is so lucidly described in D.S. Nakara and Ors. Vs. Union of India; (1983) 1 SCC 305 by Justice D.A. Desai, who spoke for the Bench, in his inimitable style, in the following words:*
>
>> *"18. The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?*
>>
>> *19. 20.What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.*
>>
>> *20. The antiquated notion of pension being a bounty a gratituous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deoki Nandan Prasad v. State of Bihar and Ors. [1971] Su. S.C.R. 634 wherein this Court authoritatively ruled that pension is a right and*

the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied maters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab and Another Vs. Iqbal Singh(6)".

It is thus hard earned benefit which accrues to an employee and is in the nature of "property". This right to property cannot be taken away without the due process of law as per the provisions of Article 300-A of the Constitution of India.

16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognized 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."*

28. In a recent judgment passed by a Division Bench of this Court in **LPA No.340 of 2017** titled as "***Gurcharan Singh Vs. State of Punjab***", decided on 08.02.2023, it was observed that in the absence of any pecuniary loss, no recovery can be effected from the pensioner. The relevant portion of the aforesaid judgment is reproduced as under:-

> *"In the absence of any finding of loss caused to the Government either by the enquiry officer or by respondent No.1, no recovery from pension could have been ordered as a punitive measure by the respondents."*

29. In "***Tukaram Kana Joshi and others through Power of Attorney Holder Vs. M.I.D.C. and others***", ***2013(1) SCC 353***, the Hon'ble Supreme Court observed that right to property is now considered to be not only a Constitutional or a Statutory Right but also a Human Right. Para 9 of the aforesaid judgment is reproduced as under:-

> "9. *The right to property is now considered to be not only a constitutional or a statutory right but also a human right. Though, it is not a basic feature of the Constitution or a fundamental right. Human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment etc. Now however, human rights are gaining an even greater multi faceted dimension. The right to property is considered very much to be a part of such new dimension. (Vide:* ***Lachhman Dass v. Jagat Ram, (2007) 10 SCC 448; Amarjit Singh v. State of Punjab, (2010)10 SCC 43; (2010)4 SCC (Civ) 29, State of Madhya Pradesh v. Narmada Bachao Andolan,***

(2011)7 SCC 875: AIR 2011 SC 1989, State of Haryana v. Mukesh Kumar, (2011)10 SCC 404: (2012)3 SCC (Civ) 769: AIR 2012 SC 559 and Delhi Airtech Services (P) Ltd. v. State of U.P., (2011)9 SCC 354: (2011)4 SCC (Civ) 673: AIR 2012 SC 573)."

30. So far as the third prayer of the petitioner pertaining to the fact that 100% provisional pension has been released to him whereas it should have been regularised is concerned, as per Rule 2.2(a) good conduct is an implied condition of every grant of pension and the Government always reserves the right of withholding or withdrawing a pension or any part of it if the pensioner be convicted of serious crime or be guilty of grave misconduct. It further provides that in case the pensioner is convicted of a serious crime, then action shall be taken in the light of the judgment of the Court relating to such conviction. In the present case, as per the petitioner and also as per the learned Assistant Advocate General, Punjab after the presentation of challan on 01.07.2021 the charges have been framed by a Criminal Court on 18.07.2022 and now the matter is pending trial. The petitioner is already getting provisional pension to the extent of 100% and therefore there is no pecuniary loss caused to the petitioner at this stage. The State always has a right to pass any order pertaining to withholding or withdrawing a pension in case a pensioner is convicted or otherwise under Rule 2.2(a) at appropriate stage. Therefore at this stage since no loss pecuniary loss has been caused to the petitioner, it will be just and proper to direct the State to pass an appropriate order as to whether the petitioner should be continued with the provisional pension or his pension should be regularised.

Conclusion:-

31. In view of the above, the present petition is allowed and the impugned order dated 26.07.2019 (Annexure P-13) is hereby set aside and it is also held that the condition which has been imposed vide Annexure P-1 in the retirement order in para No.2 is held to be totally superfluous and contrary to law. The petitioner shall be entitled for the following:-

(i) The petitioner shall be entitled for interest @ 6% per annum on the following components for the period mentioned in the table.

Sr.No	Components	Period
1.	GPF	22.02.2018 to 07.07.2018
2.	GIS	01.03.2018 to 20.08.2018
3.	Salary for the period from 14.07.2017 to 16.08.2017	31.10.2018 to March, 2019
4.	Arrears of provisional pension of 100%	01.03.2018 to 16.08.2018

The aforesaid interest amount be paid within a period of three months from today. In case the aforesaid interest amount is not paid within three months from today, then the petitioner shall be entitled for a future rate of interest @ 9% per annum instead of 6% per annum.

(ii) Since the impugned order dated 26.07.2019 (Annexure P-13) has been set aside, the State is directed to calculate the amount of leave encashment, gratuity and commutation of pension and pay to the petitioner within a period of three months from today alongwith interest

@ 6% per annum. In case the aforesaid amount is not paid within three months from today, then the petitioner shall be entitled for a future rate of interest @ 9% per annum instead of 6% per annum.

(iii) The State is directed to pass a fresh order within a period of three months from today as to whether provisional pension of petitioner be regularised or not at this stage in the light of the provisions of Rule 2.2 (a) of the Punjab Civil Services Rules. The right to exercise power under Rule 2.2 (a) will remain open at an appropriate stage. Needless to say that the order has to be well-reasoned speaking order particularly in view of the fact that now the trial is pending against the petitioner.

(iv) Since the petitioner who is appearing in person has filed the present petition which is a third round of litigation, he shall also be entitled for costs which are assessed at Rs. 25,000/-which shall also be paid to the petitioner within a period of three months from today.

01.05.2023 **(JASGURPREET SINGH PURI)**
rakesh **JUDGE**

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