IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(211)

CWP-738-2023
Date of decision: - 31.05.2024

Kamikar Singh Deol

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Rajat Malhotra, Advocate,
for the petitioner.

Ms. Neha Sonawane, DAG, Punjab.

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VIKAS BAHL, J. (ORAL)

1. This is a Civil Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the order dated 07.09.2018 (Annexure P-2) passed by respondent No.3 vide which only provisional pension has been sanctioned and the retiral benefits of the petitioner i.e. death-cum-retirement gratuity, leave encashment and regular pension, have been withheld.

2. Learned counsel for the petitioner has submitted that the petitioner had joined the respondent department on 16.02.1980 as a Junior Engineer and after attaining the age of superannuation i.e., 58 years, had retired as a Sub-Divisional Officer on 28.02.2017. It is further submitted that after his retirement, the retiral benefits i.e. death-cum-retirement gratuity, leave encashment and regular pension were not released to the

petitioner in spite of the fact that no departmental or judicial proceedings were pending against him on the day he retired from his service nor was the petitioner under suspension. It is stated that although the petitioner was involved in four FIRs, but in none of the said four FIRs, the challan had been presented on the date of retirement and thus, it could not be stated that criminal proceedings had been instituted at the time when the petitioner retired. It is further stated that FIR No.117 dated 11.10.2016 was registered under Sections 406, 420 and 120-B IPC and the cancellation report had been submitted in the same and that the other three FIRs i.e. FIR No.10 dated 17.08.2017, FIR No.3 dated 01.03.2018 and FIR No.16 dated 11.12.2017, were all registered after the date of retirement of the petitioner i.e. 28.02.2017 and thus, the question of judicial proceedings being pending on the date of retirement does not arise. It is also stated that even no charge-sheet in the departmental proceedings had been issued on the date when the petitioner retired, inasmuch as, in one departmental proceeding, which is pending against the petitioner as on date, the charge-sheet has been issued on 04.08.2023. It is submitted that in view of the judgment of this Court in "***Gobind Ram Verma*** ***Vs***. ***State of Punjab and others"***, ***passed in CWP-19954-2018 and another connected matters, decided on 12.03.2024***, the impugned order deserves to be set aside and the retiral benefits of the petitioner i.e. death-cum-retirement gratuity, leave encashment and regular pension deserve to be released to the petitioner along with interest. Reliance has also been placed upon a judgment of the Division Bench of this Court in

"***Atam Bodh Sharma* Vs. *State of Haryana and others"*, reported as 2006(4) S.C.T. 760.**

3. Learned State counsel on the other hand has submitted that the petitioner is involved in four criminal cases and is also facing departmental proceedings. It is further submitted that in three FIRs out of four, the challan has been presented. It is argued that the petitioner was absent from duty for a certain period also and thus, his retirement pension papers could not be prepared at the appropriate time. Learned State counsel, however, could not dispute the fact that on the date of the retirement of the petitioner, neither any challan in any of the said FIRs had been presented nor any charge-sheet had been issued to the petitioner in the departmental proceedings. It is submitted by the State counsel that at any rate, the petitioner be not granted interest on the retiral benefits.

4. Learned counsel for the petitioner in rebuttal has very fairly submitted that the petitioner restricts his prayer for interest from the year 2020.

5. This Court has heard learned counsel for the parties and has gone through the record.

6. A similar issue arose in the case of ***Gobind Ram Verma* (supra)** and this Court, after considering the law laid down in various judgments, had held as under: -

> *"7. The question that arises for consideration and determination before this Court in the present cases is as to whether the action of the respondents in withholding the gratuity of the petitioners solely on account of pendency of FIR no.9 dated 29.06.2004 in which no challan / report under Section 173 Cr.P.C. had been filed on the*

date when the petitioners had retired, was justified or not.

8. A similar question arose before a Coordinate Bench of this Court and the Coordinate Bench of this Court vide judgment dated 09.02.2024 passed in ***CWP-28933-2022*** *titled as* ***"Baljit Singh vs. State of Punjab and others"*** *after taking into consideration the law laid down by the Hon'ble Supreme Court in* ***Union of India vs. K.V. Jankiraman*** *reported as* ***1991(3) SCT 317*** *had observed that the criminal proceedings would be deemed to have been initiated when challan is presented in the criminal proceedings and departmental proceedings are deemed to have been initiated after the charge memo is issued to the delinquent employee. It was also observed that the Coordinate Bench of this Court in* ***CWP-3567-2006*** *titled as* ***"Atam Bodh Sharma vs. State of Haryana and others"*** *decided on 09.10.2006 had observed that mere pendency of an FIR without there being any challan presented in the said FIR on the date of the retirement of the employee, would not give any right to the department to withhold the pensionary benefits of the employee and the Court in* ***Baljit Singh's*** *case (supra) had after considering the entire matter, allowed the writ petition and directed the respondent authorities to pay interest @ 6% per annum to the petitioner therein from the date the gratuity became due till its payment. The relevant portion of the said judgment in* ***Baljit Singh's*** *case (supra) is reproduced hereinbelow:-*

"7. The only question which arises for determination before this Court in the present writ petition is whether the action of the respondents in withholding the gratuity of the petitioner keeping in view the pendency of the FIR No.5 dated 12.07.2011 is justified or not?

8. For deciding the said issue, it is to be considered that on the date of the retirement of the petitioner i.e. 31.03.2012, whether any criminal proceedings were pending against the petitioner so as to give the right to the respondents to withhold the payment of gratuity of the petitioner.

9. It is an admitted case of the parties that FIR No.5 dated 12.07.2011, was registered against the petitioner, which was pending at the time of his retirement but no challan was presented prior to the retirement of the petitioner. Perusal of order dated 13.01.2021 passed by the learned Special Judge, Patiala, would show that cancellation report in the said FIR was filed originally on 11.09.2014, however, vide order dated 09.10.2014 the said cancellation report was declined and *the case was sent back for further investigation. Subsequently, fresh cancellation report was submitted, which was again returned unaccepted vide order dated 09.03.2018 by the learned Special Judge, Patiala, with direction to conduct further probe. Again, the cancellation report was submitted wherein it was stated that contractor Sudhir Kumar had made payment for chlorine purchased by him from Una through cash and there was no bar to the making of said payment by cash and finally the third cancellation report was accepted by the learned Special Judge, Patiala, vide order dated 13.01.2021. That being so, on the date, when the petitioner retired after attaining the age of superannuation, only FIR No.5 dated 12.07.2011 was pending which was being investigated. The question that can mere pendency of an FIR on the date of retirement gives right to the respondents to withhold the retiral benefits on the ground that the criminal proceedings are pending, is required to be decided in the present writ petition.*

10. Hon'ble Supreme Court in ***Union of India v. K.V. Jankiraman 1991(3) SCT 317*** *decided the question of law as to when a proceedings are deemed to be pending against an employee in respect of the departmental inquiry as well as in respect of the criminal proceedings so as to give right to the department to withhold the benefits. Hon'ble Supreme Court held that it is only when a charge-sheet is served upon a delinquent employee during the departmental proceedings, the departmental inquiry is stated to be pending against an employee, which will give right to the respondents to take an action against the employee in accordance with law. Similarly, where a Challan/charge-sheet has been presented against a person in the criminal proceedings, the criminal proceedings are to be treated as pending against the said person so as to give jurisdiction to the employer to take action against an employee. The relevant paragraph of the judgment in* ***K.V. Jankiraman's*** *case (supra) is 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 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."

11. In the present case, it is admitted by the learned counsel for respondent No.3 that only FIR No.5 dated 12.07.2011 was pending against the petitioner at the time of his retirement, which was under *investigation and three cancellation reports were filed in the Court of learned Special Judge, Patiala, and finally third cancellation report was accepted on 30.01.2021. Therefore, it cannot be said that any criminal proceedings were pending against the petitioner on the date of his retirement so as to give right to the respondent/State to withhold the gratuity of the petitioner.*

12. This Court while deciding ***CWP No.3567 of 2006 decided on 09.10.2006, titled as Atam Bodh Sharma v. State of Haryana and Others,*** *held that mere pendency of an FIR without there being any Challan presented in the said FIR on the date of the retirement, there is no jurisdiction with the department to withhold the pensionary benefits of an employee.*

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13. In the present case, only an FIR was pending against the petitioner and no challan had been presented against him upto the date of his retirement or even thereafter also, therefore, the claim of the petitioner will be squarely covered by the judgment in ***Atam Bodh Sharma's*** *case (Supra). Learned counsel for the respondents has not been able to show any Rule or Regulation which gives the right to the respondent/State to withhold the retiral benefits merely upon the registration of an FIR. The right with the respondents is only to withhold the benefits in case of the pendency of the criminal proceedings and the criminal proceedings can only be deemed to be pending on the date when a Challan is presented against the accused. Hence, in the case of the petitioner withholding of his benefits by the respondents was beyond their jurisdiction.*

14. Keeping in view the above, present petition is allowed. Respondent No.3 is directed to grant interest to the petitioner @ 6% per annum on his retiral benefits, from the date it became due till its actual payment was made. Likewise, interest @ 6% per annum be also granted to the petitioner from the due date of gratuity till its payment made on 03.11.2022. Said exercise be carried out within a period of three months from the date of receipt of certified copy of this order."

9. The abovesaid case squarely covers the case of the petitioners. No judgment to contrary has been cited. It would be relevant to note that Rule 9.14 (c) provides that no gratuity would be paid to the government employee until the conclusion of departmental *or judicial proceedings and issue of final order thereon and the term which has been used in the said clause is "judicial proceedings". As has been held in the abovesaid judgment and also in the judgment of the Hon'ble Supreme Court of India in* ***Union of India vs. K.V. Jankiraman's*** *case (supra), the "proceeding" would only be considered to be initiated / pending in case the challan has been filed in the criminal Court and the same having not been done on the date when the petitioners had retired in the present case, It cannot be said that there were any judicial proceedings pending so as to entitle the respondent authorities to withhold the gratuity of the petitioners. The Coordinate Bench of this court in the case of* ***Lakhdev Singh vs. State of Punjab*** *reported as* ***2001(3) RSJ 599*** *while considering a case in which Clause (c) of Rule 9.14 of the Rules was applicable, had held that in a case where an FIR had been registered but no challan had been filed, it could not be said that judicial proceedings were pending on the date of retirement so as to entitle the authorities to withhold the gratuity and the other retiral benefits. The relevant portion of the said judgment is reproduced hereinbelow:-*

"The argument is that the right would ensue to the Government to withhold the retiral benefits only if the departmental or judicial proceedings are pending on the retiree on the date of retirement. Admittedly, no proceedings were pending on the date of retirement of the petitioner. In support of his argument, the learned counsel relied upon the dicta of this Court expressed in ***L.R.Dhawan v.State of Haryana and others, 1996(3) Service Cases Today 11****.*

4. So far as initiation of judicial proceedings is concerned, the same is entertained under clause (3) supra and presently period of four years having expired long back, no judicial proceedings could be initiated in pursuant to the said FIR against the petitioner for the purpose of withholding the retiral benefits. In support of his arguments, my attention was drawn to ***Walaiti Ram Gupta v. Punjab State, 1977 (4) SCT 230*** *and* ***K.C. Duggal, Sub Divisional Engineer v. The State of Punjab, 1989(2) RSJ 513.***

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6. Learned counsel appearing for and on behalf of the State has not been able to rebut the argument of the learned counsel for the petitioner and has candidly admitted that in fact no judicial proceedings were pending at the time of retirement and ***even now the***

challan is yet to be put in Court.

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7. ***I am of the view that the respondents did not have any authority in withholding the amount due and payable as leave encashment, DCRG and the commutation of the pension because no judicial proceedings or departmental proceedings were pending against the petitioner at the time of retirement****. In fact no judicial proceedings have been initiated for the last four years from the date of incident and in fact as per the said rule, before passing final orders, the Public Service Commission is required to be consulted.* ***Admittedly, even the challan has not been put up in the court pursuant to the FIR till date."***

10. The question which arose for consideration in the present case as detailed in para 7 of the present order is answered in favour of the petitioners and it is held that the respondent authorities had no right to withhold the gratuity due to the petitioners solely on account of the pendency of the FIR no.9 dated 29.06.2004, when admittedly no challan had been presented on the date the petitioners retired.

11. Once this Court has held that the respondent authorities had no right to withhold the gratuity payable to the petitioners, it necessarily follows that the petitioners are entitled to interest for the delay in payment.

12. The Coordinate Bench of this Court in **CWP-15867-2001** *titled as* ***"J.S. Cheema vs. State of Haryana and others"*** *decided on 20.11.2013 had held that the jurisprudential basis for grant of interest to a person was that the said person's money had been used by somebody else and thus, even if there was no negligence on the part of the State, it could not be denied that money which rightly belonged to the employee, was in the custody of the State and was being used by it and thus, interest was granted to the petitioner therein on the delayed payment of retiral benefits. The relevant portion of the said judgment is reproduced hereinbelow:-*

"1 to 3. xxx xxx

4. In the written statement, the plea taken is that the petitioner submitted his pension papers very late and that is why some delay was caused in the disbursal of his retiral benefits.

> ***5. In my opinion, even if the assertion made in the written statement is presumed to be correct it would not disentitle the petitioner for claiming interest. 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 laying 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.***
>
> *6. Learned Assistant Advocate General has further argued that some reasonable time has to be granted for processing the papers and the requirement of law is not that strict that interest must be ordered from the first day after retirement. I find some weight in this assertion.*
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> *7. Learned counsel for the petitioner has argued that as per the Government instructions the period of three months has to be taken as maximum period within which the retiral benefits has to be released. After deducting those three months there is still a delay as mentioned above.*
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> ***8. In the circumstances, I hold the petitioner entitled to interest @ 8% p.a. on the delayed payment of retiral benefits. The interest will become due w.e.f. 01.05.2000. Let the interest on the above components i.e. gratuity, arrears of pension and leave encashment be computed @ 8% p.a. from 01.05.2000 till the date of payment and the same be released to the petitioner within a period of two months from the date of receipt of a certified copy of this order, failing which, the petitioner would be entitled to claim the same with interest @ 9% p.a.***
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> *Petition stands disposed of in the above terms.*
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> *Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of."*

7. A perusal of Rule 2.2(b) of the Punjab Civil Services Rules (Vol.II), which entitles the Government to withhold the pension or any part of it would show that the term departmental or judicial proceeding

has been used. In the explanation, which has been provided to the said Rule, it has been stated that the departmental proceedings shall be deemed to have been 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 a judicial proceeding shall be deemed to have been instituted in the case of criminal proceedings on the date on which the complaint is made or report of the police officer on which a Magistrate takes cognizance, is filed.

8. Similarly, by virtue of Rule 8.21(aa) of the Punjab Civil Services Rules (Vol.1 Part 1), the competent authority is empowered to withhold leave encashment in the case of a Government employee, who retires from service on superannuation while under suspension or while disciplinary or criminal proceedings are pending against him. Disciplinary proceedings or criminal proceedings as has been held in various judgments which have been considered by this Court in the case of ***Gobind Ram Verma's*** ***(supra)*** would be deemed to have been initiated in the case of criminal proceedings where a challan has been presented in a criminal Court and in the case of disciplinary proceedings when a charge memo has been issued to the delinquent employee. In the present case, it is not in dispute that on the date when the petitioner retired i.e. 28.02.2017, neither the challan in any of the criminal proceedings had been filed nor any charge-sheet in the disciplinary proceedings had been issued to the petitioner. Also, it is no body's case that the petitioner was under suspension, thus, the law laid down in the case of ***Gobind Ram***

***Verma* (supra)** would apply on all fours, with respect to release of death-cum-retirement gratuity, leave encashment and regular pension.

9. With respect to the grant of interest, this Court is of the view that keeping in view the law laid down by the Co-ordinate Bench of this Court in ***CWP-15867-2001*** titled as "***J.S. Cheema* Vs**. ***State of Haryana and others***, ***decided on 20.11.2013*** and also the fair stand taken by learned counsel for the petitioner, the petitioner would be entitled to interest @ 6% per annum on the delayed retiral payments i.e. death-cum-retirement gratuity, leave encashment and regular pension and the same would reckon/apply from the year 2020 till the actual date of payment.

10. Accordingly, the present writ petition is allowed and the respondent authorities are directed to release the retiral benefits of the petitioner i.e. death-cum-retirement gratuity, leave encashment and regular pension along with interest @ 6% per annum from the year 2020 till the date of actual payment within a period of three months from today.

(VIKAS BAHL)
JUDGE

May 31, 2024
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Whether reasoned/speaking? Yes
Whether reportable? Yes