

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

233

CWP No.7601 of 2021

Decided on : January 18, 2024

KRISHAN CHAND (DECEASED) THROUGH LRs.

..... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

..... Respondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: None for the petitioner.

Mr. Ajit Singh Natt, AAG Punjab.

Mr. T.S. Sidhu, Advocate for respondent no.3.

Mr. Aditya Pratap Duggal, Advocate for respondent no.4.

NAMIT KUMAR, J. (Oral)

1. The present writ petition has been filed by the petitioner under Articles 226/227 of the Constitution of India seeking writ of *mandamus* directing the respondents to release pension to the petitioner with further prayer for issuance of directions to the respondents to decide the representation dated 12.01.2021 (Annexure P-3), which has also been submitted to the respondents for release of pension.

2. On 28.02.2023, no one had put in appearance on behalf of the petitioner and even today the same is the position.

3. The brief facts leading to the filing of the present petition, as have been pleaded in the writ petition, are that the petitioner joined services of

Municipal Council, Mansa on 24.10.1973 as Clerk and was promoted to the post of Accountant on 21.06.1995 and thereafter as Executive Officer on 09.07.1999. While the petitioner was in service and posted at Rampura Phul, an FIR was registered against him under Sections 7 and 13 (2) of Prevention of Corruption Act, 1988 and in the said case, he was convicted by the Special Court, Bathinda, vide Judgement dated 23.12.2008 and the said Judgment has been challenged by the petitioner before this Court in CRA-S-104-SB of 2009, which stands admitted before this Court. On the basis of said conviction, the petitioner has been dismissed from service vide order dated 24.06.2009.

4. It has further been stated in the petition that the retirement of the petitioner was due on 30.06.2020 but since he was dismissed from service on 24.06.2009, his service benefits like pension, gratuity and leave encashment etc. have been withheld by the department and his claim for release of retiral benefits was rejected by the respondents vide order dated 19.06.2018 and therefore, the petitioner has approached this Court by way of filing CWP No 2750 of 2019 titled as **Krishan Chand Sharma versus State of Punjab and others.**

The above said writ petition was withdrawn by the petitioner vide order dated 09.04.2019, which reads as under:-

xxx xxx xxx xxx

“ Counsel for the petitioner states that he be allowed to withdraw the present writ petition, at this stage.

Dismissed as withdrawn, as prayed for. ”

April 09 2019, Sd/-
HARSMIRAN SINGH SETHI
JUDGE

xxx xxx xxx xxx

5. Yet another writ petition bearing CWP No.448 of 2021 titled **Krishan Chand Sharma versus State of Punjab and others** was also filed by the petitioner for claiming relief of leave encashment and the said writ petition was disposed of vide order dated 27.01.2021, which reads as under:-

xxx xxx xxx xxx

“ Grievance of the petitioner is that he was dismissed from service on 24.06.2009, yet till date he has not been paid his leave encashment, despite various representations.

2. Learned counsel for the petitioner contends that case of the petitioner is squarely covered by judgment dated 19.11.2018 rendered by this Court in CWP No.27383 of 2013 (Annexure P-2). Notwithstanding, for no plausible reason, the benefit thereof is not being accorded to the petitioner and his dues against leave encashment are being withheld.

3. Learned counsel for the petitioner submits that he would be satisfied, at this stage, if a final decision is taken on the representation dated 12.11.2020 (Annexure P-4).

4. Notice of motion.

5. Ms. Ambika Bedi, AAG, Punjab, who has joined proceedings on service of advance copy of the petition, accepts notice on behalf of the respondent-State of Punjab.

6. Given the nature of order being passed, there is no necessity to seek return by any of the respondents, as no further proceedings and/or pleadings are required.

7. Without commenting on the merits of the case, the writ petition is disposed of with a direction to the competent authority to look into the grievance of the petitioner as per representation dated 12.11.2020 (Annexure P-4) and also by keeping in view the contentions stated in the present petition by treating the same as supplementary representation and decide the same by passing a speaking order, in accordance with law.

8. Let the needful be done within a period of 3 months from today.

9. Disposed of accordingly.

January 27, 2021

SD/-
(ARUN MONGA)
JUDGE ”

xxx xxx xxx xxx

6. In pursuance to the above said directions, the respondent-authorities while considering the representation dated 12.11.2020 of the petitioner, in the light of observations made in CWP No.3843 of 2019 titled as **'Ram Kumar Ranga versus State of Haryana and others, decided on 15.07.2019'**, which was preferred by similarly situated employees, who were dismissed from service and were claiming the benefit of leave encashment, rejected the claim of the petitioner, vide speaking order dated 05.10.2021, wherein it has been stated that the petitioner, who is a dismissed employee, is not entitled for the benefit of leave encashment in terms of Rules 7.1 and 8.21 of Punjab Civil Services Rules, Volume-I, Part -I. Thereafter, the petitioner has filed the instant writ petition for issuance of directions to the respondents to release pension to the petitioner.

From the above facts, it has come out that the petitioner is a dismissed employee and has filed three writ petitions claiming his retiral benefits, therefore, the present writ petition is liable to be dismissed, firstly, on the principles of *resjudicata*, as for claiming the same/similar relief, the petitioner has earlier filed two separate writ petitions besides the present one and secondly, in view of the provisions of Rules 7.1 and 8.21 of Punjab Civil Services Rules, Volume-I, Part-I, which are crystal clear to the effect that a dismissed employee is not entitled for any pensionary benefits, except the GPF amount.

7. The Hon'ble Supreme Court in the Judgement dated 02.02.2011 passed in Civil Appeal No.1215 of 2011 (arising out of Special Leave Petition (C) No.26391/10 in case titled as **'M. Nagabhushana versus State of Karnataka and others' AIR 2011 SC (CIVIL), 483** has explained the doctrine/principles of *resjudicata qua* its applicability to the writ petitions, after considering the various judgements, has held that **"the principles of Constructive Res Judicata, as**

explained in explanation IV to Section 11 of the Civil Procedure Code, are also applicable to the writ petitions". The relevant paras of the said Judgement explaining the doctrine/principles of *resjudicata*, read as under:-

xxx

xxx

xxx

xxx

" 14. The principles of Res Judicata are of universal application as it is based on two age old principles, namely, 'interest reipublicae ut sit finis litium' which means that it is in the interest of the State that there should be an end to litigation and the other principle is 'nemo debet bis vexari, si constet curiae quod sit pro una eadem cause' meaning thereby that no one ought to be vexed twice in a litigation if it appears to the Court that it is for one and the same cause. This doctrine of Res Judicata is common to all civilized system of jurisprudence to the extent that a judgment after a proper trial by a Court of competent jurisdiction should be regarded as final and conclusive determination of the questions litigated and should for ever set the controversy at rest.

15. That principle of finality of litigation is based on high principle of public policy. In the absence of such a principle great oppression might result under the colour and pretence of law in as much as there will be no end of litigation and a rich and malicious litigant will succeed in infinitely vexing his opponent by repetitive suits and actions. This may compel the weaker party to relinquish his right. The doctrine of Res Judicata has been evolved to prevent such an anarchy. That is why it is perceived that the plea of Res Judicata is not a technical doctrine but a fundamental principle which sustains the Rule of Law in ensuring finality in litigation. This principle seeks to promote honesty and a fair administration of justice and to prevent abuse in the matter of accessing Court for agitating on issues which have become final between the parties.

30. In the premises aforesaid, it is clear that the attempt by the appellant to re-agitate the same issues which were considered by this Court and were rejected expressly in the previous judgment in All India Manufacturers Organisation (*supra*), is a clear instance of an

abuse of process of this Court apart from the fact that such issues are barred by principles of Res Judicata or Constructive Res Judicata and principles analogous thereto. ”

xxx xxx xxx xxx

8. In view of the above, there is no merit in the present writ petition and the same is hereby dismissed, with no orders as to costs.

January 18, 2024
mkkoundal

(NAMIT KUMAR)
JUDGE

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