IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

256 **CWP-6683-2024**
Date of Decision :25.04.2024

Ashok Kumar **...Petitioner**

Versus

State of Haryana and others **....Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

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

Mr. Tapan Yadav, DAG, Haryana

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<u>Harsimran Singh Sethi, J. (Oral)</u>

1. Present petition has been filed challenging the action of the respondents in denying the benefit of gratuity to the petitioner on the ground that the judicial proceedings were pending against the petitioner by passing impugned order dated 05.05.2020 (Annexure P/5).

2. As per the averments made in the petition, the petitioner retired from the post of Patwari on 31.03.2018. At the time when the petitioner retired from service, he was facing FIR No.11 dated 14.01.2014 registered under Sections 420, 409 120-B, 34 and 201 of the IPC at Police Station Murthal, District Sonepat. On the basis of the said FIR, gratuity of the petitioner has been withheld by the respondents by invoking Rule 81 of the Haryana Civil Services (Pension) Rules 2016 (hereinafter referred to as “2016 Rules’)

3. Learned counsel for the petitioner submits that mere pendency

of an FIR will not mean that judicial proceedings are pending especially, when on the date when the petitioner retired from service even charges were not framed in the criminal proceedings and charges were only framed after the retirement of the petitioner hence, action of the respondents in withholding the gratuity of the petitioner is arbitrary and illegal.

4. Learned counsel for the respondents submits that Section 81 of the 2016 Rules gives power to the respondents to withhold the pensionary benefits of the employee in case, the judicial proceedings are pending against an employee and in the present case, on the day when the petitioner retired from service, an FIR was registered against him and on the date when the petitioner approached this Court, even the charges had already been framed hence, action of the respondents in denying the benefit of gratuity to the petitioner by passing impugned order dated 05.05.2020 is perfectly valid and legal.

5. Learned counsel for the respondents further submits that impugned order was passed in the year 2020 whereas, the said order has been challenged by the petitioner in the year 2024 hence, the present petition is liable to be dismissed being time barred and no interference is called for qua the stale order.

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

7. It is a settled principle of law settled by the Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab and others, 1997(3) SCT 468***, that an employee is entitled for the release of his/her pensionary benefits within a period of two months of his/her retirement in case, there is no

impediment and in case, the benefits are not released within the said prescribed period, the employee concerned is entitled for the benefit of interest. The relevant paragraph of said judgment is as under:-

> *"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 retirer 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 front 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."*

8. Keeping in view the settled principle of law cited hereinbefore, the respondents were under an obligation to release the pensionary benefits of the petitioner within a period of 02 months of his retirement, which they failed to do.

9. The question which arises for adjudication before this Court is whether or not, on the date when the petitioner retired from service i.e. 31.03.2018, there was any impediment so s to give jurisdiction to the respondents to withhold the pensionary benefits of the petitioner. Rule 81 of the 2016 Rules is being cited to give jurisdiction to the respondents to withhold the gratuity of the petitioner, which is as under:-

> **"81. Provisional pension where proceedings are pending at the time of retirement.—**
> (1) (a) In respect of a Government employee against whom departmental or judicial proceedings are pending at the

> time of retirement, the Principal Accountant General (Accounts & Entitlement), Haryana shall authorize the provisional pension equal to the maximum pension which shall have been admissible on the basis of qualifying service up to the date of retirement of the Government employee, or if he was under suspension on the date of retirement, upto the date of immediately preceding the date on which he was placed under suspension.
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> (b) The provisional pension shall be authorised by the Principal Accountant General (Accounts & Entitlement), Haryana during the period commencing from the date of retirement up to and including the date on which, after the concluding of departmental or judicial proceedings. Final orders are passed by the competent authority.
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> (c) No gratuity and commuted value of pension shall be authorised to the Government employee until the conclusion of the departmental or judicial proceedings and issue of final orders thereon
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> Note. - This provision shall also be applicable where—
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> (i) the departmental proceedings under Rule 8 of Haryana Civil Services (Punishment & Appeal) Rules, 2016 involving any financial loss to Government are pending at the time of retirement.
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> (ii) any complaint against the Government employee pertaining to his dishonesty is pending in State Vigilance Bureau, Lok Ayukat or in any Government Investigation Agency at the time of retirement.
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> (2) Payment of provisional pension made under sub-rule (1) (a) shall be adjusted against final pensionary benefits sanctioned to such Government employee upon conclusion of such 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.
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> Note. - Where any complaint against a Government employee is pending in the office of Lokayukat Haryana shall be given pensionary benefits after consultation with the Lokayukat."

10. Bare perusal of the above rule would show that where any departmental or judicial proceedings are pending against an employee, gratuity of the concerned employee can be withheld by the respondents.

11. In the present case, the question which arises is, as to whether or not, on the date when the petitioner retired from service i.e. 31.03.2018 any judicial proceedings are stated to be pending against the petitioner.

12. The said question of law has already been decided by the Hon'ble Supreme Court of India in ***Civil Appeal Nos.3018-21 of 1987***

Union of India vs. K.V. Jankiraman decided on 27.08.1991 with other connected appeals, wherein, it has been held that in case of departmental proceedings when charge sheet is issued, departmental proceedings can be stated to be pending, similarly in the case of judicial proceedings when charges have been framed against an employee, judicial proceedings can be stated to be pending. Relevant paragraph of the said judgment 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 com- menced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a chargesheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceed- ings/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 initi- ated at the instance of the interested persons,

> they are kept pending deliberately. Many times they never result in the issue of any charge-memo/chargesheet. If the allegations are serious and the authorities are keen in investigating them, ordi- narily it slould 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:
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> "(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;
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> ( ) ....…
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> (2)……………………………….
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> (3)……………………………….
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> (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."

13. In the present case, on the date when the petitioner retired from service i.e. 31.03.2018 though an FIR was registered against the petitioner but charges had not been framed. It is a conceded position that charges against the petitioner were framed in the year 2023 hence, on the date when the petitioner retired from service, there was no impediment to withhold the

pensionary benefits of the petitioner. Rule 81 of the 2016 rules has wrongly been interpreted in the case of the petitioner by ignoring the settled principle of law in settled by the Hon'ble Supreme Court of India ***K.V. Jankirman's case (supra).***

14. Keeping in view the above, as there was no impediment in the release of the gratuity of the petitioner on the date when the petitioner retired from service, action of the respondents in withholding the gratuity of the petitioner is arbitrary and illegal and is contrary to the settled principle of law settled by the Hon'ble Supreme Court of India in ***K.V. Jankiraman's case (supra)***. Hence, the respondents are directed to release the gratuity of the petitioner forthwith without any further delay.

15. Next question is, whether the petitioner is entitled for the grant of interest on the said delayed release of the gratuity or not.

16. A Coordinate Bench of this Court in of ***J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355*****,** has held that where an amount belonging to an employee, has been retained and used by the respondents, upon the release of the said amount, on a later date, the interest has to be given. The relevant paragraph of ***J.S. Cheema's case (supra)*** is as under: -

> *"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."*

17. In the present case, gratuity of the petitioner has been retained by the respondents without there being any impediment in the release of the same. Hence, the petitioner is also held entitled for the grant of interest @ 6% per annum on the said amount of gratuity from the date the same became due i.e. 01.04.2018 till the actual payment is made.

18. As far as the argument of the learned counsel for the respondents that impugned order was passed in the year 2020 and writ petition was filed in the year 2024, it may be noticed that as per the settled principle of law, claim for the pensionary benefits is a recurring cause and no claim for the grant of pensionary benefits can be declined on the basis of delay.

19. Keeping in view the above, present petition is allowed in the above terms.

20. Civil miscellaneous application pending if any is also disposed of.

April 25, 2024 **(HARSIMRAN SINGH SETHI)**
aarti **JUDGE**

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