



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

127

CWP-9029-2024
Date of decision:24.09.2024

BALBIR SINGH SIDHU

....Petitioner

Versus

UNION OF INDIA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE ALOK JAIN

Present : Mr. Harish Chandra, Advocate with
Mr. Jaskirat Singh, Advocate
for the petitioner.

Mr. K.K. Jund, Senior Panel Counsel
for the respondents-UOI.

ALOK JAIN. J.(Oral)

1. Present petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ, order or direction, especially in the nature of mandamus, directing the respondents to release the benefits of leave encashment, death-cum-retirement gratuity and commuted value of pension with interest @ 18 % per annum on delayed payments from the date the amount became due to the actual date of payment.

2. Learned counsel for the petitioner submits that the petitioner had retired from the service on 31.07.2023, however, before his retirement, vide letter dated 05.07.2023 (Annexure P-5), he was granted the provisional pension of Rs.93,100/- plus dearness relief from time to time w.e.f. 01.08.2023. Learned



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counsel further submits that the respondents are in violation of law by not releasing the retirement dues *qua* the leave encashment etc. and therefore, fundamental rights of the petitioner under Articles 14, 16 and 21 of the Constitution of India have been violated.

3. *Per contra*, learned counsel for the respondents has vehemently opposed the present petition and has opened his arguments by submitting that the petitioner has concealed the material facts from the Court and has not disclosed that the petitioner has been facing a criminal case registered by CBI at Delhi under Section 120-B of IPC and also under Sections 7, 8, 10, 12 and 13(2) read with Section 13(1) of Prevention of Corruption Act, 1988 for which the petitioner remained suspended from 2009 till 2013. The said criminal proceedings are going on before the Court of competent jurisdiction.

4. At this stage, learned counsel for the petitioner rebutted to the above arguments by submitting that in para No.8 of his petition, he has disclosed the fact that the case registered in 2009 is going on for the last 15 years and only 50% of the witnesses have been examined so far.

5. On a specific query being put to the learned counsel for the petitioner that as to whether any application has been moved by the petitioner for expediting the trial, to which he could not respond.

6. Apprehension of the procrastination of the above said trial cannot be a ground to give benefit to the petitioner by way of filing this petition for release of his dues.

7. In terms of the above, learned counsel for the respondents submits that as per Rule 39 (c) of the Central Civil Services (Leave) Rules, 1972, the



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competent authority is well within its powers to withhold whole or part of the cash equivalent of the earned leave, in the case of a Government servant, who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, therefore, certain dues of the petitioner have been withheld.

8. I have heard learned counsel for the parties at length.

9. In the above factual matrix, the Full bench of this Hon'ble High Court in LPA No.113 of 2012, has held that leave encashment cannot be released when the criminal proceedings are pending against a retiral Government employee. It has been repeatedly held that the right to withhold leave encashment is part of the statutory rules. Though the learned counsel for the petitioner relied upon a judgment passed by the Co-ordinate Bench of this Hon'ble Court in CWP-34754-2019, however, the same was a petition for grant of interest to the petitioner on delayed payment of some retiral benefits and hence the said judgment does not hold that a person against whom a criminal proceeding is pending, the whole or part, cannot be withheld by the authorities concerned.

10. Learned counsel for the petitioner at this stage has prayed for withdrawal of the present petition, which is not allowed, as the present petition has been filed by concealing the material facts and details with regard to the pendency of criminal proceedings and the petitioner has tried to abuse the process of law by concealing the same, rather it is a case of clever drafting, where the petitioner has written a line here and there but does not disclose in clear terms as to what was the criminal case registered against the petitioner and considering the fact that the petitioner was suspended on account of same criminal case itself, the present

petition deserves to be dismissed with exemplary cost.

11. At this stage, learned counsel for the petitioner prayed that cost may not be imposed upon the petitioner. Taking a lenient view, the same is not being done.

12. In view of the observations made hereinabove, the present petition is dismissed.

24.09.2024
amandeep

(ALOK JAIN)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No