2024:PHHC:123147

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

203 CWP-15681-2022
Date of Decision : 17.09.2024

THE PUNJAB STATE COOPERATIVE SUPPLY AND MARKETING FEDERATION LTD. CHANDIGARH

…. PETITIONER

V/S

THE DEPUTY CHIEF LABOUR COMMISSIONER (CENTRAL) CHANDIGARH AND OTHERS

…. RESPONDENTS

CORAM : HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Dr. Puneet Kaur Sekhon, Advocate
for the petitioner.

Mr. Aman Dhir, DAG, Punjab
for respondents No.1 and 2.

Mr. Shiv Kumar, Advocate
for respondent No.3.

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JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226 of the Constitution of India is seeking setting aside of orders dated 30.07.2018 (Annexure P-7) and 13.08.2020 (Annexure P-9) whereby authorities constituted under the Payment of Gratuity Act, 1972 (for short '1972 Act') have directed it to pay to respondent a sum of Rs.6,28,431/- towards gratuity along with interest.

2. The petitioner is a State Government undertaking and respondent No.3 (for short 'respondent') is its former employee. The

respondent joined petitioner as Clerk on 12.10.1993 on compassionate ground. The petitioner formed an opinion that respondent has obtained job on the basis of false certificate, thus, a charge-sheet dated 25.08.2006 was served upon her. The said charge-sheet was dropped vide order dated 22.10.2008 (Annexure P-3). The respondent attained age of superannuation on 30.11.2016. Prior to said date, Punjab Vigilance Bureau initiated an enquiry against her. An FIR No.9 dated 16.07.2020 under Sections 420, 465, 467, 468, 471 IPC at Police Station Vigilance Bureau, District Ludhiana came to be registered against her. The petitioner withheld gratuity of the respondent on the ground that criminal proceedings are pending against her. The respondent filed an application before Controlling Authority under 1972 Act. The said application came to be allowed. The petitioner preferred an appeal before appellate authority which was dismissed.

3. Ms. Puneet Sekhon, counsel for the petitioner submits that service of respondent was governed by the Punjab State Cooperative Supply and Marketing Federation Employees (Common Cadre) Service Rules, 1990 (for short ‘1990 Rules’). As per Rule 4.6 of 1990 Rules, the payment of gratuity was governed as per rules/instructions enforced and amended from time to time by Punjab Government. For the purpose of gratuity, the employees of petitioner are at par with Punjab Government employees and as per rule 2.2 (c) of Punjab Civil Service Rules (Volume II) (for short ‘PCS Rules’), gratuity can be withheld when departmental or judicial proceedings are pending against an employee.

4. Per contra, Mr. Shiv Kumar, Advocate submits that

respondent is not governed by PCS Rules, thus, rule 2.2 (c) cannot be invoked. The respondent was governed by 1972 Act and there is no provision in 1972 Act which permits petitioner to withhold gratuity of the respondent.

5. I have heard the arguments of counsel for the parties and perused the record.

6. To adjudicate the issue, it would be apposite to notice Rule 2.2 (c) of PCS Rules which is reproduced as below:

> ***Rule 2.2 (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 proceeding 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.*

7. From the perusal of above quoted rule, it is quite evident that in case of pendency of departmental or judicial proceedings gratuity or

death-cum-retirement gratuity cannot be released till conclusion of the proceedings.

8. A Full Bench of this Court in ***'Dr. Ishar Singh Vs. State of Punjab and another' 1993 SCC OnLine P&H 49*** had an occasion to advert with question of release of retiral benefits including gratuity. The Court in para 81 has laid down following principles:

> *"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."*

9. A full Bench of this Court in ***Punjab State Civil Supplies Corporaton Limited and others vs. Pyare Lal, 2012 SCC OnLine P&H 21595*** while adverting with Rule 2.2 (c) of PCS Rules has noticed that gratuity or death-cum-retirement gratuity and no other retiral benefits can be withheld.

10. The Supreme Court in ***The Secretary, Local self Government Department and others vs. K. Chandran etc. 2022 (12) SCC 104*** in Para 29 has considered object of withholding gratuity. The Court has found that object of withholding is to recover the amount found due from the delinquent employee or deny in case of dismissal from service. Para 29 is reproduced as below:

> "*29. We must keep in mind the very objectives of holding back pension or the DCRG. One can be to recover the amounts found due from the delinquent employee of any nature whatsoever after appropriate notice and proceedings. The second eventuality is if an employee is dismissed from service. It can hardly be doubted that in the second eventuality of the dismissal from service the employee would lose all retirement benefits.*"

11. In the case in hand, the employee retired on 30.11.2016. During her service, she was subjected to departmental enquiry which was dropped in October' 2008. No departmental enquiry or criminal case was pending against her on the date of retirement though Vigilance Bureau was conducting an enquiry against her. It is apt to notice that no FIR was registered against her by Vigilance Bureau at the time of retirement. The FIR was registered after 04 years from the date of retirement. The

petitioner has heavily relied upon rule 2.2 (c) which as per respondent is not applicable to her.

12. A conspectus of rule 2.2 (c) reveals that departmental or judicial proceedings must have been instituted at the time of retirement. The respondent retired on 30.11.2016 and on the said date, even FIR was not pending against her. The expression “judicial proceedings is instituted” does not mean that some enquiry at the hand of police is pending. Institution of judicial proceedings means charges must have been framed. In the absence of framing of charges, it cannot be concluded that judicial proceedings have been instituted against the respondent on the date of her retirement. Even if it is assumed that date of taking cognizance by trial Court is date of institution of judicial proceedings still case of respondent does not fall within the clutches of rule 2.2 (c) of PCS Rules.

14. In the wake of above discussion and findings, the present petition being bereft of merit deserves to be dismissed and accordingly dismissed. The Controlling Authority is directed to release amount of gratuity along with interest within 30 days from today.

17.09.2024 **(JAGMOHAN BANSAL)**
anju **JUDGE**

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