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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-10217-2017

Date of Decision:25.01.2024

SHIV NATH

..... Petitioner

Versus

STATE OF PUNJAB AND ORS.

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Tahaf Bains, Advocate
for the petitioner.

Mr. Aman Dhir, DAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking direction to respondents to release gratuity alongwith interest in view of order dated 29.07.2016 (Annexure P-7) passed by this Court.
2. The petitioner joined as Constable with respondent-Department on 04.10.1977. He was time to time promoted and w.e.f. 01.04.2010 promoted to the post of Sub Inspector.
3. An FIR No.02 dated 03.04.2013, under Sections 302, 201, 363, 366-A, 120-B, 217 and 218 of Indian Penal Code (for short 'IPC') came to be registered against the petitioner. The Trial Court vide judgment dated 17.05.2014 (Annexure P-1) held the petitioner guilty and awarded him sentence of two and half years under Sections 217 and 218 of IPC. The petitioner preferred appeal No. CRA-S-2517-SB-2017 before this Court. The sentence of the petitioner has been suspended vide order

dated 29.05.2014, however, the appeal is still pending. The petitioner preferred CWP No. 18512 of 2014 before this Court seeking release of his retiral benefits. The said petition came to be disposed of vide order dated 29.07.2016 (Annexure P-7) with a direction to respondents to pass necessary orders within 3 months. The said direction was based upon reading of Rule 2.2 (b) of Punjab Civil Service Rules (Volume-II). The relevant extracts of the order dated 29.07.2016 read as:

“The perusal of 2.2 (b) makes it clear that in case of pensioner, the departmental proceedings have to be initiated apparently to determine whether the misconduct is ‘grave’ or whether the crime of which he has been convicted, is ‘serious’. It follows that without holding departmental proceedings, no order under Rule 2.2 (b) could be passed.

The perusal of the impugned order shows that no such departmental proceedings were conducted. Admittedly, after the conviction of the petitioner under Section 217 and 218 IPC, the pension file was moved and it remained pending. The opinion of the District Attorney Legal was also sought and ultimately the matter was decided on 17.03.2015 i.e. only after the retirement of the petitioner. At that time, the petitioner had already been retired from service on 31.01.2015 and as such the impugned order dated 17.03.2015 (Annexure P- 8) being contrary to the provisions of Rule 2.2 (b) is hereby set aside.

Consequently, the respondents are at liberty to follow the provisions of Rule 2.2 (b), if they so desire. If they decide to proceed under the provision of Rule 2.2 (b), then provisional pension as per Government Rules shall be released to the petitioner alongwith other service benefits and if they decide not to proceed under 2.2 (b) then of course, the entire pension and

other pensionary benefits will have to be released.

The State of Punjab is directed to pass necessary orders as observed above within three months from the date of receipt of certified copy of this order.”

4. Learned counsel for the petitioner submits that in view of judgment dated 29.07.2016 (Annexure P-7) passed by this Court in CWP No. 18512 of 2014, the respondents are bound to release gratuity despite his conviction. The respondent has not initiated departmental proceedings against the petitioner, thus, mere pendency of appeal before this Court cannot create embargo to release gratuity.

5. Per contra, learned State counsel submits that petitioner is wrongly placing reliance upon Clause (b) of Rule 2.2 because case of petitioner is covered by Clause (c) of Rule 2.2 as well as Rule 9.14 (c) of Punjab Civil Service Rules, Volume II. Appeal of the petitioner is pending before this Court, thus, he cannot be released gratuity in view of aforesaid Rules.

In support of his contention, learned State counsel relies upon judgment of Hon’ble Supreme Court in ***‘The Secretary, Local Self Government Department & Ors. Etc. Vs. K. Chandran Etc. 2022 (12) SCC 104*** as well as full Bench judgment of this Court in ***‘Punjab State Civil Supplies Corporation Limited and others Vs. Pyare Lal’ 2012 SCC OnLine P&H 21595.***

6. I have heard the arguments of both sides and with the able assistance of learned counsels have perused the record.

7. The conceded position emerging from the record is that the petitioner has been convicted vide judgment dated 17.05.2014 (Annexure P-1) passed by the Trial Court. The petitioner has been awarded sentence

of two and half years alongwith fine under Sections 217 and 218 of IPC. The petitioner has preferred appeal before this Court which is still pending. The petitioner in view of judgment dated 29.07.2016 (Annexure P-7) of this Court has already been released all retiral benefits except gratuity. The respondent has withheld gratuity in view of Clause (c) of Rule 2.2 as well as Rule 9.14 (c) of Punjab Civil Service Rules (Volume - II).

8. To adjudicate the issue, it would be apposite to notice Rule 2.2 (c) as well as Rule 9.14 (c) Punjab Civil Services Rules (Volume-II) which are 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.

Rule 9.14 - Provisional pension where departmental or judicial proceedings may be pending-

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(c) No gratuity shall be paid to the Government employee until the conclusion of the departmental or judicial proceedings and issue of final order thereon

9. From the perusal of above quoted rules, it is quite evident that in case of pendency of departmental or judicial proceedings gratuity or death cum retirement gratuity cannot be released till the conclusion of the proceedings. The petitioner has been convicted and he has been awarded sentence. Appeal of the petitioner is still pending before this Court.

10. A Full Bench of this Court in '***Dr. Ishar Singh Vs. State of Punjab and another***' 1993 SCC OnLine P&H 49 had 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.”

Hon’ble Supreme Court while adverting with similar question in **K. Chandran** (supra) has held that appeal is continuation of trial and in case an employee has been convicted and appeal is pending, he cannot be released gratuity death cum retirement gratuity. The relevant extracts of the judgment read as:

“On the conviction in a criminal case for violation of integrity norms in performance of official duties and an appeal pending before the High Court, is the employee still entitled to the release of his death-cum-retirement gratuity (for short “DCRG”) is the moot point arising for consideration in the present appeals. We are, in fact, examining a Full Bench judgment of the Kerala High Court which resolved the conflict of view of the Division Benches and ruled in favour of the employees. The controversy having been set down, the Government of Kerala, which is naturally aggrieved by the decision of the Full Bench is before us on the aforesaid issue.

2. In the main appeal before us, the question of law is the same but the facts differ in the two cases of the two employees.

3.(A) K. Chandran, the respondent in the appeal was working as Village Extension Officer, Noolaphuza. In the course of his employment the Vigilance Department registered a crime under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1998 (hereinafter referred to as “the PC Act”) alleging that he had received Rs 500 as

bribe from one K.K. Mohanan. Mr Chandran was suspended from service on 27-10-2006 and was reinstated in service on 1-3-2008. He retired from service on 31-3-2011 on superannuation while working as the General Extension Officer in Wayanad.

4. The Inquiry Commissioner and Special Judge, Kozhikode convicted K. Chandran vide judgment dated 29-7-2011 in CC No. 13 of 2008 and sentenced him to undergo rigorous imprisonment (for short "RI") for 2 years and a fine of Rs 5000. Aggrieved by the same, K. Chandran filed an appeal before the High Court of Kerala, which was registered as Crl. A. No. 6053 of 2013. The appeal was admitted and the sentence was suspended in the meantime.

5. K.Chandran submitted a request before the Accountant General to release his DCRG in 2014. On not receiving a favourable response, he filed an application numbered OA (EKM) No. 104 of 2014 before the Kerala Administrative Tribunal (for short "KAT"), which dismissed his application on 9-12-2014 on the ground that judicial proceedings had been concluded and K. Chandran had been convicted. The issue which arose pertained to the intent and purport of Rule 3-A of Part III of the Kerala Service Rules (for short "KSR"), which was stated to require the outcome of departmental or judicial proceedings to be concluded for the release of DCRG. Thus, if the criminal case went against K. Chandran, it had to be withheld or otherwise it had to be released. It was opined that K. Chandran being a convict and that too for receiving a bribe, could not claim entitlement to the DCRG and, thus, accepting his application would defeat the very purpose of the Rule.

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40. We also believe that it is a very restrictive view to disburse DCRG on account of the proceedings against a pensioner coming to an end, even where a conviction has arisen. This is especially so where the convicted person has availed of the remedy of appeal. An appeal is a continuation of the proceedings in trial and would be, thus, a continuation of judicial proceedings. For example, if no appeal had been filed, can it be said that despite conviction in the criminal case, the State is without authority of forfeiting the DCRG or pension for that matter? If it is not so, as we believe, then the pendency of the appeal cannot disentitle the State from withholding the DCRG, considering that it is a hiatus period within which certain arrangements have to be made which would be dependent on the outcome of the appeal.”

10. A full Bench of this Court in ***Pyare Lal*** (supra) while advertizing with Rule 2.2 (c) of Punjab Civil Service Rules (Volume-II) has noticed that gratuity or death cum retirement gratuity and no other retiral benefits can be withheld.

11. The Supreme Court in above noted case in Para 29 has considered object of withholding gratuity. Court has found that object of withholding is to recover the amount found due from the delinquent employer 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.”

In the case in hand, the employee has retired and his appeal against conviction is pending before this Court. No recovery is pending him, however, as contemplated by Supreme Court, he may be dismissed from service after confirmation of his conviction. In case, State decides not to dismiss the petitioner or Rules do not permit, the petitioner after final adjudication of criminal proceedings would be entitled to gratuity.

12. In the backdrop of afore-cited facts and law laid down by Supreme Court, this Court is of the considered opinion that petitioner at this stage cannot be released gratuity. Thus, present petition deserves to be dismissed and accordingly dismissed. It is hereby made clear that dismissal of this petition would not absolutely debar petitioner from asking for release of gratuity. The petitioner, in accordance with law, would be at liberty to move an appropriate application to authorities after final adjudication of criminal proceedings.

(JAGMOHAN BANSAL)
JUDGE

25.01.2024
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>