2024:PHHC:022004

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1833 of 2017 (O&M)
Date of decision: 15.02.2024

Narinder Kumar

....Petitioner

Versus

Punjab State Power Corporation Limited and others

....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Rahul Sharma, Advocate
for the petitioner.

Mr. I.P.S. Doabia, Advocate
for the respondents.

NAMIT KUMAR J. (Oral)

1. The present petition has been filed by the petitioner under Articles 226/227 of the Constitution of India, seeking a writ of mandamus, directing the respondents to pay the petitioner interest @ 18% on the amount of pension/retiral benefits, withheld by the respondents.

2. The facts, as have been pleaded in the present petition, are that the petitioner retired on 31.01.2013, on attaining the age of superannuation while he was holding the post of Junior Engineer, Model Town, Ludhiana, his pensionary benefits were withheld by the respondents on the ground that some departmental proceedings are contemplated/pending against the petitioner and his 30% pension was withheld and 70% pension was released. After the retirement, the petitioner was issued charge-sheet dated 26.04.2013, which was finally

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dropped on 09.09.2013 (Annexure R-1). Another show cause notice dated 23.08.2013 was culminated into passing of order dated 21.11.2013 (Annexure R-2) whereby a cut of 5% in pension for a period of 01 year was imposed. Yet another charge-sheet dated 19.03.2015 was issued to the petitioner, which was also dropped vide order dated 16.10.2015 (Annexure R-3).

3. In the written statement, it has been stated as under:-

> *"It be seen that some of the retiral benefits were withheld by PSPCL due to the fault of the petitioner, as such no interest is payable to the petitioner. It may also been seen that provisional pension @ 75% was granted to the petitioner vide letter dated 26.11.13 and arrears of provisional pension from 1.2.13 to 31.12.13 amounting to Rs.195598 were paid with the pension for the month of January, 2014. Similarly the amount of leave encashment to the tune of Rs.452790/- was paid to him vide cheque no.904510 on 20.1.2014.*
>
> *Thus unless he rendered full account for the materials he withdrew from the stores of respondent Department he could not be allowed to be released his final dues after retirement and only a provisional pension was being paid."*

5. Learned counsel for the petitioner submits that the action of the respondents in withholding the pensionary benefits of the petitioner, after his retirement is totally illegal and arbitrary, therefore, the petitioner is entitled to grant of interest on the delayed payment of retiral benefits. He further submits that he has sent a legal notice dated 20.09.2016 to the respondents but to no avail.

6. Learned counsel for the respondents submits that since the

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penalty of 5% cut in pension of the petitioner was imposed for a period of 01 year, therefore, he is not entitled for the relief sought in the present writ petition.

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

8. The Hon'ble Supreme Court in ***"Union of India vs. K.V. Jankiraman",* 1991(3) SCT 317**, decided the question of law as to when a proceedings are deemed to be pending against an employee in respect of the departmental inquiry as well as in respect of the criminal proceedings so as to give right to the department to withhold the benefits. The Hon'ble Supreme Court held that it is only when a charge-sheet is served upon a delinquent employee during the departmental proceedings, the departmental inquiry is stated to be pending against an employee, which will give right to the respondents to take an action against the employee in accordance with law. Similarly, where a Challan/charge-sheet has been presented against a person in the criminal proceedings, the criminal proceedings are to be treated as pending against the said person so as to give jurisdiction to the employer to take action against an employee. The relevant paragraph of the judgment in K.V. Jankiraman's case (supra) 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 commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental*

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proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the chargememo/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 initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it would 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:

> *"(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of*

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> *pendency of a disciplinary or criminal proceedings against an official;*
> *(2)* ....
> *(3)* ....
> *(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."*

9. In the present case, the petitioner already retired on 31.01.2013 and on the date of retirement, no charge-sheet was pending against the petitioner and all the 03 charge-sheets/show cause notice were issued to him after his retirement and out of 03 charge-sheets/show cause notice, 02 charge-sheets were dropped and in 01 show cause notice, 5% cut in pension was ordered for a period of 01 year.

10. Keeping in view the above facts and circumstances, the present petition is allowed and the respondents are directed to grant interest @ 6% per annum to the petitioner on the payment of delayed retiral benefits, from the date it became due till its actual payment was made. Said exercise be carried out within a period of 03 months from the date of receipt of certified copy of this order.

(NAMIT KUMAR)
JUDGE

15.02.2024
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

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