

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

1.

CWP-19954-2018 (O&M)

Gobind Ram Verma

... Petitioner

Versus

State of Punjab and others

... Respondents
2.

CWP-19957-2018 (O&M)

Manjit Singh

... Petitioner

Versus

State of Punjab and others

... Respondents
3.

CWP-20012-2018 (O&M)

Sewa Singh

... Petitioner

Versus

State of Punjab and others

... Respondents
4.

CWP-20016-2018 (O&M)

Ram Singh

... Petitioner

Versus

State of Punjab and others

... Respondents
5.

CWP-20059-2018

Nahar Singh

... Petitioner

Versus

State of Punjab and others

... Respondents
6.

CWP-19175-2018 (O&M)

Sudarshan Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Gurcharan Dass, Advocate
for the petitioners in all the petitions.

Mr.T.P.S. Chawla, Sr. DAG, Punjab.

VIKAS BAHL, J.(ORAL)

1. This order will dispose of six writ petitions i.e., CWP-19954-2018 filed by Gobind Ram Verma, CWP-19957-2018 filed by Manjit Singh, CWP-20012-2018 filed by Sewa Singh, CWP-20016-2018 filed by Ram Singh, CWP-20059-2018 filed by Nahar Singh and CWP-19175-2018 filed by Sudarshan Singh as common questions of law and fact arise in all the six writ petitions.

2. Prayer in all the writ petitions is for issuance of a writ in the nature of mandamus directing the respondents to pay the interest @ 10% per annum from the date of gratuity was payable till the date of its payment.

3. The undisputed facts in the present case are that all the petitioners had joined the services in the Public Works Department, Punjab and had retired in the period between 2005-08 but their gratuity was sanctioned and paid in the year(s) 2016-17, after much delay. The sole reason for non-release of the gratuity was the pendency of FIR no.9 dated 29.06.2004 registered under Sections 406, 420, 467, 468, 471, 120-B IPC and Sections 7, 12, 13(1) A.C.D. read with Section 13(2) of the Prevention of Corruption Act, 1988 at Police Station Vigilance Bureau, Flying Squad-I, Mohali. It is not in dispute that on the date when the petitioners retired, no challan / report under Section 173 Cr.P.C. had been presented before the criminal Court and no judicial proceedings were pending. Admittedly, no departmental proceedings were initiated against any of the petitioners and even with respect to the FIR an untraced report was submitted on

04.07.2014 by the Vigilance Bureau which was accepted by the Judge, Special Court, S.A.S. Nagar (Mohali) vide order dated 05.05.2015 (which has been annexed as Annexure P-2 with each of the six writ petitions). A perusal of the said order dated 05.05.2015 would show that after the untraced report had been presented, Darshan Singh, Superintendent of Police had appeared and had submitted that he had no objection in case the same was accepted and even the complainant had appeared and had also given “no objection” to the acceptance of the said untraced report. It was observed by the Judge, Special Court, S.A.S. Nagar (Mohali) while passing the order dated 05.05.2015, that during the investigation of the case, the Investigating Officer had found no material with regard to purchase of furnace oil by the concerns dealing in furnace oil and had observed that it had been opined by the Investigating Officer that when Bitumen was not purchased by the department, then as to how the official(s) could sell the said Bitumen to anyone. The necessary details with report to each petitioner are detailed hereinbelow in the form of a chart:-

<i>Sr. No.</i>	<i>CWP no.</i>	<i>Name of petitioner</i>	<i>Date of retirement / designation</i>	<i>Amount of gratuity, date of sanction / payment</i>	<i>FIR no., date and offence</i>	<i>Date of order passed by ld. Judge</i>
1	19175 of 2018	Sudarshan Singh	31.1.2006 Retired as J.E.	3,85,440/- Sanctioned on 24.6.2016 Paid on 10.10.2016	FIR no.09 dated 29.6.2004 registered under Sections 406, 420, 467, 468, 471, 120-B IPC and 7, 12, 13(1) A.C.(D) read with 13(2) of the Prevention of Corruption Act, P. S. Vigilance Bureau, Flying Squad-I at Mohali	05/05/15

<i>Sr. No.</i>	<i>CWP no.</i>	<i>Name of petitioner</i>	<i>Date of retirement / designation</i>	<i>Amount of gratuity, date of sanction / payment</i>	<i>FIR no., date and offence</i>	<i>Date of order passed by ld. Judge</i>
2	19954 of 2018	Gobind Ram Verma	28.2.2006 Retired as A.E.	3,95,835/- sanctioned on 31.3.2017 and paid on 16.5.2017	-do-	-do-
3	19957 of 2018	Manjit Singh	30.9.2008 Retired as SDE	5,82,434/- sanctioned on 16.12.2016, received on 19.6.2017	-do-	-do-
4	20012 of 2018	Sewa Singh	31.12.2005 Retired as A.E.	3,49,190/- sanctioned on 29.8.2016, paid on 20.12.2016	-do-	-do-
5	20016 of 2018	Ram Singh	31.05.2008 Retired as SDE	5,62,353/- sanctioned on 16.9.2016, paid on 5.12.2016	-do-	-do-
6	20059 of 2018	Nahar Singh	31.12.2007 Retired as Superintendent	4,63,122/- sanctioned on 28.4.2016	-do-	-do-

4. It is the case of the petitioners that since no judicial proceedings were pending, thus, at the time of retirement, the respondents could not have withheld the gratuity muchless for a period of more than 10 years and since they had illegally withheld the gratuity, thus, they were duty bound to pay interest on the same.

5. On the other hand, learned State counsel has submitted that since the FIR has been registered against all the petitioners prior to the date of retirement, thus, till the time the proceedings emanating from the FIR were not finally concluded, the respondent department was entitled to withhold the release of gratuity and when the untraced report was submitted in the year 2015, the process was started and the amount of gratuity was released in the years 2016-17 and thus, the State cannot be faulted and all the petitions deserve to be dismissed on the said ground. Reference has

been made to Rule 9.14 (c) of the Punjab Civil Services Rules, Vol.II in the said regard.

6. This Court has heard the learned counsel for the parties and has perused the paper book.

7. The question that arises for consideration and determination before this Court in the present cases is as to whether the action of the respondents in withholding the gratuity of the petitioners solely on account of pendency of FIR no.9 dated 29.06.2004 in which no challan / report under Section 173 Cr.P.C. had been filed on the date when the petitioners had retired, was justified or not.

8. A similar question arose before a Coordinate Bench of this Court and the Coordinate Bench of this Court vide judgment dated 09.02.2024 passed in **CWP-28933-2022** titled as **“Baljit Singh vs. State of Punjab and others”** after taking into consideration the law laid down by the Hon'ble Supreme Court in **Union of India vs. K.V. Jankiraman** reported as **1991(3) SCT 317** had observed that the criminal proceedings would be deemed to have been initiated when challan is presented in the criminal proceedings and departmental proceedings are deemed to have been initiated after the charge memo is issued to the delinquent employee. It was also observed that the Coordinate Bench of this Court in **CWP-3567-2006** titled as **“Atam Bodh Sharma vs. State of Haryana and others”** decided on 09.10.2006 had observed that mere pendency of an FIR without there being any challan presented in the said FIR on the date of the retirement of the employee, would not give any right to the department to withhold the pensionary benefits of the employee and the Court in **Baljit Singh's** case (supra) had after considering the entire matter, allowed the writ petition and

directed the respondent authorities to pay interest @ 6% per annum to the petitioner therein from the date the gratuity became due till its payment. The relevant portion of the said judgment in **Baljit Singh's** case (supra) is reproduced hereinbelow:-

“7. The only question which arises for determination before this Court in the present writ petition is whether the action of the respondents in withholding the gratuity of the petitioner keeping in view the pendency of the FIR No.5 dated 12.07.2011 is justified or not?

8. For deciding the said issue, it is to be considered that on the date of the retirement of the petitioner i.e. 31.03.2012, whether any criminal proceedings were pending against the petitioner so as to give the right to the respondents to withhold the payment of gratuity of the petitioner.

9. It is an admitted case of the parties that FIR No.5 dated 12.07.2011, was registered against the petitioner, which was pending at the time of his retirement but no challan was presented prior to the retirement of the petitioner. Perusal of order dated 13.01.2021 passed by the learned Special Judge, Patiala, would show that cancellation report in the said FIR was filed originally on 11.09.2014, however, vide order dated 09.10.2014 the said cancellation report was declined and the case was sent back for further investigation. Subsequently, fresh cancellation report was submitted, which was again returned unaccepted vide order dated 09.03.2018 by the learned Special Judge, Patiala, with direction to conduct further probe. Again, the cancellation report was submitted wherein it was stated that contractor Sudhir Kumar had made payment for chlorine purchased by him from Una through cash and there was no bar to the making of said payment by cash and finally the third cancellation report was accepted by the learned Special Judge, Patiala, vide order dated 13.01.2021. That being so, on the date, when the petitioner retired after attaining the age of superannuation, only FIR No.5 dated 12.07.2011 was pending which was being investigated. The question that can mere pendency of an FIR on the date of retirement gives right to the respondents to withhold the retiral benefits on the ground that the criminal proceedings are pending, is required to be decided in the present writ petition.

10. Hon'ble Supreme Court in **Union of India v. 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. 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 proceedings/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 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 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."

11. In the present case, it is admitted by the learned counsel for respondent No.3 that only FIR No.5 dated 12.07.2011 was pending against the petitioner at the time of his retirement, which was under investigation and three cancellation reports were filed in the Court of learned Special Judge, Patiala, and finally third cancellation report was accepted on 30.01.2021. Therefore, it cannot be said that any criminal proceedings were pending against the petitioner on the date of his retirement so as to give right to the respondent/State to withhold the gratuity of the petitioner.

*12. This Court while deciding **CWP No.3567 of 2006 decided on 09.10.2006, titled as Atam Bodh Sharma v. State of Haryana and Others**, held that mere pendency of an FIR without there being any Challan presented in the said FIR on the date of the retirement, there is no jurisdiction with the department to withhold the pensionary benefits of an employee.*

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*13. In the present case, only an FIR was pending against the petitioner and no challan had been presented against him upto the date of his retirement or even thereafter also, therefore, the claim of the petitioner will be squarely covered by the judgment in **Atam Bodh Sharma's** case (Supra). Learned counsel for the respondents has not been able to show any Rule or Regulation which gives the right to the respondent/State to withhold the retiral benefits merely upon the registration of an FIR. The right with the respondents is only to withhold the benefits in case of the pendency of the criminal proceedings and the criminal proceedings can only be deemed to be pending on the date when a Challan is presented against the accused. Hence, in the case of the petitioner withholding of his*

benefits by the respondents was beyond their jurisdiction.

14. Keeping in view the above, present petition is allowed. Respondent No.3 is directed to grant interest to the petitioner @ 6% per annum on his retiral benefits, from the date it became due till its actual payment was made. Likewise, interest @ 6% per annum be also granted to the petitioner from the due date of gratuity till its payment made on 03.11.2022. Said exercise be carried out within a period of three months from the date of receipt of certified copy of this order.”

9. The abovesaid case squarely covers the case of the petitioners. No judgment to contrary has been cited. It would be relevant to note that Rule 9.14 (c) provides that no gratuity would be paid to the government employee until the conclusion of departmental or judicial proceedings and issue of final order thereon and the term which has been used in the said clause is “judicial proceedings”. As has been held in the abovesaid judgment and also in the judgment of the Hon'ble Supreme Court of India in ***Union of India vs. K.V. Jankiraman's*** case (supra), the “proceeding” would only be considered to be initiated / pending in case the challan has been filed in the criminal Court and the same having not been done on the date when the petitioners had retired in the present case, It cannot be said that there were any judicial proceedings pending so as to entitle the respondent authorities to withhold the gratuity of the petitioners. The Coordinate Bench of this court in the case of ***Lakhdev Singh vs. State of Punjab*** reported as ***2001(3) RSJ 599*** while considering a case in which Clause (c) of Rule 9.14 of the Rules was applicable, had held that in a case where an FIR had been registered but no challan had been filed, it could not be said that judicial proceedings were pending on the date of retirement so as to entitle the authorities to withhold the gratuity and the other retiral benefits. The relevant portion of the said judgment is reproduced

hereinbelow:-

*“The argument is that the right would ensue to the Government to withhold the retiral benefits only if the departmental or judicial proceedings are pending on the retiree on the date of retirement. Admittedly, no proceedings were pending on the date of retirement of the petitioner. In support of his argument, the learned counsel relied upon the dicta of this Court expressed in **L.R.Dhawan v.State of Haryana and others, 1996(3) Service Cases Today 11.***

4. *So far as initiation of judicial proceedings is concerned, the same is entertained under clause (3) supra and presently period of four years having expired long back, no judicial proceedings could be initiated in pursuant to the said FIR against the petitioner for the purpose of withholding the retiral benefits. In support of his arguments, my attention was drawn to **Walaiti Ram Gupta v. Punjab State, 1977(4) SCT 230** and **K.C. Duggal, Sub Divisional Engineer v. The State of Punjab, 1989(2) RSJ 513.***

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6. *Learned counsel appearing for and on behalf of the State has not been able to rebut the argument of the learned counsel for the petitioner and has candidly admitted that in fact no judicial proceedings were pending at the time of retirement and **even now the challan is yet to be put in Court.***

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7. ***I am of the view that the respondents did not have any authority in withholding the amount due and payable as leave encashment, DCRG and the commutation of the pension because no judicial proceedings or departmental proceedings were pending against the petitioner at the time of retirement.** In fact no judicial proceedings have been initiated for the last four years from the date of incident and in fact as per the said rule, before passing final orders, the Public Service Commission is required to be consulted. **Admittedly, even the challan has not been put up in the court pursuant to the FIR till date.”***

10. The question which arose for consideration in the present case as detailed in para 7 of the present order is answered in favour of the petitioners and it is held that the respondent authorities had no right to withhold the gratuity due to the petitioners solely on account of the pendency of the FIR no.9 dated 29.06.2004, when admittedly no challan had been presented on the date the petitioners retired.

11. Once this Court has held that the respondent authorities had no right to withhold the gratuity payable to the petitioners, it necessarily follows that the petitioners are entitled to interest for the delay in payment.

12. The Coordinate Bench of this Court in **CWP-15867-2001** titled as **“J.S. Cheema vs. State of Haryana and others”** decided on 20.11.2013 had held that the jurisprudential basis for grant of interest to a person was that the said person’s money had been used by somebody else and thus, even if there was no negligence on the part of the State, it could not be denied that money which rightly belonged to the employee, was in the custody of the State and was being used by it and thus, interest was granted to the petitioner therein on the delayed payment of retiral benefits. The relevant portion of the said judgment is reproduced hereinbelow:-

“1 to 3. xxx xxx

4. In the written statement, the plea taken is that the petitioner submitted his pension papers very late and that is why some delay was caused in the disbursal of his retiral benefits.

5. In my opinion, even if the assertion made in the written statement is presumed to be correct it would not disentitle the petitioner for claiming interest. 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 laying 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.

6. Learned Assistant Advocate General has further argued that some reasonable time has to be granted for processing the papers and the requirement of law is not that strict that interest must be ordered from the first day after retirement. I find some weight in this assertion.

7. Learned counsel for the petitioner has argued that as per the Government instructions the period of three months has to be taken as maximum period within which the retiral benefits has to be released. After

deducting those three months there is still a delay as mentioned above.

8. In the circumstances, I hold the petitioner entitled to interest @ 8% p.a. on the delayed payment of retiral benefits. The interest will become due w.e.f. 01.05.2000. Let the interest on the above components i.e. gratuity, arrears of pension and leave encashment be computed @ 8% p.a. from 01.05.2000 till the date of payment and the same be released to the petitioner within a period of two months from the date of receipt of a certified copy of this order, failing which, the petitioner would be entitled to claim the same with interest @ 9% p.a.

Petition stands disposed of in the above terms.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.”

13. Keeping in view the abovesaid facts and circumstances, all the six writ petitions are partly allowed and the petitioners are held entitled to interest @ 6% per annum as granted in the case of **Baljit Singh** (supra) on the delayed payment of gratuity and the said interest would accrue to the petitioners after three months from their date of retirement(s) till the date of actual payment. The respondent authorities are directed to release the amount to the petitioners on account of the said interest within a period of three months from the date of receipt of certified copy of the present order.

(VIKAS BAHL)
JUDGE

March 12, 2024
Davinder Kumar

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