

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-21869-2017 (O&M)

Reserved on 05.12.2023

Pronounced on 11.01.2024

Satpal

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. DS Adlakha, Advocate for the petitioner

Mr. Kapil Bansal, DAG Haryana

Ms. Veena Hooda, Advocate for respondents No.4

Sandeep Moudgil, J.

(1). The petitioner has filed the present writ petition invoking the jurisdiction of this Court under Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *certiorari* quashing the impugned order/Reply dated 29.05.2017 (Annexure P-9), vide which petitioner has been denied the Retirement benefits i.e. Leave Encashment, Death cum Retirement Gratuity, Group Insurance Scheme etc., and pay for the suspension period w.e.f. 21.05.2015 to 17.07.2015, refundable security amount which was got deposited at the time of appointment, LTC (Leave Travel Concession) for the Block Year 2012 to 2015 as well as promotion with retrospective effect. Further a direction is sought to release the retirement benefits i.e. Leave Encashment, Death cum Retirement Gratuity, Group Insurance Scheme etc. alongwith interest @ 18% for the delayed period and to give the pay for the suspension period w.e.f. 21.05.2015 to 17.07.2015, refundable security amount which was got deposited at the time of appointment as well as LTC (Leave Travel Concession) for the Block Year

2012 to 2015, along with interest @ 18% for the delayed period to the petitioner, in view of the service rules and also to grant promotion to the petitioner with retrospective effect i.e. the date when his junior namely Satish Kumar was promoted as Senior accountant along with consequential benefits with interest from the date of his entitlement.

(2). The petitioner joined the Cooperation Department as Clerk at the Karnal Central Cooperative Bank Ltd. on 21.11.1984, subject to fulfilling the formalities including refundable cash security as per appointment letter dated 19.11.1984. An FIR No.455 dated 04.11.2014 was registered at the instance of Babli under Section 406/420/120-B IPC at Police Station Indri. In the investigation conducted by four independent authorities, the petitioner was found to be innocent vide reports dated 26.12.2013, 25.02.2014, 07.05.2014 & 04.07.2014, however, the petitioner was suspended without any reason on 21.05.2015. The petitioner was thereafter reinstated w.e.f. 17.07.2015 and came to know that a junior person namely, Satish Kumar has been promoted. Thereafter, the petitioner was superannuated w.e.f. 31.05.2016 but his retiral benefits have not been released despite legal notice dated 10.10.2017. The petitioner approached this Court in CWP-3560-2017 which was disposed of vide order dated 22.02.2017 to decide the said legal notice within three months. Vide impugned order/reply dated 29.05.2017, the respondent NO.4 has denied the grant of retiral benefits to the petitioner on the ground of pendency of departmental enquiry.

(3). Learned counsel for the petitioner contended that the petitioner never received any notice or information with regard to initiation or pendency of any departmental enquiry/disciplinary proceedings against him

during his service tenure. Even the order of retirement of the petitioner dated 26.05.2016 does not specify that the same shall be subject to pendency of any inquiry or disciplinary proceedings.

(4). It is then argued that the petitioner being an employee of Cooperative Bank/Society is governed by Haryana State Central Cooperative Bank's Staff Service (Common Cadre) Rules, 1975 and there is no provision to initiate or continue any disciplinary proceedings against an employee after retirement. He submits that as per Rules 27.3 & 27.4 and Rule 28 of the Rules *ibid*, an employee against whom disciplinary action is proposed to be taken for gross misconduct shall be given a charge-sheet and sufficient time shall be given to employee to appear and produce evidence and as per Rule 2(p), the petitioner does not fall within the definition of employee and as such no proceedings could be initiated against a retired employee like the petitioner. Reliance has been placed on **Bhagirathi Jena vs. Board of Directors OSFC & Ors. 1999 (2) SLR 355 (SC)**.

(5). Notice of motion was issued on 26.03.2018 and pursuant thereto, respondent No.2 has filed short reply and contesting respondent No.4 has filed separate written statement dated 09.05.2019.

(6). As per the written statement filed by respondent No.4, it has been averred that the writ petition is not maintainable as Cooperative Societies are autonomous and regulated by subsidiary laws and guidelines and rules framed under the Cooperative Societies Act and as such, the petitioner has not availed any alternative remedy available under the Cooperative Societies Act, and has directly approached this Court.

(7). Ms. Veena Hooda, Advocate for respondent No.4 informs that an appeal under Rule 31 of the Haryana State Central Cooperative Banks Staff Service (Common Cadre) Rules, 1975 lies against the impugned order, which the petitioner has not availed. She further submits that all the retiral benefits are subject to service rules applicable to the petitioner which otherwise can be withheld pending enquiry.

(8). It is then averred that the petitioner is delaying the enquiry pending against him and before this Court he is trying to plead that his retiral benefits are not being released even though the same are subject to outcome of the pendency enquiry.

(9). Having heard learned counsel for the parties and after going through the record, this Court is of the considered view that the petitioner ought to have availed his remedy before the competent authority by filing appeal under Rule 31 of the Haryana State Central Cooperative Bank Service Rules, 1975. Rule 31 of the Rules *ibid* provides that an appeal against the orders of the competent authority imposing a penalty under Rule 27 shall lie with the authorities mentioned in column 4 of Rule 29, to be filed within 60 day from the date of communication of the order.

(10). Since the respondent No.4 has come up with the stand that the retiral benefits are subject to the outcome of the departmental proceedings, this writ petition is disposed of with a direction to the petitioner to file appeal under Rule 31 of the 1975 Rules, as aforesaid, within one month from today and in that case, the respondent No.4 shall not raise any objection against the limitation as provided under Rule 31.2.

(11). In view of the fact that the petitioner is a retired employee and is salary-less since 31.05.2016, it is directed that the competent authority shall decide the appeal of the petitioner by affording opportunity of personal hearing, within one month from the date of filing of appeal and if found entitled to, all the consequential benefits including that of pay during the suspension period as also the promotion from due date, shall be granted to the petitioner within two months thereafter, along with interest @ 6% p.a. from the date of accrual to actual realization.

(12). Ordered accordingly.

11.01.2024
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No