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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-30778-2018

Date of Decision: 13.03.2024

Raghubir Singh Malik

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Ashok Kumar Viridi, Advocate,
for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Udit Garg, Advocate,
for respondent Nos.2 to 6.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ, order or directions, preferably a writ in the nature of *mandamus* directing the respondents to make the payment of full amount of pension as the petitioner presently is being paid provisional pension (Annexure P-1), element of commutation of pension, gratuity, one month's salary in lieu of non-availing of LTC for the block year 2016-2019 along with the penal interest for delay in payment of leave encashment, element of commutation of pension, pension, one month's salary in lieu of non-availing of LTC, gratuity, arrears of difference of full pension and provisional pension to the petitioner.

2. The brief facts involved in the present case are that the petitioner

was working as an Executive Engineer in the respondent-Nigam and was scheduled to retire on attaining the age of superannuation on 30.06.2017. As per the learned counsel for the petitioner, the petitioner is having unblemished record. However, just a few days before his retirement, a charge-sheet dated 12.04.2017 was served to him vide Annexure R-2/1 with an allegation that while he was posted at Fatehabad in the year 2015, he did not verify some of the documents of some reputed persons. During the pendency of the charge-sheet, the petitioner retired on 30.06.2017, but he was not given any retiral benefits except of 100% provisional pension. Thereafter, vide Annexure P-2 on 16.01.2018, the charges against the petitioner were dropped by the competent authority. The petitioner had filed the present petition for release of the retiral benefits. However, as per the learned counsel for the parties, during the pendency of the present petition, the retiral benefits were already released to the petitioner since the charges were dropped. Now the subject matter of the present petition is restricted only for grant of interest on the delayed payments.

3. The learned counsel for the petitioner submitted that it is a case where due to the politics in the office when the petitioner was scheduled to retire, a few days before the date of retirement, a charge-sheet was issued to him on 12.04.2017 and thereafter he retired on 30.06.2017. To the aforesaid charge-sheet, he had filed a reply and had supplied all the documents to the concerned authority, but no inquiry officer was appointed. Thereafter, the various comments were received from the various officers pertaining to the explanation given by the petitioner and on the basis of the explanation given by the petitioner to the charges against him, he was found to be innocent and

thereafter, instead of proceeding further vide Annexure P-2, the charges were dropped. He further submitted that once the charges have been dropped and on the basis of petitioner being innocent, he is entitled for grant of interest on the delayed payment from the date of his retirement. He also submitted that the petitioner has been granted leave encashment with a delay of 8 months, LTC with a delay of 4 months, provisional pension with a delay of 1-4 months, commutation of pension with a delay of 23 months and 15 days, DCRG with a delay of 22 months and 15 days and gratuity with a delay of 43 months and 16 days. He further submitted that with regard to the LTC and provisional pension with a delay of 1-4 months, he does not wish to press for the same, but he is certainly entitled for the interest on the remaining of the aforesaid delay period. The learned counsel for the petitioner referred to a judgment of Full Bench of this Court passed in “A.S. Randhawa Vs. State of Punjab and others”, **1997(3) SCT 468**, in this regard.

4. On the other hand, learned counsel for the respondents-Nigam submitted that once there was a charge-sheet against the petitioner at the time of his retirement then the respondent-Nigam was within its right to have withheld the retiral benefits and 100% provisional pension paid to the petitioner and after the dropping of the charges, if at all any, delay has occurred, then the petitioner is entitled for interest on the delay to be calculated after two months from the dropping of the charges. In this regard, he also referred to Rule 79 of the Haryana Civil Services (Pension) Rules-2016 and also referred to Para No.5 of the reply wherein it has reproduced to contend that when an employee against whom the charges have been dropped, he will

not be entitled for grant of interest since the time it has been dropped, no interest shall be payable on the pension and death-cum-retirement gratuity. He also referred to Annexure R-2/11 wherein after the charge-sheet was issued to the petitioner, various comments were invited from not only from the petitioner but from various officers and from where it can be seen that it was recommended to take a lenient view which was a part of the comment of the Superintending Engineer and therefore, it was because of the fact that a lenient view was taken qua the petitioner since he has retired, the charges were dropped and therefore, in view of Clause 79(6)(ii) of Haryana Civil Services (Pension) Rules-2016, the petitioner is not entitled for the interest prior to the dropping of the charges.

5. I have heard the learned counsel for the parties.

6. The present petition has been filed for grant of retiral benefits but during the pendency of the same, the retiral benefits were released to the petitioner on the aforesaid dates as mentioned by the learned counsel for the petitioner. Therefore, the only subject matter of the present petition is as to whether the petitioner is entitled for grant of interest on the delayed payments or not. It is an admitted position that the petitioner was served with a charge-sheet on 12.04.2017 vide Annexure R-2/1 on the allegations that he did not verify some documents pertaining to some recruitment. Thereafter, the petitioner retired on attaining the age of superannuation on 30.06.2017. Vide Annexure P-2 dated 16.01.2018, the charges against the petitioner were dropped. The aforesaid order of dropping of the charges against the petitioner vide Annexure P-2 is reproduced as under:

“After having considered the charge sheet No. 02/Conf/DVN-3043 dated 12.04.2017 served upon Sh. R.S. Malik/XEN (now, Retd.), reply thereto & the comments of field offices, the competent authority has decided to file the same.

Accordingly, the charge sheet No. 02/Conf/DVN-3043 dated 12.04.2017 served upon Sh. R.S. Malik/XEN (now, Retd.), is hereby filed.

This issues with the approval of Chairman-cum-Managing Director, DHBVN, Hisar.”

7. A perusal of the aforesaid order would show that there is nothing in the order to suggest that the charge-sheet has been dropped only because a lenient view has been taken or that since the petitioner has attained the age of superannuation. However, on the other hand, a perusal of the aforesaid order would show that after considering the charge-sheet and also the reply thereto and the comments of the Field Offices that the competent authority decided to file the same i.e drop the same. In other words, from the aforesaid order it is crystal clear that the charges against the petitioner were dropped not because of the only fact that since he has retired or that some lenient view was taken but it appears that the charges were dropped on own its merits on the basis of the reply submitted by the petitioner, the comments of the field offices that the competent authority took a decision to drop the charges.

8. A perusal of the Annexure R-2/11 which has been referred by learned counsel for the respondents-Nigam would show that when the comments of the Superintending Engineer were invited which is so incorporated in the aforesaid Annexure, he recommended that a lenient view may be taken in deciding the charge sheet and thereafter, when the comments

of the Chief Engineer, OP were sought, he had so stated that the petitioner, namely, Raghbir Singh Malik, XEN is innocent in the instant case and keeping in view the above, the charge-sheet, in question, may be dropped and that the petitioner was not directly responsible for the lapses. The aforesaid comments of the Chief Engineer reproduced here as under:

“The CE/OP, DHBVN, Hisar vide memo No. Ch- 80/ESG-973 dated 25.10.2017 has supplied the comments on the defence reply submitted by the charged officer, which is reproduced as under:-

The contents of charge sheet issued to the officer, defence reply submitted by him & comments offered by the SE OP' Circle DHBVN, Fatehabad vide his office memo No. 1223/24 dated 04.10.2017 has gone through & it is observed that the relevant documents are verified by the concerned Dy. Supdt. of Division office & issue of EPF & ESI is being dealt by Divnl. Accountant. As such, the officer Sh. R.S. Malik Xen is not directly responsible for the lapses. Moreover, the stay of the officer at Fatehabad is only for 14 days. In such a short span, he cannot be expected to find & fix the responsibilities regarding lapses being committed by his subordinates & take remedial measures. Therefore, Sh. R.S. Malik, Xen is innocent in the instant case.

Keeping in view of above, the charge sheet, in question, may please be dropped.”

9. A perusal of the aforesaid would show that the charge-sheet was dropped against the petitioner after finding him innocent on the basis of its own merits and on the basis of the findings of the Chief Engineer wherein he has so stated that the petitioner is innocent and charge-sheet against him may be

dropped and consequently, Annexure P-2 was passed wherein the charges were dropped. Therefore, the arguments raised by learned counsel for the respondents-Nigam that it was because a lenient view was taken and because of the retirement of the petitioner, the charges were dropped is not only unsustainable but is against the record itself. Therefore, it is clear that the charges were dropped against the petitioner on its own merits by considering the reply, comments of the Field Offices and by taking a conscious decision.

10. Learned counsel for the respondents-Nigam has referred to Rule 79(6)(ii) of Haryana Civil Services (Pension) Rules-2016 which has been so reproduced in Para No.5 of the reply. However, strangely the preceding Rule i.e Rule 79(6)(i) of the Haryana Civil Services (Pension) Rules-2016 has not been reproduced. However, the learned counsel for the petitioner has pointed out to the aforesaid provision of Rule 79(6)(ii), wherein it has been so stated that when an employee is clearly exonerated of all the charges during the process of disciplinary proceedings and prove innocent, then the pension and gratuity shall be paid to him along with interest. The aforesaid provision of Rule 79(6) of the Haryana Civil Services (Pension) Rules-2016 is reproduced as under:

“(6) Where the Government employee against whom disciplinary proceedings are pending at the time of retirement and—

(i) he is clearly exonerated and steered clear of all the charges during the process of disciplinary proceedings and proved innocent, the pension and death-cum-retirement gratuity due to him shall be paid alongwith interest as per provisions laid

down in sub-rule (1).

- (ii) *he is held guilty, partially or fully, of the charges leveled against him, or the same are dropped on account of lack of evidence, i.e. he is not proved innocent, or disciplinary proceedings are dropped only on the grounds that the Government employee has retired, no interest shall be payable on the pension and death-cum-retirement gratuity if the same have been authorized within three months from the date of final decision on the disciplinary proceedings. In case of delay, interest shall be regulated as per provision laid down in sub-rule (1) for the delayed period.”*

11. A perusal of the aforesaid provision would show that the case of the present petitioner would fall in Rule 79(6)(i) and not under Rule 79(6)(ii) of the Haryana Civil Services (Pension) Rules-2016, since against him the charges were dropped on the basis of being proved innocent and not because of the reason that any lenient view was taken or that the charges were dropped only because of the reason that he had retired and which is so evident from the bare perusal of order dated 16.01.2018 (Annexure P-2), where the charges were dropped as reproduced above.

12. In view of the aforesaid facts and circumstances, the present petition is allowed. The respondents are directed to calculate the arrears of the petitioner on the delayed payments from the date of its accrual i.e. to be calculated after two months after his retirement till the date of its disbursal on the following heads i.e leave encashment, commutation of pension, DCRG, gratuity and other heads along with interest @ 6% per annum (simple). The aforesaid amount shall be paid to the petitioner within a period of two months

from today.

13. In case, the aforesaid amount is not paid to the petitioner within a period of two months from today, then the petitioner shall be entitled to future interest @ 9% per annum (simple) instead of 6% per annum (simple).

13.03.2024
Bhumika

(JASGURPREET SINGH PURI)
JUDGE

1. Whether speaking/reasoned
- Yes/No
2. Whether reportable:
- Yes/No