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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP-85-2022
Date of Decision : 04.12.2024

THE PUNJAB STATE CO-OPERATIVE SUPPLY AND MARKETING FEDERATION LTD AND ANR …. PETITIONERS

V/S

ASHWANI KUMAR GARG AND ORS …. RESPONDENTS

Sr. No.	**Case No.**	**Parties Name**
2.	CWP-10862-2020	THE PUNJAB STATE COOPERATIVE SUPPLY AND MARKETING FEDERATION LTD V/S APPELLATE AUTHORITY AND ORS
3.	CWP-13233-2022	THE PUNJAB STATE COOPERATIVE SUPPLY AND MARKETING FEDERATION LIMITED AND ANR V/S MAKHAN RAM AND ORS
4.	CWP-17083-2022	PUNJAB STATE COOPERATIVE SUPPLY AND MARKETING FEDERATION LTD V/S THE CONTROLLING AUTHORITY UNDER PAYMENT OF GRATUITY CUM ASSISTANT LABOUR COMMISSIONER JALANDHAR AND ORS
5.	CWP-20606-2022	PUNJAB STATE CO -OPERATIVE SUPPLY AND MARKETING FEDERATION LIMITED. V/S APPELLATE AUTHORITY UNDER PAYMENT OF GRATUITY ACT AND ORS.
6.	CWP-2869-2023	THE PUNJAB STATE COOPERATIVE SUPPLY AND MARKETING FEDERATION LTD V/S GURMEET SINGH AND ANR.
7.	CWP-7164-2020	THE PUNJAB STATE COOPERATIVE SUPPLY AND MARKETING FEDERATION LTD. V/S APPELLATE AUTHORITY AND ORS
8.	CWP-19823-2022	PUNJAB STATE COOPERATIVE SUPPLY AND MARKETING FEDERATION LTD AND ANR. V/S KAKA SINGH AND ORS

9.	CWP-15291-2022	THE PUNJAB STATE CO-OPERATIVE SUPPLY AND MARKETING FEDERATION LTD V/S THE APPELLATE AUTHORITY AND ORS

CORAM : HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. T.S.Sidhu, Advocate
for the petitioner in CWP-7164-2020
& CWP-85-2022.

Mr. Vikas Singh, Advocate and
Ms.Anamika Sheoran, Advocate
for the petitioner in CWP-10862-2020.

Mr. P.I.P.Singh, Advocate
for the petitioner in CWP-13233-2022 &
CWP No.19823 of 2022.

Ms. Kushaldeep Kaur, Advocate and
Mr. Siddhanth Arora, Advocate
for the petitioner in CWP-17083-2022.

Ms. Sidhi Bansal, Advocate
Ms. Ridhi Bansal, Advocate
for the petitioner in CWP-15291-2022.

Mr. Ramandeep Singh, Sr. DAG, Punjab and
Mr. Aman Dhir, DAG, Punjab
for respondent No.1.

Mr. Harjot Singh Bedi, Advocate
for respondent No.3 in CWP-17083-2022.

Mr. Shiv Kumar, Advocate with
Mr. Raman Kaplish, Advocate and
Mr. Lovedev Singh, Advocate
for respondent No.3 in CWP No.10862 of 2020,
CWP No.13233 of 2022, CWP No.7164 of 2020 &
CWP-85-2022 & CWP-15291-2022.

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JAGMOHAN BANSAL, J. (Oral)

1. By this common order, the above-noted petitions are hereby adjudicated as issues involved and prayer sought in all the petitions are common. For the sake of convenience and with the consent of parties, the

facts are borrowed from CWP-85-2022.

2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting of order dated 28.09.2018 (Annexure P-1) whereby Controlling Authority under Payment of Gratuity Act, 1972 (for short '1972 Act') and order dated 29.10.2020 (Annexure P-3) whereby Appellate Authority have directed the petitioner to pay gratuity alongwith interest.

3. The petitioner is a Public Sector Undertaking and engaged in the business of manufacture and supply of different agriculture products. Respondent No.3 (for short 'employee') joined petitioner on 21.09.1981. He retired on attaining the age of superannuation on 30.06.2017. During the tenure of his service, he was served multiple charge sheets. In all the charge sheets, there was allegation of misconduct causing loss to the Organization. The petitioner has concluded proceedings with respect to a few charge sheets, however, proceedings with respect to a few charge sheets are still pending. It is apt to notice that petitioner retired on 30.06.2017 and charge sheets were issued during 2015-2017 meaning thereby charge sheets were issued at the fag end of his service tenure.

4. The petitioner on account of pendency of aforesaid charge-sheets withheld gratuity of the employee. No order of dismissal or removal from service was passed and he was made to retire subject to departmental proceedings.

5. The employee in 2017 filed an application before the Controlling Authority seeking release of gratuity along with interest. The said authority vide impugned order dated 28.09.2018 ordered the petitioner to pay a sum of Rs.9,76,988/- along with interest @ 10% p.a. to respondent-employee. The petitioner deposited demand draft with Controlling Authority and preferred appeal before Appellate Authority which vide impugned order dated 29.10.2020 has dismissed the same. Hence, the present petition.

6. Learned counsel for the petitioner submits that indubitably as per Section 4(6) of 1972 Act, gratuity can be forfeited for the act and omission contemplated therein. As per Rule 5.7 of Punjab State Co-operative Supply and Marketing Federation Employees (Common Cadre) Service Rules, 1990 (for short '1990 Rules'), if Rules are silent on any issues or no provision has been made on a specific point, the Punjab Government Rules/Instructions are applicable and as per Rule 2.2 of Punjab Civil Service Rules (Volume-II) (for short 'PCS Rules'), if departmental or judicial proceedings are initiated against an employee during his service or within four years from the date of retirement, the proceedings may continue and gratuity can be withheld. In the case of respondent, the proceedings were initiated prior to his retirement, thus, departmental proceedings initiated before his retirement can continue and he is deemed to be in service for the purpose of those proceedings. The PCS Rules permit to withhold gratuity during the pendency of departmental proceedings, thus, petitioner has rightly withheld gratuity of the respondent. There are allegations of causing loss to the Organization

and there are all probabilities of creation of financial liability against the respondent, thus, petitioner has rightly withheld gratuity of the respondent. As per Rule 6.16AA(6), Government has right to effect recovery from gratuity, in the circumstances as recoveries can be effected from an ordinary pension under Rule 2.2(b). As per proviso to Rule 2.2(b), an employee is deemed to be in service if departmental proceedings are pending against him. As departmental proceedings were pending against the respondent while he was in service, those proceedings can be concluded even after his retirement and he can be subjected to punishment of dismissal/removal as if in service.

7. *Per contra*, Mr. Shiv Kumar, Advocate submits that Rule 2.2 of PCS Rules is inapplicable to employees of MARKFED-petitioner because employees of petitioner are not entitled to pension. Rule 2.2 provides for partial or complete denial of pension. The employees of petitioner are not entitled to pension, thus, there is no question of application of Rule 2.2. The petitioner is invoking Rule 2.2 with the aid of Rule 5.7 of 1990 Rules. The rules made by authorities cannot override 1972 Act especially in view of Section 14 thereof.

8. I have heard the arguments of learned counsel for the parties and perused the record with their able assistance.

9. The conceded position emerging from the record is that the petitioner is a Public Sector Undertaking. It has framed its rules governing service of its employees. It has made 1972 Act applicable to its employees. As per its Rules, gratuity is payable to the employee on his

retirement or death. The respondent-employee has retired. Prior to his retirement, he was served different charge sheets alleging misconduct causing loss to the Organization. Few departmental cases are still pending though others are concluded. As per Rule 5.7 of 1990 Rules, if there is no specific rule with respect to a specific point, Punjab Government Rules/Instructions are applicable.

10. Indubitably, the respondent is governed by 1972 Act. Section 4(6) specifically provides for forfeiture of gratuity. It provides that gratuity may be forfeited in case an employee has caused damage or loss to the Organization. It is further provided that gratuity may also be forfeited if services of the employee are terminated on account of riotous or disorderly conduct or he is found involved in an offence involving moral turpitude. Sub-sections (1) and (6) of Section 4 of 1972 Act, for the ready reference, are reproduced as below:-

> "*Section: 4 Payment of gratuity.*
>
> *(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years, -*
>
> *(a) on his superannuation, or*
>
> *(b) on his retirement or resignation, or*
>
> *(c) on his death or disablement due to accident or disease:*
>
> *Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:*
>
> *Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any*

such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

Explanation.: For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he, was capable of performing before the accident or disease resulting in such disablement.

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(6) Notwithstanding anything contained in sub-section (1), -

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

(b) the gratuity payable to an employee may be wholly or partially forfeited]

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment."

11. The petitioner with respect to its employees has made 1990 Rules which govern different aspects of the employees. These rules provide for payment of gratuity. Rule 5.7 provides that if these Rules are silent on any issue and no provision has been made on any specific point, Punjab Government Rules/Instructions on that issue will apply. The

petitioner with the aid of said Rule is claiming that Rule 2.2(b) of PCS Rules is applicable to its employees. Rule 5.7 of 1990 Rules and Rule 2.2(b) of PCS Rules are reproduced as below:-

> Rule 5.7 of 1990 Rules
>
> *"5.7 If these Rules are silent on any issue or no provision has been made on any specific point, the Punjab Government Rules/instructions on that issue will apply."*
>
> Rule 2.2 (b) of Punjab Civil Services Rules
>
> *(b) The Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings, to have been guilty of grave misconduct or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on reemployment after retirement.*
> *Provided that—*
> *(1) such departmental proceedings, if instituted while the officer was in service whether before his retirement or during his re-employment shall after the final retirement of the officer, be deemed to be a proceeding under this rule and shall be continued and concluded by the authority by which it was commenced in the same manner and as if the officer had continued in service,*
> *(2) such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment—*
> *(i) shall not be instituted save with the sanction of the Government;*
> *(ii) shall be in respect of an event which took place not more than four years before the institution of such*

proceedings; and

(iii) shall be conducted by such authority and at such place or places as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made;

(3) such judicial proceedings, if not instituted while the officer was on duty either before his retirement or during his re-employment, shall be instituted in respect of an event as is mentioned in clause (ii) of proviso (2); and

(4) The Public Service Commission shall be consulted before final orders are passed.

Explanation.— For the purpose of this rule:-

(1) Departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him or, if the officer has been placed under suspension from an earlier date, on such date; and

(2) Judicial proceedings shall be deemed to have been instituted—

(i) in the case of criminal proceeding, on the date on which the complaint is made or a challan is submitted to a criminal court; and

(ii) in the case of civil proceeding, on the date on which the plaint is presented or, as the case may be, an application is made to civil court.

Note 1.— As soon as proceedings of the nature referred to in the above rule are instituted, the authority which institutes such proceedings should without delay intimate the fact to the Accountant General.

Note 2.— In a case in which a pension as such is not withheld or withdrawn, but the amount of any pecuniary loss caused to Government is ordered to be recovered from the pension, the recovery should not ordinarily be made at a rate exceeding one-third of the gross pension originally sanctioned including any amount which may have been commuted."

11.1 As per Rule 2.45 (b) of PCS Rules (Volume-I), pension includes gratuity. Rule 2.45 (b) is reproduced as below:

> *"Except when the term, "pension" is used in contradiction to "Gratuity", pension includes Gratuity"*

12. Undoubtedly, as per Rule 5.7 of 1990 Rules, if Rules are silent on any issue or no provision has been made on any specific point, the Punjab Government Rules are applicable. It means petitioner-MARKFED by way of reference has made PCS Rules applicable to its employees where its own Rules are silent. In the 1990 Rules, there is no provision with respect to withholding of gratuity of an employee who is facing departmental proceedings or judicial proceedings at the time of his retirement. Consequently, PCS Rules can be made applicable with respect to said situation. Rule 2.2(b) provides that Government has right to withhold or withdraw whole or any part of pension whether permanently or for a specified period as well as right to order recovery from pension any pecuniary loss caused to Government if in departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service. Proviso to said Rule provides that such departmental proceedings, if instituted while the officer was in service, shall after his retirement be deemed to be proceedings under this Article and shall be continued and concluded by the authority by which it was commenced.

13. From the reading of Rule 2.2(b) of PCS Rules, it appears that

petitioner has right to recover loss caused to it from the pension. It is undisputed that pension includes gratuity, thus, petitioner, as per said Rule, has right to recover loss caused to it from the gratuity. Rule 2.2(c) provides for withholding of gratuity. It empowers Government to withhold gratuity during the pendency of departmental or judicial proceedings. The petitioner is also relying upon said Rule to claim that petitioner has right to withhold gratuity during the pendency of departmental proceedings. Rule 2.2(c) for the ready reference is reproduced as below:-

> "*(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. The gratuity, if allowed to be drawn by the competent authority on the conclusion of the proceedings will be deemed to have fallen due on the date of issue of final orders by the competent*

authority"

[Emphasis Supplied]

14. The employees of petitioner are not entitled to pension. From the in-depth reading of Rule 2.2(b), it is evident that the said Rule provides for withholding or withdrawing of pension or any part of it, or recovery from pension any pecuniary loss caused to Government. If in the departmental or judicial proceedings, the employee is found guilty of grave misconduct or negligence during the period of his service, the Government has right to recover pecuniary loss caused to it. The said Rule provides for recovery from pension and respondent is not entitled to pension. He is entitled to gratuity or other benefits but he is not entitled to pension. The said Rule is meant for recovery from a pensioner from his pension on account of loss caused by him during the course of service. This Court in ***CWP No.26728 of 2014*** titled as **'*Gurinder Singh vs. Punjab Agro Industries Corporation* (PAIC) Ltd.'** has held that rule 2.2(b) is inapplicable to employees of Punjab Agro Industries Corporation. Similarly this Court in ***CWP No.5254 of 2005*** titled as **'*Nirmal Singh v. Punjab State Civil Supplies (PUNSUP)*'** has held that Rule 2.2(b) allows the department to impose cut in pension whereas employees working with PUNSUP do not enjoy benefit of pension after their retirement. The Court has further concluded that after retirement, in terms of Rule 2.2 (b) proceedings against employees of PUNSUP cannot be continued or initiated.

15. The petitioner is relying upon Rule 2.2(b) and (c) of PCS Rules to contend that gratuity during the departmental proceedings can be

withheld. Section 14 of 1972 Act provides that provision of this Act shall override provisions of other enactments. Section 14 of 1972 Act reads as:-

> ***Section: 14 Act to override other enactments, etc.***
> *"The provisions of this Act or any rule made there under shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act."*

16. From the perusal of above quoted section, it is evident that provision of 1972 Act shall have effect notwithstanding anything inconsistent contained in any enactment, instrument or contract other than that Act. Section 4(6) specifically provides for forfeiture of gratuity. It provides for forfeiture in following circumstances:

(i) employee is terminated for any act, willful omission or negligence causing any damage or loss to or destruction of property of employer.

(ii) employee is terminated for his riotous or disorderly conduct or any other act of violence.

(iii) employee is terminated for any act which constitutes an offence involving moral turpitude.

17. From the reading of Section 4(6), it is evident that gratuity can be withheld for causing loss to employer; or riotous or disorderly conduct or violence; or committing an offence involving moral turpitude.

17.1 In the common parlance, the expression termination means dismissal or removal from service, however, the said expression in 1972 Act is having different colour and contour. Section 4(1) provides that termination may be by way of superannuation or retirement or resignation or death or disablement of the employee. It shows that for the purpose of Section 4, termination does not mean dismissal or removal from service, thus, Section 4 (6) is applicable where in the departmental proceedings it is found that employee by his act, willful omission or negligence has caused damage or loss to the Organization; or he is guilty of riotous or disorderly conduct or any other act of violence; or he has committed an offence involving moral turpitude. The requirement is not dismissal or removal from service to invoke Section 4(6). The requirement is causing loss to Organization by any act or willful omission or negligence; or committing riotous or disorderly conduct; or committing offence involving moral turpitude.

The petitioner in the instant case has initiated departmental proceedings which may culminate in determination of loss caused to the Organization. There is no case against any respondent that he has committed riotous or disorderly act or he was involved in violence or commission of offence involving moral turpitude. The allegation against respondents in all the petitions is that they have caused loss to the Organization by way of their act and omission.

18. The petitioner as well as respondents are relying upon a three Judge Bench judgment of Supreme Court in ***'Chairman-Cum-Managing Director, Mahanadi Coalfields Limited Vs. Sri Rabindranath Choubey'***

(2020) 18 SCC 71. The Bench adverted to question of withholding of gratuity in case of pendency of departmental proceedings after retirement and power of authorities to impose major penalty including dismissal from service after retirement. The Court considered Rule 34.2 or 34.3 of Coal India Executives Conduct Discipline and Appeal Rules, 1978 (for short 'CDA Rules'). Rule 34.2 of CDA Rules specifically provides that disciplinary proceedings if instituted while the employee was in service shall be continued and concluded by the authority by it was commenced in the same manner as if the employee had continued in service. Considering scope of Section 4(6) of 1972 Act and Rule 34.2/34.3 of CDA Rules, all the Hon'ble Judges concluded that authority can withhold gratuity till the conclusion of departmental proceedings. Two Hon'ble Judges formed an opinion that major punishment including dismissal from service can be imposed despite retirement of employees, however, one Hon'ble Judge formed an opinion that after retirement employee cannot be dismissed from service.

From the reading of different paragraphs of the judgment, it is evident that Supreme Court has concluded that Section 4 (6) of 1972 Act does not deal with pendency of departmental proceedings. The CDA Rules are not contrary to Section 4(6) of 1972 Act.

19. In the case in hand, the respondent is pleading that he cannot be dismissed from service in terms of Rule 2.2.(b) of PCS Rules. The requirement to forfeit gratuity in terms of Section 4(6) (a) is not dismissal from service. The requirement under Section 4 (6) (a) is causing loss or damage to the Organization by any act, willful omission or negligence.

As per proviso to Rule 2.2 (b), the proceedings initiated prior to retirement may continue. As noted hereinabove as well as held by this Court in ***Nirmal Singh (supra)***, an employee may not be dismissed from service in terms of Rule 2.2(b), however, question of dismissal from service is not relevant for the adjudication of instant petitions. The instant petitions are confined to withholding of gratuity during the pendency of departmental proceedings.

18. From the perusal of Rule 2.2(c) of PCS Rules read with Section 4(6) of 1972 Act, it is evident that as per Section 4(6), the employer has power to forfeit the gratuity whereas PCS Rules are providing for withholding of gratuity. The power to withhold gratuity is not at par with power to forfeit the gratuity. Forfeiture of gratuity means denial of gratuity forever whereas under PCS Rules, power is confined to withholding of gratuity. The petitioner has not forfeited gratuity of the respondent. It is nobody's case that gratuity has been forfeited. The petitioner has withheld gratuity on account of pending departmental proceedings. As per Section 4(6) of 1972 Act, gratuity can be forfeited in case of termination on the grounds as contemplated in the said Section. The petitioner is claiming that as per 1990 Rules read with PCS Rules as well as The Punjab State Cooperative Supply and Marketing Federation Employees (Punishment & Appeal) Rules, 1990, the respondent may be dismissed/removed even after his retirement because departmental proceedings were initiated prior to his retirement and he is deemed to be in service for the purpose of departmental proceedings. The petitioner has heavily placed reliance upon proviso to Rule 2.2(b) of PCS Rules which

permits continuation of proceedings even after retirement if initiated prior to retirement. The petitioner has not placed on record any document disclosing that proceedings for dismissal or removal of respondent are pending before the authorities. Concededly, the departmental proceedings are pending. As per respondent, the proceedings cannot continue and at-least he cannot be dismissed after his retirement because Rule 2.2(b) is not applicable to petitioner's employees. The respondent in support of his contention that an employee after his retirement cannot be dismissed has placed reliance upon judgments of this Court in ***Gurinder Singh (supra)*** and ***Nirmal Singh (supra)***.

20. The judgments of this Court cited by respondent relate to workers of Punjab State Civil Supplies Corporation Limited (PUNSUP) and Punjab Agro Industries Corporation (PAIC). These are not relating to employees of petitioner-Markfed. The instant matter relates to withholding of gratuity. It does not relate to power of petitioner to impose major punishment after retirement of the employee. If this Court, at this stage, concludes that proviso to Rule 2.2 (b) of PCS Rules is inapplicable to employees of Markfed or they cannot be dismissed or departmental proceedings cannot continue after retirement, it would amount to setting aside of departmental proceedings which is not subject matter of the instant petition. Thus, it would not be just and fair on the part of this Court to hold that the employee cannot be dismissed after his retirement.

21. The petitioner initiated departmental proceedings before retirement of the respondent. Multiple charge sheets were issued. Few cases have concluded and a few are still pending. The petitioner did not exercise power of dismissal in any case. Departmental proceedings are

pending in all the connected petitions and in every case one or more charge-sheets are pending. An employee may or may not be dismissed/removed in the departmental proceedings. On conclusion of the inquiry, the disciplinary authority may impose one or another punishment. The punishment may be minor or major. If the employee is exonerated, he would be entitled to gratuity along with interest but if he is held guilty and his case falls in any of the situation contemplated by Section 4(6) of 1972 Act, the petitioner would be entitled to forfeit whole or part of the gratuity. This Court, at this stage, cannot conclude, especially when there is no challenge to departmental proceedings by the respondent, that no punishment as contemplated by Section 4(6) would be awarded or petitioner cannot award punishment of dismissal from service with retrospective effect.

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 to 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."

22. A Coordinate Bench of this Court in the case of similarly situated employees of the petitioner vide judgment dated 16.03.2021 in ***CWP No.14029 of 2020, Shanti Nandan v. State of Punjab and others*** has held that where charge-sheet is issued during the tenure of employment, employer has right to withhold amount of gratuity. The relevant extracts of the judgment read as under:-

"In view of the above-mentioned Rules, it further becomes explicit that since the charge-sheets had been issued to both the petitioners during the tenure of their employment/re-employment with the respondent-Federation, therefore the respondent-Federation was well within its rights to withhold the amount of gratuity, as payble to the petitioners, till the conclusion of the disciplinary proceedings launched against them.

12. Moreover, it has, recently, been observed by a three Judges' Bench of the Hon'ble Supreme Court in "Chairman-cum-Managing Director, Mahanadi Coalfields Limited vs. Sri. Rabindranath Choubey" 2020(2) SCT 554 that "where the disciplinary proceedings were initiated *before the superannuation of an employee, the payment of gratuity could be withheld till the proceedings were concluded". In the light of these observations also, it becomes crystal clear that the respondents could withhold the amounts of the Gratuity of the petitioners, against whom the disciplinary proceedings had, admittedly, been initiated before their superannuation, till the conclusion of the disciplinary proceedings carried out against them.*

23. The respondent retired on 30.06.2017. A period of more than 7 years from the date of his retirement has passed away. The power to continue departmental proceedings after retirement is one aspect, however, departmental proceedings cannot be permitted to continue for indefinite period especially when job of respondent is not pensionable and his gratuity has been withheld. Continuation of proceedings after more than 5 years from the date of retirement is unjustified and unfair.

24. This Court is not oblivious of the fact that petitioner is a public sector undertaking and respondents are not entitled to pension. If despite pending departmental proceedings, gratuity is paid to the respondent and in the departmental proceedings demand is created against him, it would be very difficult for the petitioner to recover the said payment. The petitioner at the most will have to pursue remedy of civil suit which is a time consuming process. It would multiply litigation. The respondent had retired in 2017 and in other connected cases, the employees had retired more than 5-10 years back and proceedings are still pending before authorities. The petitioner has made a statement that proceedings would be concluded within time as prescribed by this Court.

25. In these circumstances, neither it would be fair to permit the petitioner to continue the proceedings for indefinite period nor without

granting some time, ask to conclude the pending proceedings.

In view of above discussion and legal position, the orders passed by the authorities cannot be upheld. The petitioner cannot be compelled to make payment towards gratuity, however, to maintain balance, this Court finds it appropriate to direct the petitioner to conclude departmental proceedings within three months where charge-sheet was issued before 01.01.2020 and within six months where charge-sheet was issued on or after 01.01.2020. The petitioner subject to outcome of departmental proceedings shall make payment to respondents within two months from the expiry of aforesaid period alongwith interest @ 10% p.a. The interest shall be payable from the expiry of 30 days from the date of retirement to date of payment.

26. Disposed of in above terms.

(JAGMOHAN BANSAL)
JUDGE

04.12.2024
Ali

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No