255 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CWP No.25169 of 2022 (O&M)
Date of Decision:10.04.2024

Dr. Bharat Bhushan Kakkar ...**Petitioner**

Versus

State of Haryana and Others …**Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Wazir Singh, Advocate
for the petitoner.

Mr. Pankaj Midda, Addl.AG, Haryana.

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HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present petition, the grievance being raised by the petitioner is that though he has already retired from service on attaining the age of superannuation on 30.09.2021 but all his retiral benefits have not been released to him which is causing prejudice to the petitioner. Hence, the respondents be directed to release his pensionary benefits as there is no impediment in releasing of the said benefits.

2. Upon notice of motion, the respondents have filed reply and has conceded the fact that the petitioner has retired on attaining the age of superannuation on 30.09.2021 and there is no disciplinary proceedings pending though, the same are still contemplated even as of now by the department to be initiated against the petitioner. Learned State counsel submits that there is an FIR which is pending against the petitioner, being FIR No. 394 dated 18.08.20021 and keeping in view the pendency of the said FIR, the respondents are well within its jurisdiction to withhold certain pensionary benefits when read with Rule 81 of Haryana Civil Service (Pension) Rules, 2016.

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

4. It may be noticed that the employer has a right to withhold certain pensionary benefits in case any disciplinary proceedings or any criminal proceedings are pending against the employee. The pendency of the disciplinary proceedings has already been explained by Hon'ble Supreme Court of India while passing order in case titled as "**Union of India Vs. K.V. Jankiraman", 1991 (4) SCC 109**. As per Hon'ble Supreme Court of India, in case a charge sheet has been served upon a delinquent employee in a departmental proceedings, the disciplinary proceedings can be stated to be pending against the said employee. Similarly, with regard to the criminal proceedings, in case charges have been framed against an employee by a competent Court of law, criminal proceedings are deemed to be pending against the said employee.

5. In the present case, relevant paragraph of the said judgment is as under:

> "*6. 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 chargesheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceed- ings/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.* "

6. Though the criteria mentioned by the Hon'ble Supreme Court of India are not fulfilled in the facts and circumstances of the present case, as it is a conceded position that no departmental proceedings is pending against the petitioner even as of now, much less at the time when the petitioner retired on 30.09.2021. With regard to the criminal proceedings in FIR No. 394 dated 18.08.2021, it is conceded that no charges have been framed against the petitioner, even as of now.

7. That being so, the pensionary benefits admissible to the petitioner could not have been stopped.

8. Further, the same question of law came up for consideration before the Division Bench in LPA No.314 of 2023 and it has already been held that in case there was no disciplinary proceedings pending or criminal proceedings pending in terms of the judgment of **K.V. Jankiraman's case (*supra*)**, the pensionary benefits could not have been withheld. Learned counsel for the respondents has not been able to rebut the said factual aspect as well as the settled principle of law.

9. Learned counsel for the respondent has raised contention that even if a complaint is pending before the Vigilance, the Rule 81 of 2016 Rules permits the Department to withhold the pensionary benefits, hence pendency of FIR is enough to withhold the pensionary benefits.

10. In the present case, the FIR in question against the petitioner was not registered by the Department dealing *qua* any allegation in respect of any official duty but is an outcome of a private dispute between the petitioner and the complainant. Keeping in view the fact that even when the charges have not been framed in the said FIR so as to *prima facie* come to the conclusion that the petitioner is guilty of the allegation alleged, it will be too much to say that the respondents are within their jurisdiction to withhold the pensionary benefits. Rule 81 of 2016 Rules only deals with the working of an employee while discharging the official duty hence, the same cannot be imported to any FIR which is pending so as to hold that mere pendency of an FIR will be a reason to withhold the pensionary benefits of the petitioner and that too by ignoring the judgment of Hon'ble Supreme Court of India in **K.V. Jankiraman's case (supra).**

11. In the present case, the next question is whether the petitioner is entitled for grant of interest. As per the judgment of the Full Bench in ***"A.S. Randhawa v. State of Punjab and others,1997(3) SCT 468"*** , an employee is entitled for the release of pensionary benefits within a period of 02 months in case there is no impediment. Where, the pension has not been released within the time frame, the employee is held entitled for grant of interest to

compensate. The relevant paragraph in the judgment of Full Bench in case "***A.S. Randhawa v. State of Punjab and others***" is as under:

> " *Since a government employee on his retirement becomes immediately entitled to pension and other benefits in terms of the Pension Rules, a duty is simultaneously cast on the State to ensure the disbursement of pension and other benefits to the retirer in proper time. As to what is proper time will depend on the facts and circumstances of each case but normally it would not exceed two months from the date of retirement which time limit has been laid down by the Apex Court in M. Padmanabhan Nair's case (supra). If the State commits any default in the performance of its duty thereby denying to the retiree the benefit of the immediate use of his money, there is no gainsaying the fact that he gets a right to be compensated and, in our opinion, the only way to compensate him is to pay him interest for the period of delay on the amount as was due to him on the date of his retirement."*

12. Similarly, a Coordinate Bench of this Court has held that where an amount belonging to an employee has been retained by the Department to their favour, the employee becomes entitled for grant of interest. The relevant portion of the judgment passed by the Coordinate Bench of this Court in ***"J.S. Cheema v. State of Haryana, 2014(13) RCR (Civil) 355"*** is as under:

> " *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 lying 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."*

13. In the present case, it has already been held that on the date when the petitioner retired on 30.09.2021, there was no valid justification with regard to withholding of the pensionary benefits. That being so, it has to be held that there is no impediment in the release of the pensionary benefits as on 30.09.2021 and it is a conceded position that those pensionary benefits were not released within a period of two months, hence, keeping in view the settled principles of law, as cited hereinbefore, the petitioner

becomes entitled for grant of interest so as to compensate him for the prejudice caused.

14. Accordingly, the pensionary benefits be released alongwith interest @6% per annum to the petitioner, from the date the amount becomes due till the date of its realization within a period of 08 weeks of receipt of copy of this order.

15. Liberty is granted to the respondent-Department in case, they have valid claim to obtain the reimbursement of the interest granted to the petitioner from any other Department.

16. Disposed of accordingly.

10th April, 2024 **(HARSIMRAN SINGH SETHI)**
Sonia Puri **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/ No.