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

CWP-28933 of 2022
Date of decision: 09.02.2024

Baljit Singh

......Petitioner

Versus

State of Punjab and others

......Respondents

**CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR**

Present: - Mr. Amrik Singh, Advocate,
for the petitioner.
Mr. Ajit Singh Natt, AAG, Punjab.
Mr. Baljinder Singh, Advocate,
for respondent No.3.
Mr. Parambir Singh, Advocate,
for respondent No.4.

**NAMIT KUMAR, J.**

1. Petitioner has approached this Court by way of filing the present petition under Articles 226/227 of the Constitution of India seeking a writ of *certiorari* for quashing the order dated 22.11.2022 (Annexure P-9) vide which the claim of the petitioner for grant of interest on the delayed payment of retiral benefits stands declined and further a writ of *mandamus* has been sought for directing the respondents to grant interest @ 18% per annum on the retiral benefits, which include gratuity, arrears of pension, regular pension and arrears of leave encashment on account of revised pension, which have been paid after a considerable delay to the petitioner, after his retirement on 31.03.2012.

2. Brief facts, as have been stated in the petition, are that the petitioner was promoted as Junior Engineer on 09.07.1999 and retired as

such on 31.03.2012 on attaining the age of superannuation from the office of Municipal Corporation, Patiala and thereafter GPF amount of Rs.2,49,910/-, leave encashment amount of Rs.3,48,320/- was paid to him. Regular pension and gratuity was not disbursed to the petitioner and only provisional pension was granted, in view of case bearing FIR No.5 dated 12.07.2011 under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 and Section 120-B IPC registered at Police Station Vigilance Bureau, Patiala, registered against him. The petitioner had earlier filed CWP No.12990 of 2021 seeking directions to the respondents to revise the pay of the petitioner in accordance with notification dated 01.12.2011 by granting pay scale of Rs.15600-39100+5400 grade pay. The said writ petition was disposed of by this Court vide order dated 16.07.2021, with a direction to the respondents to consider the legal notice dated 19.04.2021, by passing a speaking order, preferably within a period of one month from the date of receipt of certified copy of the order. Thereafter, the department has revised his pay and given him accrued arrears upto 31.03.2012. It has further been averred that gratuity amount was not released to the petitioner on account of pendency of FIR No.5 dated 12.07.2011, despite the fact that cancellation report was accepted by the learned Special Judge, Patiala, on 13.01.2021. It has further been averred that despite 'NOC' issued by the Municipal Corporation, Ludhiana, vide letter dated 26.09.2012 (Annexure P-6), gratuity amount was not released to the petitioner and the same has been released only on 03.11.2022 despite the fact that no chargesheet/criminal proceedings were pending against him. Therefore, he is also entitled for interest on the delayed payment of retiral benefits. Thereafter, petitioner served legal notice dated 10.06.2022 upon the respondents and since no reply/action was taken, therefore, the petitioner again approached this Court by way of filing CWP No.14236 of 2022 seeking directions to release all the pensionary benefits in his favour. In terms of said order, petitioner has been given gratuity amount of Rs.7,44,975/- on 03.11.2022 and pension amount of Rs.2,24,101/- on 07.11.2022 and rejected his claim regarding interest on the delayed payment. In the meantime, petitioner filed COCP No.2265 of 2022, which stands disposed of as infructuous on 09.03.2023 as all the benefits i.e. ACP, leave encashment, gratuity and pension have already been paid to the petitioner.

3. On issuance of notice of motion, written statement on behalf of respondent No.3 has been filed and it has been stated therein that the petitioner was not disbursed the gratuity in view of FIR No.5 dated 12.07.2011 and the same was cancelled by the Court of learned Special Judge, Patiala, vide order dated 13.01.2021 and since respondent No.3 was not party to the abovesaid criminal case, therefore, petitioner informed the office of respondent No.3, vide application dated 03.06.2021 that the criminal case against him stands disposed of. Accordingly, the case of the petitioner was proceeded for disbursement of the retiral dues, but on perusal, it was found that since the petitioner belonged to the provincial cadre, therefore, no objection certificate from the Government was needed. Accordingly, letter dated 16.08.2021 was sent to the Government for sending 'NOC' of the petitioner.

Government issued conditional 'NOC' dated 17.08.2021 and directed to obtain 'NOC' from all the Corporations/offices/branches where the petitioner had worked before his retirement. Accordingly, respondent No.3 issued letters dated 20.08.2021 and 22.09.2021 to Municipal Corporation, Ludhiana, for issuing no objection certificate of the petitioner. Municipal Corporation, Ludhiana, issued letter bearing No.411 dated 17.09.2021 in which it was clearly written that two measurement books bearing No.2482 and 2483 which were issued to the petitioner on 15.06.2007 are pending against him. Show cause notice bearing No.398/MOD dated 29.01.2021 had been issued to the petitioner and the proceedings of the same are pending, therefore, no objection certificate cannot be issued to the petitioner. Accordingly, the petitioner was intimated by the office of respondent No.3 vide letter bearing No.333/D/Establishments dated 28.09.2021. It has further been submitted that thereafter petitioner sent his application on 03.06.2021 informing that the criminal case against him was no longer pending. Accordingly, the case of the petitioner was processed for disbursing the retiral dues and a letter was written to Municipal Corporation, Ludhiana for sending NOC of the petitioner to the Municipal Corporation, Patiala. Reply was received from Municipal Corporation, Ludhiana vide letter dated 17.09.2021 to the same effect as stated in its letter No.411 dated 17.09.2021. Thereafter, the office of the Municipal Corporation, Ludhiana, issued letter bearing No.130/XEN/E/D dated 01.11.2022 in which they have asserted that earlier NOC bearing No. 264/MOED dated 26.09.2012 was issued to the petitioner in relation to MB No.2483.

Thereafter, DDR was registered at Police Station Division No.6 regarding MB No.2483 and after obtaining legal advice which was further approved by the Commissioner, Municipal Corporation, Ludhiana vide order dated 01.11.2022 the petitioner was given no dues. It has further been submitted that in view of the above facts, petitioner is not entitled for grant of interest.

4. Learned counsel for the petitioner has submitted that the action of the respondents in withholding the gratuity amount of the petitioner only due to registration of FIR No.5 dated 12.07.2011 is totally illegal and arbitrary. The gratuity amount cannot be withheld merely on registration of FIR against an employee and no chargesheet was filed in the said criminal case on or before the date of retirement, therefore, petitioner was entitled to be paid the said amount of gratuity at the time of retirement, especially when no due certificate dated 26.09.2012 (Annexure P-6) was already issued by the Municipal Corporation, Ludhiana. He further submitted that thereafter, the petitioner is entitled to grant of interest on the delayed payment of retiral benefits.

5. *Per contra*, learned counsel for respondent No.3 has submitted that after the FIR registered against the petitioner was cancelled by the Court of learned Special Judge, Patiala, vide order dated 13.01.2021, the case of the petitioner was processed and he was released the payment of gratuity and there is no delay on the part of the respondents, therefore, he is not entitled for grant of interest.

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

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. This Court relied upon the judgment in ***K.V. Jankiraman's*** case (supra) to direct the respondents to release the pensionary benefits of an employee, which were being withheld only due to the pendency of an FIR and the same reads thus:

*"4. A perusal of the Explanation 2(i) makes it evident that judicial proceedings would be deemed to have been instituted on the date on which challan is submitted to a*

*criminal Court. In the present case it is conceded position that challan has not been presented so far against the petitioner although he had retired on 31.3.2005 and the FIR was registered against him on 21.8.2003. The principle laid down in the aforementioned explanation has been fully supported by the judgment of Hon'ble the Supreme Court in the case of Union of India v. K.V. Jankiraman, 1991(3) SCT 317 (SC) : (1991) 4 SCC 101. The question before the Court was that whether for the purposes of sealed cover procedure mere contemplation of disciplinary inquiry of criminal proceedings could be deemed to be pending and it was held as under:*

*"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 restored 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....."*

*(Emphasis added)*

*5. There is another reason for us to accept the prayer made by the petitioner. A Division Bench of this Court has taken the view that respondent cannot invoke Rule 2.2(b) on the excuse that criminal case has been pending till the trial Court has declared the pensioner as guilty. It is only after the decision of the trial Court that a competent authority has to apply its mind and then to conclude whether any punishment under Rule 2.2(b) is to be imposed. After* *quoting Rule 2.2(b) and the proviso 1, a Division Bench of this Court in the case of Manohar Singh v. Punjab State Electricity Board, 2006(2) SCT 103 (P&H): 2006 (2) RSJ 316, has observed as under:*

*"12. A bare perusal of the aforesaid rule shows that it can be invoked if in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his services. In the present case, the enquiry proceedings had already concluded against the petitioner and he had been punished by orders dated 16.11.2000 (Annexure P-6) and 26.8.2002 (Annexure P-9). Therefore, the petitioner is correct in his submission that no departmental proceedings were pending against him at the time of his superannuation on 31.5.2003. In our opinion, the respondents cannot invoke Rule 2.2(b) on the ground that the case in FIR No.112 of 1999 is still pending against the petitioner. The sine quo non for invoking Rule 2.2(b) is that the pensioner has been found guilty in a departmental or judicial proceeding which had continued after the superannuation of the employee. This view of ours finds support from the judgment of the Supreme Court in the case of High Court of Punjab and Haryana v. Amrik Singh, 1995 (2) SCT 613 (SC) : 1995(1) SLR 236. In Para 4 of the aforesaid judgment, it is observed as follows:*

*"4. Rule 2(2) of the Pension Rules, Clause (b) clearly mentions thus:*

*"2(2)(b) the Government further reserves to themselves the right to withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and right of ordering the recovery from the pension of the whole or part of any pecuniary loss caused to Government. If, in a departmental or judicial proceeding, the petitioner is found guilty of grave misconduct or negligence during the*

> *period of his service including service rendered upon reemployment after retirement.*
> *A reading thereof clearly indicates that the disciplinary authority, consequent upon the result of the departmental or judicial proceedings, should record a finding whether the delinquent has committed grave misconduct or negligence during the period of his service including the service rendered upon reemployment after retirement.*
> *6. In the present case also there is no conclusion of the trial. Even the challan has not been presented. Therefore, the respondents merely on the basis of registration of the FIR on 21.08.2003, are not within their rights to withhold the pension or pensionary benefits of the petitioner. Therefore, the impugned order dated 15/22.2.2006 (P-7) is liable to be set aside."*

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.

**(NAMIT KUMAR)**
**JUDGE**

09.02.2024
R.S.

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No