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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-29328-2022
Date of Decision: 24.04.2024

Naresh Kumar Petitioner
Versus

State of Haryana and others Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sunil Garg, Advocate,
for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Jagdish Manchanda, Advocate,
for the respondents No.5 & 6.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of *mandamus* for directing the respondents to release the petitioner's pensionary benefits i.e. pension, gratuity and leave encashment in view of the order dated 03.12.2022 (Annexure P-8) with a further prayer to direct the respondent Nos.2 to 4 to decide the petitioner's representation dated 03.10.2022 vide Annexure P-9.

2. Learned counsel for the petitioner submitted that the petitioner retired on 28.02.2022 and the retiral benefits pertaining to gratuity, leave encashment etc. has been paid to him after a delay of one year and there is no justification for the same. He further submitted that there is another prayer in the present petition that his commutation of pension has not been

allowed by any of the authority and as per the reply filed by the State the onus shifted to Municipal Council. He submitted that because of inter-departmental communication or any inter-departmental shifting of onus, the petitioner cannot be deprived of his commutation of pension. He referred to a judgment of Full Bench of this Court passed in “*Dr. Ishar Singh Vs. State of Punjab and another*”, 1993(3) PLR 499, in this regard.

3. On the other hand, Mr. Kapil Bansal, learned DAG, Haryana and Mr. Jagdish Manchanda, learned counsel appearing on behalf of the respondents No.5 & 6 have submitted that so far as the gratuity and leave encashment etc. are concerned, the same have been paid to the petitioner after a delay of one year but it was only because of the inter-departmental communication that final decision is not taken with regard to the commutation of pension. They further submitted that so far as the commutation of pension is concerned, a final decision is yet to be taken by the authority regarding the same.

4. I have heard the learned counsels for the parties.

5. So far as the first prayer of the petitioner with regard to interest on the delayed payment of gratuity and leave encashment etc. is concerned, since no justification is coming forth as to why there was a delay of about one year, the prayer of the petitioner for grant of interest on delayed payment is accepted. The respondents are directed to pay the interest @ 6% per annum (simple) on the delayed payment of gratuity and leave encashment etc. from two months after the date of retirement till the date of its disbursement.

6. So far as the prayer of the petitioner for grant of commutation

of pension is concerned, it appears that both the respondents i.e. Municipal Corporation and Director, Fire and Emergency Service, Haryana have not been able to arrive at conclusion that as to who was the authority to sanction the same. A Full Bench judgment of this Court in ***Dr. Ishar Singh's case (supra)*** held as under:-

81. *As a result of the above discussion, I would conclude as under:-*

(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.”

7. In view of the aforesaid facts and circumstances, the Director, Fire and Emergency Service, Haryana is directed to hold a meeting with the Chief Executive Officer, Municipal Council, Bhiwani or any other relevant officer which he requires within a period of two months from today and pass an order with regard to the right of the petitioner for commutation of pension.

8. It is made clear that after the release of the commutation of pension to the petitioner, he will also be entitled for interest @ 6% per annum (simple).

9. The present petition stands disposed of.

24.04.2024
Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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