



CWP-12478-2022

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

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CWP-12478-2022 (O & M)
Date of decision: 28.01.2025

Gagandeep

....Petitioner

Versus

State of Punjab and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. R.K.Arora, Advocate for the petitioner.

Mr. Satnam Preet Singh Chauhan, DAG, Punjab.

AMAN CHAUDHARY, J.

1. The petitioner joined as a Lecturer on 17.09.1986 on *ad hoc* basis, whereafter her services were regularized on 05.10.1995. She retired on 31.10.2021 after attaining the age of superannuation, however, has been released only provisional pension to the extent of 50% besides, GPF, on account of certain recovery with regard to the selection grade, the same was made subject matter of CWP-9030-2021, which has since been even disposed of on 02.09.2024, setting aside it having been passed in violation of the principles of natural justice. There is neither any departmental proceeding nor criminal proceeding that is pending against the petitioner.



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2. Reliance is placed on the judgment of the Full Bench of this Court in **Dr. Ishar Singh v. State of Punjab and another**¹, covers the case of the petitioners on all fours, which learned State counsel despite best efforts has been unable to controvert regards the factual position and draw out any distinctive aspects in the aforementioned judgment or cite any contrary law, wherein Rule 9.9(3) (i) and (ii) of the Punjab Civil Service Rules, Vol-II, was dealt with, the relevant paras whereof reads thus:

“1. The principal questions which fall for consideration from the reference order dated 17.7.1991 can safely be itemised as under :

- (1) Whether withholding or postponing the payment of pension or gratuity amount due to account of commutation of pension is permissible in law ?
- (2) Whether the authorities could withhold or postpone the payment of retiral benefits ?
- (3) Whether the Government can initiate or continue with the departmental enquiry long after the date of alleged lapse in spite of the fact that the officer had retired from service many years back ?
- (4) Should the enquiry proceedings be quashed on the ground of long pendency alone ?

2. to 80. xx xx xx

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.

¹ 1994(1) SCT 563



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(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 reasonable 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.”

3. In view of the aforesaid dictum, this Court in **Harbans Singh vs. State of Punjab** 2003(5) SLR 296, directed to grant 100% provisional pension to the petitioner as per Rule 9.14-A read with Rule 9.9 of the Punjab Civil Service Rules Vol.II Part II and similarly in **Harbhajan Singh Riar vs. State of Punjab**, 2010(1) SCT 120, it has been observed and held that “...the statutory rules provide for release of 100% provisional pension respondents have no right or authority to withhold the same and to take a plea that only 40% is being released so as to safeguard the interest of the State Exchequer, pending departmental proceedings. The respondent cannot in anticipation of a liability deny payment, of pension to the petitioner. Action of the respondents being against the provisions in the Rules is not only illegal but also unreasonable, unjust and inequitable. An employee works for the employer so that at the eve of his life, he can provide for himself and his family. It seems that considering the right of a human being to live and exist and considering



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equitable right of an employee, it has been provided in the statutory provisions that provisional pension equal to maximum which would have been admissible on the basis of qualifying service upto the date of retirement of the Government employee shall be authorised. The action of the respondents in denying this right is clearly arbitrary. The provisional pension of the petitioner could not have been withheld in view of provisions of Rule 9.14 of Punjab Civil Services Rules, Vol. II.”

4. In view of the afore, the present petition is disposed of with a direction to the respondents to release 100% pension to the petitioner within a period of three months, with interest at the rate of 6% per annum from the date, it fell due till it is paid. For any other relief, the petitioner is at liberty to file a representation.

28.01.2025
parveen kumar

(AMAN CHAUDHARY)
JUDGE

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