



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
238

CWP-21843-2021 (O&M)
Date of decision: 28.10.2025

Subhash

....Petitioner

Versus

Dakshin Haryana Bijli Vitran Nigam Limited and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Parveen Moudgil, Advocate
for the petitioner.

Mr. Udit Garg, Advocate
for the respondents.

HARPREET SINGH BRAR J. (Oral)

1. Prayer in this writ petition filed under Article 226 of the Constitution of India, is for issuance of a writ in the nature of *certiorari*, for quashing the impugned order dated 10.01.2020 (Annexure P-3) vide which the claim of the petitioner for counting of work-charge period from 06.06.1974 till 04.10.1985 towards pensionary benefits has been rejected and further the claim of the petitioner for releasing the withheld amount of Rs.4,84,305/- *qua* retiral benefits has been rejected. Further a writ of *mandamus* has been sought, directing the respondents to count the work-charge period of the petitioner towards pensionary benefits and further to release the withheld amount of Rs.4,84,305/- to the petitioner *qua* retiral benefits along with interest @ 18% per annum from the date of retirement.



2. Learned counsel for the petitioner, *inter alia*, contends that the petitioner was appointed on 06.06.1974 to the post of Assistant Lineman (ALM) on work-charge basis and thereafter, his services were regularized on 05.10.1985. The petitioner was promoted from time to time and thereafter, he retired on 30.06.2014 as Assistant Foreman (AFM). However, the period of work-charge service rendered by the petitioner w.e.f. 06.06.1974 till 04.10.1985 has not been counted towards pensionary benefits and further, an amount of Rs.4,84,305/- has been withheld by the respondent/Nigam without issuing any charge-sheet or holding any enquiry and as such, the action of the respondents is contrary to the settled law. The petitioner served a demand notice upon the respondents, however, the same was rejected by passing a non-speaking order on 23.02.2020.

3. *Per contra*, learned counsel for the respondents submits that the petitioner was served a charge-sheet (Annexure R-16) on 01.07.2013, which culminated into the order dated 10.09.2015 vide which the recovery of Rs.1,23,890/- has been imposed upon the petitioner. Further, the petitioner has never challenged the order dated 10.09.2015 (Annexure R-17) which has attained finality. On 06.02.2018, the petitioner has given his consent for deducting Rs.4,84,305/- from his pending pensionary benefits and he has given his 'No Objection' and undertaken not to claim this amount in future, as discernible from Annexure P-18.



4. In rebuttal, learned counsel for the petitioner submits that the petitioner retired on 30.06.2014 and for almost four years, the retiral benefits of the petitioner was not released and the consent of the petitioner was obtained under economic duress and the petitioner succumbed to the arm twisting tactics of the respondent/Nigam in order to get his pending retiral benefits only.

5. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that out of recovery of Rs.4,84,305/-, an amount of Rs.1,23,890/- was deducted on account of order of punishment dated 10.09.2015, vide which the punishment of recovery, of the said amount from the pensionary benefits of the petitioner, was imposed. The petitioner has not challenged the charge-sheet (Annexure R-16) and the order of punishment (Annexure R-17), however, with regard to the remaining amount, no charge-sheet or disciplinary proceedings were initiated and withhold the retiral benefits without any statutory mandate is illegal and contrary to the settled law.

6. It is no longer *res integra* that in case the disciplinary or criminal proceedings are pending against an employee on the date of retirement, the employer would be well within its right to withheld the gratuity as well as the leave encashment. However, the Hon'ble Supreme Court in ***Union of India vs K.V. Jankiraman, 1991 (3) SCT 317*** has authoritatively laid down that the pending proceedings would mean if a charge sheet is served in departmental proceedings or the



charges have been framed in criminal proceedings by the competent Court of law on the date of retirement of an employee. The relevant paragraph of the judgment is reproduced 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 should 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."



7. Admittedly, on the date of retirement, i.e. 30.06.2014, neither any departmental charge-sheet nor any criminal proceedings were pending against the petitioner before any competent authority or Court of law. The charge-sheet dated 01.07.2013 had already culminated into the order of punishment dated 10.09.2015, which was passed after the petitioner's retirement and thus, the same cannot be treated as a "pending proceeding" within the meaning of law as settled by the Hon'ble Supreme Court in ***K.V. Jankiraman's case (supra)***. The respondent/Nigam is not entitled to withhold the pensionary benefits of the petitioner. The case of the petitioner is further covered by the judgment rendered by this Court in **CWP No.3493 of 1986** titled as ***L.R. Dhawan vs. State of Haryana*** and it is further reiterated in **CWP No.20687 of 2012** titled as ***Amarjit Singh vs. Punjab State Civil Supplies Corporation Limited***.

8. Moreover, the issue with regard to counting of past service rendered by the petitioner on work-charge basis is no longer *res integra*. The Full Bench of this Court in ***Kesar Chand and others v. State of Punjab and others, 1988(5) SLR 25***, has held that the work-charge service rendered by an employee prior to regularization is to be counted as qualifying service for pension and other service benefits. The operative part of the said judgment, reads as follows:-

"Once the services of a work-charged employee have been regularized, there appears to be hardly any logic to deprive him of the pensionary benefits as are available to other public servants under Rule 3.17 of the Rules. Equal



protection of laws must mean the protection of equal laws for all persons similarly situated. Article 14 strikes a arbitrariness because a provision which is arbitrary involves the negation of equality. Even the temporary or officiating service under the State Government has to be reckoned for determining the qualifying service. It looks to be illogical that the period of service spent by an employee is a work-charged established before his regularization has not been taken into consideration for determining the qualifying service. The classification which is sought to be made from Government servants who are eligible for pension and those who started as work-charged employee and their services regularized subsequently, and the others is not based on any intelligible criteria and, therefore, is not sustainable at law. After the services of a work charged employee have been regularized, he is a public servant like any other servant. To deprive him of the pension is not only unjust and inequitable but is hit by the vice of arbitrariness and for these reasons the provisions of sub rule (ii) of Rule 3.17 of the Rules have to be struck down being violative of Article 14 of the Constitution.”

9. Furthermore, the Division Bench of this Court in ***Harbans Lal v. State of Punjab and others, 2012(3) SCT 362***, has held that the entire daily wage/work-charge service rendered by an employee prior to regularization is to be counted as qualifying service for the purposes of pension. The relevant paragraph of the said judgment reads as under:-

“16. From the above discussion, we have come to the conclusion that the entire daily wage service of the petitioner from 1988 till the date of his regularization is to be counted as qualifying service for the purpose of pension. He will be deemed to be in govt. service prior to



01.01.2004. The new Re-structured Defined Contribution Pension Scheme (Annexure P-1) has been introduced for the new entrants in the Punjab Government Service w.e.f. 01.01.2004, will not be applicable to the petitioner. The amendment made vide Annexure P-2 amending the Punjab Civil Services Rules, cannot be further amended by issuing clarification/instructions dated 30.5.2008 (Annexure P-3). The petitioner will continue to be governed by the GPF Scheme and is held entitled to receive pensionary benefits as applicable to the employees recruited in the Punjab Govt. Services prior to 01.01.2004.

17. In view of the above, the writ petition is allowed. Accordingly respondents are directed to treat the whole period of work charge service as qualified service for pension because accordingly to clarification issued on 30.05.2008 (Annexure P-3), the new defined Contributory Pension Scheme would be applicable to all those employees who have been working prior to 01.01.2004 but have been regularized thereafter. Let his pension and arrears be calculated and paid to him expeditiously, preferably within a period of three months from the date of receipt of copy of this order.”

10. At this stage, learned counsel for the respondents has relied upon the judgment dated **21.01.2020** passed by the Single Bench of this Court in **CWP-8313-2018**, titled as ***Satbir Singh vs UHBVNL and others*** and submits that the petitioner himself had retained certain transformers and electrical parts even after his retirement, which were subsequently returned by him, and therefore, the delay in releasing his retiral benefits was justified.

11. The contention raised by learned counsel for the respondents is, however, devoid of merit and the facts of ***Satbir Singh’s case (supra)*** are clearly distinguishable. The alleged retention or subsequent return of certain departmental materials by the petitioner



cannot justify the withholding of retiral dues in the absence of any pending or duly instituted disciplinary proceedings. It is a settled principle of law that pensionary and retiral benefits constitute a statutory right and the same cannot be withheld or delayed except in accordance with law and under a valid disciplinary or judicial proceeding. In the present case, no such proceedings were pending against the petitioner on the date of his retirement and hence, the justification for delay advanced by the respondents is unsustainable.

12. Accordingly, in view of the aforesaid authoritative pronouncements of the Hon'ble Supreme Court in *K.V. Jankiraman's case (supra)*, the Full Bench of this Court in *Kesar Chand's case (supra)*, as well as the Division Bench of this Court in *Harbans Lal's case (supra)*, the present petition is allowed. Consequently, the impugned order dated 10.01.2020 (Annexure P-3) passed by the respondents is hereby quashed and set-aside. The respondents are directed as under:

(i) The balance amount of withheld retiral dues i.e. Rs.3,60,415 (Rs.4,84,305/- – Rs.1,23,890/-), shall be released to the petitioner along with interest @ 6% per annum, to be calculated after a period of two months from the date of retirement of the petitioner, i.e. 30.06.2014, till the date of actual payment.

(ii) The period of work-charge service rendered by the petitioner from 06.06.1974 to 04.10.1985 shall be counted as qualifying service for the purpose of determining pension and other retiral benefits.

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(iii) Necessary consequential benefits, including revision of pension and payment of arrears, shall be paid to the petitioner within a period of three months from the date of receipt of a certified copy of this order.

13. Pending miscellaneous applications, if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

28.10.2025
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No