IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

285 **CWP-23556-2019 (O&M)**
Date of decision : 01.05.2025

DHARAM SINGH
...... Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS
...... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPINDER SINGH NALWA

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Present :- Mr. B. S. Mittal, Advocate
for the petitioner.

Mr. Puru Jarewal, AAG, Punjab.

Mr. Sanjeev Soni, Advocate and
Ms. Nishtha Grover, Advocate
for respondent No.3.

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Deepinder Singh Nalwa, J. (Oral)

1. In the present writ petition, the petitioner has challenged the order dated 30.04.2019 (Annexure P-4) passed by respondent No.3 vide which, the claim of the petitioner for release of his retiral dues has been rejected.

2. The brief facts of the case are as under:-

3. The petitioner was appointed as an Octroi Clerk on 26.10.1984 and on attaining the age of superannuation, retired from the post of Junior Assistant on 31.05.2017 (Annexure P-1). Pension was released to the petitioner however, gratuity, leave encashment and provident fund were not released. In view of the above said facts, petitioner filed a civil writ petition

in this Court being CWP-17106 of 2017 for release of retiral benefits alongwith interest @ 12%.

4. The above said writ petition was disposed of by this Court vide order dated 03.08.2017 (Annexure P-3) with a direction to respondent No.3 to decide the representation dated 08.06.2017 (Annexure P-2) within a period of three months. It transpires from the facts of the case that no decision was taken by respondent No.3 in terms of the direction issued by this Court. As a consequence of this, the petitioner filed COCP No.1077 of 2018.

5. In response, respondent No.3 filed an affidavit alongwith a speaking order dated 30.04.2019 (Annexure P-4) before this Court in the aforementioned contempt petition vide which, the claim of the petitioner for release of retiral benefits like gratuity, leave encashment and provident fund was rejected on the ground of pendency of FIR No.09, dated 24.01.2017 registered against the petitioner under Sections 409, 166, 167, 186, 171F, 174, 175 IPC at Police Station City, Rampura Phul, District Bathinda (Annexure P-6). Aggrieved against the speaking order dated 30.04.2019 (Annexure P-4) passed by respondent No.3, the present writ petition has been filed challenging the above said order.

6. During the pendency of the writ petition, the provident fund was also released to the petitioner on 26.06.2020.

7. Learned counsel appearing for the petitioner submits that the petitioner had retired on attaining the age of superannuation on 31.05.2017. On that day, there were no departmental proceedings or criminal

proceedings pending against the petitioner. As such, respondent No.3 could not have withheld gratuity and leave encasement. It is also contended by learned counsel for the petitioner that departmental proceedings can only be held to be initiated if a charge sheet has been issued to the petitioner and in case of criminal proceedings, it can only be held to be initiated when the charges have been framed against the petitioner.

8. Learned counsel appearing for respondent No.3 submits that the petitioner was not entitled for release of gratuity and leave encashment for the reason that in fact an FIR was registered against him and consent from respondent No.3 was sought for initiation of departmental proceedings against the petitioner under Rule 8 of the Punishment and Appeals Rules, 1970. It is also argued that the petitioner was held guilty in the inquiry conducted by SDM, Rampura Phul, District Bathinda, as such, the action of respondent No.3 in not releasing gratuity and leave encashment was in accordance with law.

9. After hearing the parties at some length, a perusal of the facts of the present case would show that no charge sheet was issued to the petitioner nor any charges were framed on the basis of registration of FIR on or before the date of retirement.

10. It is a settled principle of law that in regard to grant of retiral benefits to the retired employee the position is to be seen on the day when an employee retires. In case, there are proceedings pending against an employee on the date of retirement, employer will be well within their right to withhold the gratuity as well as the leave encashment. As per the settled

principle of law settled by Hon'ble the Supreme Court of India in ***Union of India Vs. K.V. Jankiraman, 1991(3) SCT 317***, the proceedings can only be termed as pending in case a charge sheet is served in a departmental proceeding or the charges have been framed in a criminal proceeding by the Competent Court of Law. The relevant extract of the judgement 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 com- menced, 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. 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 initi ated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/chargesheet. If the allegations are serious and the authorities are keen in investigating them, ordi- narily it slould 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."*

11. Admittedly, in the present case, neither any charge sheet was pending against the petitioner on the date of his retirement nor there was any

criminal proceeding pending before any Competent Court of law where, charges were framed against the petitioner, so as to entitle the respondents to withhold the pensionary benefits of the petitioner. Therefore, the position is clear that on the date of the retirement of the petitioner, no proceedings were pending against the petitioner, which would have entitled the respondents to withhold the pensionary benefits. No Rules or instructions have been brought to the notice of this Court by the respondents that entitles the respondents to withhold the retiral benefits of an employee on the basis of mere registration of FIR.

12. Taking into consideration the above said facts, the action of respondents in not releasing the gratuity and leave encashment at the time of retirement is held to be illegal as deprivation of the abovesaid retiral benefits has been done without Authority of Law.

13. The law with regard to the right to receive the pension and pensionary benefits is no longer res-integra and pension and pensionary benefits are not a bounty of the State and the State does not do any charity by giving pension and pensionary benefits. Right of receiving pension and pensionary benefits is rather Right to Property which is a Constitutional Right under Article 300-A of the Constitution of India and a person can only be deprived of his Right to Property with an authority of law whereas in the present case the deprivation has been done without the authority of law. Reliance is placed on a judgment of Constitution Bench of Hon'ble Supreme Court in "***Deokinandan Prasad Vs. State of Bihar", 1971(2) SCC 330: [1971(1) SLR 175 (SC)]***, held that pension is not a bounty of the State and is

rather a Fundamental Right under Article 31(1) of the Constitution of India. However, later on by virtue of 44th Amendment of the Constitution of India, Right to Property became a Constitutional Right under Article 300-A of the Constitution of India instead of a Fundamental Right The relevant portion of the aforesaid judgment is reproduced as under:-

> *"31. The matter again came up before a Full Bench of the Punjab and Haryana High Court in K.R. Erry v. The State of Punjab, ILR 1967 Punj & Har 278. The High Court had to consider the nature of the right of an officer to get pension. The majority quoted with approval the principles laid down in the two earlier decisions of the same High Court, referred to above and held that the pension is not to be treated as a bounty payable on the sweet-will and pleasure of the Government and the right to superannuation pension including its amount is a valuable right vesting in a Government servant. It was further held by the majority that even though an opportunity had already been afforded to the officer on an earlier occasion for showing cause against the imposition of penalty for lapse or misconduct on his part and he has been found guilty, nevertheless, when a cut is sought to be imposed in the quantum of pension payable to an officer on the basis of misconduct already proved against him, a further opportunity to show cause in that regard must be given to the officer. This view regarding the giving of further opportunity was expressed by the learned Judges on the basis of the relevant Punjab Civil Service Rules. But the learned Chief Justice in his dissenting judgment was not prepared to agree with the majority that under such circumstances a further oppor-tunity should be given to an officer when a reduction in the amount of pension payable is made by the State. It is not necessary for us in the case on hand, to consider the question whether before taking action by way of reducing or denying the pension on the basis of disciplinary action already taken, a further notice to show cause should be given to an officer. That question does not arise for consideration before us. Nor are we concerned with the further question regarding the procedure, if any, to be adopted by the authorities before reducing or*

> *withholding the pension for the first time after the retirement of an officer. Hence we express no opinion regarding the views expressed by the majority and the minority Judges in the above Punjab High Court decision, on this aspect. But we agree with the view of the majority when it has approved its earlier decision that pension is not a bounty payable on the sweet-will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant.*
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> *32. This Court in State of Madhya Pradesh v. Ranojirao Shinde and another, 1968-3 SCR 489 had to consider the question whether a "cash grant" is "property" within the meaning of that expression in Articles 19(1)(f) and 31(1) of the Constitution. This Court held that it was property, observing "it is obvious that a right to sum of money is property".*

14. Thereafter, in "***State of Kerala Vs. M. Padmanabhan Nair", AIR 1985 Supreme Court 356: [1985(1) SLR 750 (SC)]***, the Hon'ble Supreme Court observed that pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but are valuable rights and property, in their hands. The aforesaid authoritative law was thereafter reiterated by the Hon'ble Supreme Court in "***Dr. Uma Agarwal Vs. State of U.P. and another", 1999(2) SCT 347 (SC): [1999(2)SLR22(SC)]***.

15. Thereafter, Hon'ble Supreme Court in another judgment passed in "***State of Jharkhand and others Vs. Jitendra Kumar Srivastava and another", 2013(12) SCC 210 : [2013(5) SLR 448 (SC)]*** again discussed the entire law pertaining to the valuable rights pertaining to the grant of pensionary benefits. Para No.8 of the aforesaid judgment is reproduced as under:-

> *"8. It is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his*

long, continuous, faithful and unblemished service. Conceptually it is so lucidly described in D.S. Nakara and Ors. Vs. Union of India; (1983)1 SCC 305 by Justice D.A. Desai, who spoke for the Bench, in his inimitable style, in the following words:

> *"18. The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?*
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> *19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.*
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> *20. The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deoki Nandan Prasad v. State of Bihar and Ors. [1971] Su. S.C.R. 634 wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab and Another Vs. Iqbal Singh(6)".*

It is thus hard earned benefit which accrues to an employee and is in the nature of "property". This right to property cannot be taken away without the due process of law as per the provisions of Article 300-A of the Constitution of India."

16. In view of the aforesaid facts and circumstances of the present case, the present writ petition is allowed and the impugned order dated 30.04.2019 (Annexure P-4)is set aside. The respondent No.3 is directed to release gratuity and leave encashment to the petitioner within a period of 04 weeks from the date of receipt of certified copy of this order. As respondent No.3 had no authority to withhold gratuity and leave encashment of the petitioner after retirment, the petitioner is also held entitled for grant of 9% interest on delayed payment of above mentioned retiral dues from two months after the retirement of the petitioner till actual date of realization of the same.

17. Pending applications, if any, shall also stand disposed of accordingly.

(DEEPINDER SINGH NALWA)
JUDGE

01.05.2025

Rimpal

Whether speaking/reasoned Yes
Whether Reportable : No