

2025:PHHC:061170



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

218

**CWP-25579-2019 (O&M).
Date of Decision: 08.05.2025.**

BACHITTAR SINGH

... Petitioner

Versus

UNION OF INDIA AND OTHERS

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Daljeet Singh Kahlon, Advocate,
for the petitioner.

Mr. Ashish Bansal, Advocate,
for respondents No.2 to 5/FCI.

VINOD S. BHARDWAJ, J. (ORAL)

Challenging the communication received from the Respondent-Food Corporation of India (hereinafter referred to as 'FCI') dated 10.06.2019 wherein the FCI has denied to release the payment of gratuity, Contributory Provident Fund (CPF) and other pending service dues of the petitioner after his dismissal from service, the instant writ petition has been filed by the petitioner for seeking the release thereof.

2 Learned counsel contends that the petitioner joined the respondent-FCI as Handling Labour Gang-8 on 01.07.1990 at Food Storage Depot Vallah, District Amritsar. He performed all his duties to the complete

2025:PHHC:061170



satisfaction of his superiors, however, one Charan Dass moved a false complaint dated 25.05.2007 against the petitioner to the Senior Superintendent of Police, Amritsar alleging that the petitioner had obtained employment with the respondent-FCI by changing his name as Bachittar Singh whereas his actual name is Balwant Singh and that he had also been convicted in a criminal case in the name of Balwant Singh, before joining the service. The said complaint was investigated by the SHO, Police Station, Sultanwind, Amritsar, and it was found that the petitioner was innocent and not involved. The complainant, however, submitted the complaint again on 30.07.2009 to the respondent-FCI Chandigarh on the same set of allegations. The Respondent-FCI took cognizance and conducted the departmental inquiry wherein the petitioner was held guilty.

3 Learned counsel for the petitioner contends that the aforesaid conclusions drawn by the respondent-FCI were incorrect as the defence evidence adduced by him had not been considered and notwithstanding the same, he was dismissed from service vide order dated 10.06.2011. The said order of dismissal was challenged by the petitioner by instituting a civil suit for declaration before the Civil Court, Amritsar. Vide judgment and decree dated 05.02.2016, the civil suit was dismissed. The appeal preferred by the petitioner was also dismissed vide judgment and decree dated 04.09.2017. The Regular Second Appeal No.1871 of 2017 is now pending before this Court.

4 Learned counsel for the petitioner further contends that only the order of dismissal was the subject matter of challenge in the civil suit for

2025:PHHC:061170



declaration but prayer for service dues such as Gratuity and CPF etc. was not claimed therein. It is contended that the petitioner thus submitted a representation followed by demand legal notice dated 26.02.2019 for release of the service benefits. Vide the response dated 10.06.2019, the respondents denied payment of any gratuity and CPF etc. to the petitioner on the ground that he has lost his case before the Civil Court.

5 Counsel contends that the scope of the civil suit being limited to the order of dismissal dated 10.06.2011, hence, a mere dismissal of the civil suit cannot be held as a ground for denial of release of his benefits such as Gratuity and CPF which become due after the dismissal or retirement and that the respondents could not have withheld the same.

6 Learned counsel further contends that the respondent-FCI issued a Circular No.03 of 2006 dated 10.01.2006, as per which the order of dismissal or removal from service does not automatically dis-entitle an employee from the gratuity wholly or partly and that in the absence of any specific order, the said benefits cannot be withheld.

7 Counsel for the respondents-FCI vehemently opposes the arguments advanced by the counsel for the petitioner and contends that the petitioner had all the opportunity to raise all pleas before the Civil Court but his suit for declaration was dismissed followed by the appeal preferred against the same. The petitioner having been held guilty in departmental proceedings, his services were rightly terminated and hence, the petitioner is not entitled to the release of benefits as asked for.

2025:PHHC:061170



8 Counsel for the respondents-FCI does not dispute the applicability of Circular No.03 of 2006 dated 10.01.2006 to the case of the petitioner and is also not in a position to counter that in the order of removal from service, there is no order of forfeiture of the gratuity, wholly or partly, or for any amount to be recovered from the petitioner. He also does not dispute that once there is no order of forfeiture at the initial stage, no subsequent order can be passed for withholding of the same.

9 It is a settled position in law that gratuity, CPF and other statutory dues, to which an employee is entitled to, cannot be withheld except by a valid authority of law. Undisputedly, as per the provisions of Payment of Gratuity Act, 1972, gratuity of a labourer can be withheld only when the services are terminated on account of any act or willful omission causing damage or loss or destruction of the property belonging to the employer. There is neither any such allegation nor any claim of recovery of loss or damage to the property of employer that has been raised or claimed by the respondents. Hence, withholding of gratuity is clearly in violation of the mandate of the Payment of Gratuity Act, 1972 as well as Circular No.03 of 2006 dated 10.06.2006.

10 Further, counsel for the respondent has not been able to refer to any provision as per which the provident fund payable to the petitioner could be withheld on cessation of relationship between the employer and the employee. In the absence of any enabling power, the respondents would not be justified in withholding the rightful dues of an employee solely on the ground that the petitioner's suit for declaration against the order of dismissal

2025:PHHC:061170



from service was dismissed. The dismissal of the civil suit challenging the order of termination cannot be held to be a decree in favour of the respondents-FCI to forfeit the gratuity and CPF etc. which is payable to the petitioner.

11 Consequently, the instant writ petition is allowed. The respondents are directed to release the gratuity as well as the CPF and other benefits that may be payable to the petitioner within a period of 04 weeks of receipt of a certified copy of this order failing which the petitioner shall be entitled to interest @ 5% per annum from the date of institution of the instant writ petition till its final disbursement.

May 08, 2025.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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