



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

LPA No.2363 of 2016 (O&M)

Date of Decision: 22.01.2025

Dakshin Haryana Bijli Vitran Nigam Limited and others

...Appellants

Versus

Om Parkash (since deceased) through his LR's and another

...Respondents

CORAM: *HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA*
 HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Parveen Chauhan, Advocate for
 Mr. Gagandeep Singh Wasu, Advocate
 for the appellants.

Mr. Dhiraj Chawla, Advocate
for respondents No.1(a) to 1(d).

SANJEEV PRAKASH SHARMA, J.(Oral)

The appellants assail the order dated 25.04.2016 passed by learned Single Judge, whereby learned Single Judge has allowed the petition of the writ petitioner and has set-aside the order dated 08.10.2013, directing the respondents to release the pension and leave encashment to the petitioner within a period of one month.

2. Learned counsel appearing for the appellants-Corporation, DHBVNL, submits that as per the provisions of the Rules, namely Rule 2.2(c) and Rule 8.21(aa) of the Punjab Civil Services Rules Volume I Part I Chapter VIII, which are adopted for the purpose of release of pension, specifically deny and direct to withhold leave encashment as well as



gratuity of a pensioner who is convicted or against whom a departmental enquiry or criminal case is pending. He, therefore, submits that the respondents could not have been granted the benefits.

3. Per contra, learned counsel appearing for the respondent-writ petitioner submits that at the time when the petitioner was retired from service, criminal case was pending and he was, therefore, entitled to provisional pension. However, the Corporation did not release his pension. The employee has expired during the pendency of the present appeal and his widow would, therefore, be entitled to family pension and arrears of pension.

4. Having heard learned counsel, we find that the deceased respondent Om Parkash, retired as Junior Engineer from the Corporation in September, 2011. While he was in service, an FIR was registered against him on 04.11.2010 under Sections 7 and 13 of the Prevention of Corruption Act and after he had retired, the trial Court sentenced him on 22.03.2012 to undergo RI of one year and fine of Rs.3000/-, convicting him of offence under Section 13(1)(d) of the PC Act and to undergo RI for six months and fine of Rs.2000/- under Section 7 of the PC Act. The appeal against the said judgment is pending before this Court which is yet to finalize and the judgment passed by the trial Court has not been stayed and thus, conviction stands as against the deceased employee.

5. In light of the afore-said facts, we examine the order passed by learned Single Judge. We find the same to be unsustainable in law. We find that in the judgment passed by the Full Bench of this Court reported in ***Punjab State Civil Supplies Corporation Limited vs. Pyare Lal, 2015(1)***



PLR 617, the law laid down by the Larger Bench was otherwise than what has been interpreted by learned Single Judge. In fact, this Court approved the judgment passed earlier by the Court to the extent that the power is available to the authorities to withhold the leave encashment benefit if an employee is suffering from departmental enquiry proceedings or criminal proceedings and therefore, the directions issued by learned Single Judge will have to be set-aside.

6. Question, however, arises further as to what all the respondents namely the wife of the deceased employee would be entitled to.

7. It has been informed that the leave encashment benefit has already been released to the employee during his lifetime. No pension has been released to him. Family pension, therefore, has also not been released to the widow respondent. As per the meaning of the provisions of Rule 2.2(c) of the Rules, it is apparent that future good conduct is an implied condition of every grant of pension and the Government reserves themselves the right of withholding of an employee's pension or any part of it if the pensioner be convicted of serious crime or be guilty of grave misconduct. In case, where the pensioner is convicted of a serious crime, action shall be taken in light of the judgment of the Court relating to such conviction.

8. In view of above provisions, it is apparent that a decision had to be taken by the appellants as to how much and to what level they would withhold or withdraw the pension of the deceased employee. Since the conviction of the husband of the respondent was on 22.03.2012 while he



retired in September, 2011, provisional pension was required to be given to him till the time of his conviction. However, he would not be entitled to receive the gratuity or leave encashment benefits.

9. In view of afore-said, we set-aside the order passed by learned Single Judge and in the afore-said circumstances, we direct the appellants to release the arrears of provisional pension admissible to the deceased employee for the period from the date he attained superannuation upto the date of his conviction, i.e 22.03.2012. We further direct that the amount of leave encashment already released to the concerned deceased employee, would be subject to recovery and would be adjusted from the concerned arrears as the same could not have released in terms of the provisions of Rule 8.21(aa) (*supra*). Further, the appellants shall conduct an exercise and take a conscious decision with regard to the pension to be paid to the deceased employee after his conviction and further the family pension, which is to be paid to the widow employee. The authorities are expected to examine the said issue more so in the light of the fact that the employee has expired and the wife of the employee would be required to have some subsistence amount and family pension ought to be released in normal course to her.

10. Be that as it may, it is not for this Court to take a decision and we leave it on the authorities to take a final decision in this regard within a period of two months. It is made clear that if the concerned employee is acquitted ultimately by this Court in the criminal appeal, which is pending, consequences thereof shall follow and the widow would be entitled to



claim the benefits as available to the said employee.

11. With the said observations, the appeal is allowed to the afore-said extent.
12. All the pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

22.01.2025
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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No