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2025:PHHC:169961

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-25918-2025
DECIDED ON: 02.12.2025

RAJ BAHADUR SINGH TEWATIA

.....PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Mahabir Singh Tanwar, Advocate
for the petitioner

Mr. Deepak Balyan, Addl. AG. Haryana

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SANDEEP MOUDGIL, J (ORAL)

Prayer

1. The jurisdiction of this Court has been invoked under Article 226 of the Constitution of India for issuance of directions to the respondents to take the immediate decision in the matter and to release the retiral dues of the petitioner without any delay with interest @ 18% per annum as allowed vide order dated 31.01.2025 (Annexure P-5).

Brief Facts

2. The petitioner, a retired Additional Excise and Taxation Commissioner, Haryana, superannuated on 31.12.2020 after more than thirty-one years of service, having entered the department in 1989 through the HCS (Executive Branch) Examination and having earned successive promotions.

3. Despite having no disciplinary, judicial, or vigilance proceedings pending at the time of retirement, none of his retiral or pensionary benefits were released. Nine months later, the State issued a charge sheet dated 05.10.2021 under Rule 7 of the Haryana Civil Services (Punishment and Appeals) Rules, 2016, relating to alleged supervisory lapses of 2012.

4. The petitioner promptly submitted his reply, asserting that the charge sheet was barred under the Haryana Civil Services (Pension) Rules, 2016(in short referred to as "HCS (Pension) rules 2016". After prolonged silence and reminders, he was granted a personal hearing on 17.05.2023 and also submitted written submissions. Continued inaction led to a legal notice dated 14.07.2024.

5. Eventually, vide order dated 29.01.2025 (issued on 31.01.2025), the competent authority withdrew the charge sheet and directed release of all retiral dues. However, despite this clear directive and a subsequent reminder dated 28.04.2025, the respondent-authority failed to release the petitioner's pensionary benefits. Aggrieved by the unjustified and prolonged withholding of his dues for over four years, the petitioner has approached this Court seeking a writ of mandamus for immediate release of retiral and pensionary benefits with interest.

<u>Contentions</u>
<u>On behalf of the petitioner</u>

6. Learned counsel for the petitioner contends that despite the petitioner having rendered more than thirty-one years of unblemished service and retiring on 31.12.2020 with no disciplinary, judicial, or vigilance proceedings pending against him, the respondents have illegally

withheld his retiral and pensionary benefits for over four years without any justification.

7. It is argued that the charge sheet issued on 05.10.2021, pertaining to alleged lapses of the year 2012, was not only baseless but also hit by the bar contained in Rule 12(2)(b) and Rule 12(5)(i) of HCS (Pension) Rules,2016, having been served nearly nine years after the alleged incident and long after the petitioner's retirement.

8. It is further submitted that the competent authority, upon considering the petitioner's reply, submissions, and legal notice, ultimately withdrew the charge sheet vide order dated 29.01.2025 (issued on 31.01.2025) and specifically directed the Excise and Taxation Commissioner to release all retiral dues.

9. Despite this unequivocal direction, respondent No.2 has failed to release the pensionary benefits even after a further reminder dated 28.04.2025, thereby acting in clear violation of the service and pension rules.

On behalf of the respondent/State

10. Learned State counsel submits that at the time of his retirement on 31.12.2020, departmental proceedings arising out of Enquiry No. 07 dated 20.12.2011 were pending against the petitioner, and a charge sheet under Rule 7 of the Haryana Civil Services (Punishment & Appeal) Rules, 2016 had been issued on 21.09.2021.

11. It is contended that in view of Rule 81 of the HCS (Pension) Rules 2016, only provisional pension could be released while gratuity and commutation had to be withheld until conclusion of the proceedings; accordingly, provisional pension was sanctioned on 13.01.2021.

12. Counsel further submits that although the competent authority withdrew the charge sheet vide order dated 29.01.2025, it simultaneously recommended initiation of judicial proceedings to recover the alleged revenue loss of ₹1,53,07,180/–. Pursuant thereto, payment of 300 days' unutilized earned leave was sanctioned vide order dated 20.11.2025, and the petitioner's pension and gratuity case has already been processed and uploaded on the ODMS of the Principal Accountant General for further disbursal. It is therefore contended that the petitioner's claim for retiral benefits stands duly addressed and that the writ petition merits dismissal.

4. ***<u>Analysis</u>***

13. Having heard learned counsel for the parties and upon perusal of the record, the pivotal questions posed before this court may be understood through the two issues framed as under:

> 1: Whether the initiation of departmental proceedings vide charge sheet dated 05.10.2021 was legally sustainable in view of the bar contained in Rule 12(2)(b) of the HCS (Pension) Rules 2016?
>
> 2: Whether withholding of the petitioner's retiral benefits after withdrawal of the charge sheet is permissible under Rule 81 of the HCS (Pension) Rules 2016?

Issue No. 1: Whether the initiation of departmental proceedings vide charge sheet dated 05.10.2021 was legally sustainable in view of the bar contained in Rule 12(2)(b) of the HCS (Pension) (Rules, 2016)?

14. It is an admitted position that the petitioner superannuated on 31.12.2020 after more than three decades of unblemished service, and that no departmental, judicial, vigilance or criminal proceedings were pending against him on the date of retirement. The charge sheet under Rule 7 of the

Haryana Civil Services (Punishment & Appeal) Rules, 2016 came to be issued only on 05.10.2021, i.e., nine months after retirement, for alleged supervisory lapses of the year 2012.

15. Before proceeding further it would be apposite to reproduce the Rule 12(2)(b) of the HCS (Pension) Rules 2016 which reads as under:

> *12(2)(b)The departmental proceedings, if not instituted while the Government employee was in service, whether before his retirement, or during his re-employment, (i)shall not be instituted save with the sanction of the Government, (ii)shall not be in respect of any event which took place more than four years before such institution, (iii)and shall be conducted by such authority and at such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government employee during his service.*

16. On close reading of Rule 12(2)(b) of the HCS (Pension) Rules, 2016 would make it clear that it places an express embargo on the institution of departmental proceedings in relation to any event which occurred more than four years prior to the date of retirement. The alleged lapses of 2012 occurred eight years before the petitioner's retirement in the year 2020, and therefore any departmental inquiry initiated in 2021 was ex facie barred by the statutory limitation.

17. It is significant that the disciplinary authority itself recognised the legal infirmity in the initiation of the proceedings and accordingly withdrew the charge sheet vide order dated 29.01.2025, communicated on 31.01.2025. Upon such withdrawal, the legal position stood restored to that contemplated under Rule 12 that no valid departmental proceedings existed nor could any fresh proceedings be instituted thereafter.

18. The above principle stands fortified by a decision rendered by this Court in ***Narinder Dev Sharma v. State of Punjab and another,***

1996(2) Service Law Reporter 270 : 1996(1) SCT 623 (P&H), wherein this court has also come to the conclusion that the Disciplinary Authority is empowered to initiate disciplinary action, against an employee even after his retirement, subject to the condition, that the enquiry pertained to an incident not more than four years prior to the date of initiation of the enquiry. I fully endorse the decision referred to above and hold that initiation of enquiry in the instant case after retirement of the petitioner in respect of the allegation which pertained to the period about almost 8 years prior to the initiation of the charge sheet, is barred under the provisions of 2(2)(b) of the HCS (Pension) Rules 2016.

19. Thus, the charge sheet itself being non est in law and having been subsequently annulled, the respondents were left with no lawful basis to treat any departmental proceedings as pending thus the issue no.1 rests in favor of the petitioner.

Issue No. 2: Whether withholding of the petitioner's retiral benefits after withdrawal of the charge sheet is permissible under Rule 81 of the HCS (Pension) Rules, 2016?

20. Before answering 2nd issue this court deems it appropriate to reproduce the relevant rule

> *81.Provisional pension where proceedings are pending at the time of retirement.—*
>
> *(1) (a) In respect of a Government employee against whom departmental or judicial proceedings are pending at the time of retirement, the Principal Accountant General (Accounts & Entitlement), Haryana shall authorize the provisional pension equal to the maximum pension which shall have been admissible on the basis of qualifying service up to the date of retirement of the Government employee, or if he was under suspension on the date of retirement, upto the date of immediately preceding the date on which he was placed under suspension.*
>
> *(b) The provisional pension shall be authorised by the Principal*

> *Accountant General (Accounts & Entitlement), Haryana during the period commencing from the date of retirement up to and including the date on which, after the concluding of departmental or judicial proceedings. Final orders are passed by the competent authority.*
>
> *(c) No gratuity and commuted value of pension shall be authorised to the Government employee until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.*
>
> *Note. - This provision shall also be applicable where— (i) the departmental proceedings under Rule 8 of Haryana Civil Services (Punishment & Appeal) Rules, 2016 involving any financial loss to Government are pending at the time of retirement. (ii) any complaint against the Government employee pertaining to his dishonesty is pending in State Vigilance Bureau, Lok Ayukat or in any Government Investigation Agency at the time of retirement.*
>
> *(2) Payment of provisional pension made under sub-rule (1) (a) shall be adjusted against final pensionary benefits sanctioned to such Government employee upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.*

On a thorough examination of Rule 81 of *HCS (Pension) Rules, 2016* it can be made out that, it authorises the withholding of gratuity and commutation only when departmental or judicial proceedings are actually pending on the date of retirement and continue thereafter. The rule cannot be invoked in the absence of any extant proceedings, nor can it be stretched to cover hypothetical, contemplated, or invalid proceedings.

21. In the present case no proceedings existed on the date of retirement on 31.12.2020.The subsequent charge sheet dated 05.10.2021, apart from being time-barred under Rule 12(2)(b) *HCS (Pension) Rules, 2016*, was withdrawn by the competent authority on 29.01.2025 with a specific direction to release all retiral dues. After such withdrawal, no departmental or judicial proceedings whatsoever remained pending against the petitioner.

22. Therefore, once the charge sheet was annulled, the statutory foundation for withholding retiral dues automatically ceased. The

continued withholding of pensionary benefits despite explicit departmental directions to release them is not only without authority of law but also amounts to arbitrary exercise of power, defeating the protective object of the Pension Rules.

23. The Supreme Court has repeatedly held that pension is a vested right flowing from the service rendered and constitutes "property" under Article 300-A. In **D.S. Nakara v. Union of India (1983) 1 SCC 305** the court observed as under**:**

> *31. From the discussion three things emerge : (i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 Rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to Article 309 and Clause (5) of Article 148 of the Constitution, (ii) that the pension is not an ex gratia payment but it is a payment for the past service rendered; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the hey day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. It must also be noticed that the quantum of pension is a certain percentage correlated to the average emoluments drawn during last three years of service reduced to ten months under liberalised pension scheme. Its payment is dependent upon an additional condition of impeccable behaviour even subsequent to retirement, that is, since the cessation of the contract of service and that it can be reduced or withdrawn as a disciplinary measure*

24. Therefore the respondents' continued refusal even after withdrawing the charge sheet violates the petitioner's constitutional property right.

25. The Supreme Court in the case of ***"D.D.Tewari (dead) through Legal representatives v. Uttat Haryana Bijli Vitran Nigam Limited and others reported in (2014) 8 SCC 894*** referring to the decision rendered in ***"State of Kerala v. Padmanaban Nair reported in (1985) 1 SCC 429"*** was held that *"pension and gratuity are no longer any bounty to be to the disputed by the Government to its employee on their retirement but have become under the decisions of this Court, valuable rights and*

property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till the actual payment to the employees", held that the said principle still holds good insofar as awarding interest on the delayed payment is concerned. The present case reflects not merely delay but unjustified deprivation for over four years, despite clear departmental orders directing release.

26. In **Vijay L. Mehrotra v. State of U.P. (2001) 9 SCC 687** the apex court observed as under

> *3. In case of an employee retiring after having rendered service, it is expected that all the payment of the retiral benefits should be paid on the date of retirement or soon thereafter if for some unforeseen circumstances the payments could not be made on the date of retirement.*
>
> *4.. In this case, there is absolutely no reason or justification for not making the payments for months together. We, therefore, direct the respondent to pay to the appellant within 12 weeks from today simple interest at the rate of 18 per cent with effect from the date of her retirement i.e. 31st August, 1997 till the date of payment.*

27. This principle squarely applies to the present case of the petitioner, who is clearly entitled to interest on the delayed retiral benefits. Despite the fact that the charge sheet stood withdrawn on 29.01.2025, and despite there being no subsisting departmental or judicial proceedings thereafter, the respondents have continued to withhold his lawful pensionary dues till date, without any statutory or legal basis. Such persistent withholding after the very foundation for any disciplinary action ceased to exist is arbitrary, unjustified, and in complete disregard of the statutory mandate governing retiral benefits.

Conclusion

28. The Court cannot remain oblivious to the hardship caused to the petitioner, who, after rendering more than three decades of dedicated

service, was entitled to dignity and fairness at the time of retirement. Instead, he was subjected to an invalid charge sheet issued long after superannuation, followed by prolonged administrative silence. Even after the said charge sheet was formally withdrawn, the authorities continued to deny him his rightful pension, causing undue mental, financial and emotional distress. Such conduct reflects a disturbing insensitivity on the part of the State towards its retired employee and falls short of the standard of fairness, responsibility and compassion expected from a welfare-oriented administration. It is precisely this kind of inattentive and unjust administrative behaviour that the pension rules seek to prevent.

29. The respondents acted without authority of law and in violation of the petitioner's statutory and constitutional rights by withholding retiral and pensionary benefits despite withdrawal of proceedings. The delay cannot be justified on any legal ground. The petitioner is clearly entitled to release of all retiral dues with interest @ 9% per annum, from the date of its accural to the date of its realization which is consistent with the principles laid down in *Padmanabhan Nair* (supra) and *Vijay L. Mehrotra (supra)*.

30. The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

02.12.2025
Meenu

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