



**103 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-35087-2025

Date of Decision: 23.12.2025

Ishwar Singh

...Petitioner

Versus

State of Haryana and Others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Roopak Bansal, Advocate
for the petitioner.

Mr. Ravi Partap Singh, DAG, Haryana.

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking direction to respondent to release his gratuity.

2. Written statement of Mr. Bhupender Singh, IPS, Superintendent of Police, Panipat on behalf of respondents No.1 to 3 has been filed in the Court today, which is taken on record. The Registry is directed to tag the same at an appropriate place.

3. The petitioner joined service as Constable on 02.10.1989. He was promoted as Exemptee Head Constable and Exemptee Assistant Sub-Inspector on 25.01.2006 and 26.10.2011 respectively. He was implicated in FIR No.84 dated 01.04.2014 under Sections 147, 148, 427, 447, 506, 511 and 120-B of Indian Penal Code, 1860. He was placed under suspension on 24.06.2014. He was reinstated on 10.03.2015. He was awarded punishment of stoppage of one annual increment with temporary

effect vide order dated 01.03.2016. He was served notice for retirement at the age of 55 years and was finally made to retire w.e.f. 13.04.2020. He preferred CWP No.11905 of 2020 assailing order of retirement. At the time of his retirement, aforesaid criminal case was pending against him. He was convicted by Trial Court. He has filed appeal which is still pending. The alleged offence and conviction do not relate to his official duties. It was a purely personal and private dispute. The respondent has no right to withhold his gratuity.

4. Learned State counsel submits that as per Rule 81(c) of Haryana Civil Services Rules, 2016 (for short '2016 Rules'), gratuity and commutation cannot be issued during the pendency of criminal case/departmental inquiry/judicial proceedings. The petitioner was made to retire at the age of 55 years. At that point of time, a criminal case was pending against him. He was subsequently convicted. As he was convicted, he is not entitled to gratuity. If gratuity is released to petitioner, all the employees who are facing incarceration would come forward and claim gratuity. It will create havoc. Claim of petitioner cannot be entertained at this stage because appeal against judgment of conviction is still pending. At present, judgment of conviction stands against him. It is irrelevant that he was sentenced to imprisonment of one year and offence committed by him did not relate to official duty.

5. I have heard learned counsel for the parties and perused the record with their able assistance.

6. The respondent has withheld gratuity of the petitioner while relying upon Rule 81(c) of 2016 Rules. Rule 81 (c) of 2016 Rules reads as:

“Rule 81. Provisional pension where proceedings are pending at the time of retirement.-

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(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

Note.- Where any complaint against a Government employee is pending in the office of Lokayukat Haryana shall be given pensionary benefits after consultation with the Lokayukat.”

7. From the perusal of above quoted Rule, it is evident that gratuity cannot be released till the conclusion of departmental or judicial proceedings.

8. In the case in hand, departmental proceedings culminated in punishment of forfeiture of one increment with temporary effect. The petitioner stands convicted. He has been sentenced to imprisonment of

one year. The alleged offence did not relate to his official duties. It was purely a private dispute which culminated in sentence. The respondent has not pointed out any Rule other than Rule 81 to support its contention that State can withhold gratuity despite conclusion of trial. This Court is not oblivious of the fact that appeal is continuation of trial. The petitioner at the most may be finally sentenced to imprisonment. Rule 81 permits authorities to withhold gratuity till the conclusion of judicial proceedings. It does not specify status of gratuity on conclusion of trial. Object of withholding gratuity due to departmental and/or criminal proceedings needs to be fathom. In departmental proceedings, retiree may be subjected to financial liability which has to be recovered from gratuity or leave encashment. In departmental proceedings, he may be dismissed from service entailing denial of pension. Similarly, conviction in criminal proceedings may invite dismissal from service though ordinarily a retiree cannot be retrospectively dismissed from service. Position may be clarified from Rule 10 of 2016 Rules. Rule 10 of 2016 Rules provides that appointing authority has right to withhold or withdraw pension or any part of it whether permanently or for specified period if the pensioner is convicted of serious crime or is found guilty of grievous misconduct. Expressions “serious crime” and “grave misconduct” are defined in the explanation. Rule 10 of 2016 Rules reads as:

“10. Pension subject to future good conduct.-

(1) (a) Future good conduct shall be an implied condition of every grant of pension and its continuance under these rules;

(b) The appointing authority reserves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, if the

pensioner is convicted of serious crime or is found guilty of grave misconduct. The decision of the appointing authority on any question of withholding or withdrawing the whole or any part of pension under these rules shall be final and conclusive:

Provided that, where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount fixed as minimum pension.

Note.- The Haryana Public Service Commission or Haryana Staff Selection Commission or any other approved Recruitment Agency, as the case may be, shall be consulted before final orders are passed.

(2) Where a pensioner is convicted of a serious crime by a court of law, action under sub-rule (1) shall be taken in the light of the judgement of the Court relating to such conviction.

(3) In a case not falling under sub-rule (2), if the authority referred to in sub-rule (1) considers that the pensioner is prima facie guilty of grave misconduct, it shall, before passing an order under sub-rule (1)-

(i) serve upon the pensioner a notice specifying the action proposed to be taken against him and the ground on which it is proposed to be taken and calling upon him to submit, within fifteen days of the receipt of the notice or such further time, not exceeding fifteen days, as may be allowed by the appointing authority, such representation as he may wish to make against the proposal; and

(ii) take into consideration the representation, if any, submitted by the pensioner under clause (i).

(4) (a) Without prejudice to the provisions of sub-rule (3), no Government employee who having worked in any intelligence or security-related Organization(s) included in the Second Schedule to the Right to Information Act, 2005 (Central Act 22 of 2005), shall without prior clearance from the Head of the Department in the aforesaid

Organization(s) make any publication after retirement of any material relating to sensitive information, the disclosure of which may prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State or relation with a foreign State, or which may lead to incitement of an offence;

(b) The Government employees who have worked in any Intelligence or Security-related Organizations) included in the Second Schedule to the Right to Information Act, 2005 (Central Act 22 of 2005), shall give an undertaking in regard to the above restriction and any failure to observe such an undertaking on the part of the retired Government employees shall be treated as grave misconduct under this rule. A specimen of the above undertaking is available at end of this rule.

(5) An appeal against an order under sub-rule (1), passed by any authority other than the Government, shall lie to the next higher authority i.e. Government or Governor and the Appellate Authority shall, in consultation with the Haryana Public Service Commission or Haryana Staff Selection Commission, as the case may be, pass such orders on the appeal as the appellate authority thinks appropriate.

Note.- Where a pensioner is convicted in judicial proceedings for an offence committed by him while in service, it is a pre-requisite to issue a show cause notice on the basis of conviction by the court to the pensioner before imposing any cut in his pension for clear manifestation of principle of natural justice.

Explanation.-

In this rule, the expression-

"serious crime" includes a crime involving an offence under the Official Secrets Act, 1923 (Central Act 19 of 1923);

"grave misconduct" includes the communication or disclosure of any secret official code or pass-word or any sketch, plan, model, article, note, document or information

such as it mentioned in section 5 of the Official Secrets Act, 1923 (Central Act 19 of 1923) (which was obtained while holding office under the Government) so as to prejudicially affect the interests of the general public or the security of the State;

"publication" includes communication to the press or electronic media or publish or publication of any book, letter, pamphlet, poster or other document, in any form;

"information" includes any material in any form including records, documents, memos, e-mails, opinion, advice, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models and data material in any electronic form held or accessed by the Government servant while in service."

9. As per aforesaid Rule, appointing authority has right to withhold or withdraw pension if a pensioner is convicted of serious crime or grave misconduct. Serious crime includes a crime involving an offence under the Official Secrets Act, 1923. Grave misconduct includes communication or disclosure of any secret official code which prejudicially affect interest of general public or the security of the State. In view of explanation of Rule 10 of 2016 Rules, pension cannot be withheld for committing an offence which is not even remotely connected with the official duties. Rule 10 of 2016 Rules does not provide for withholding of gratuity. Rule 81 of 2016 Rules relied upon by respondent provides for withholding of gratuity during the pendency of judicial proceedings. The petitioner has been convicted for an offence which is unconnected with his official duties. He has been awarded sentence of one year, thus, it cannot be concluded that he has committed a serious offence. In the absence of specific Rule, permitting to withhold gratuity after adjudication of judicial proceedings, the respondent has no authority

to withhold petitioner's gratuity. He has already been awarded punishment of forfeiture of one increment in departmental proceedings. A period of five years from the date of his retirement has already expired. No other proceeding is pending or under consideration for dismissal from service. The respondent concededly has not withheld his pension under Rule 10 of 2016 Rules despite his conviction which shows that respondent is of the opinion that even Rule 10 of 2016 Rules qua pension is inapplicable to the petitioner. In these circumstances, unescapable conclusion is that neither any financial liability nor any proceeding which may culminate in dismissal from service is pending against the petitioner.

10. In the wake of aforesaid discussion and findings, this Court is of the considered opinion that instant petition deserves to be allowed and accordingly *allowed*.

11. The respondents are directed to release petitioner's gratuity within two months from today failing which respondents shall be liable to pay interest @ 7.5% per annum on the expiry of said period.

(JAGMOHAN BANSAL)
JUDGE

23.12.2025
Prince Chawla

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No