2026:PHHC:064437

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-6466-2018 (O&M)
Date of decision: 28.04.2026

Darshan Singh Chawla (deceased) through his LRs
....Petitioner

Versus

State of Punjab and others
....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. R.K. Sharma, Advocate for the petitioner.

Mr. Amit Singla, DAG, Punjab.

Mr. Vinod Kumar Polist, Advocate for respondent No.3.

HARPREET SINGH BRAR J. (Oral)

1. Prayer in this writ petition filed under Articles 226/227 of the Constitution of India, is for issuance of a writ in the nature of *certiorari*, for quashing the order dated 26.10.2012 (Annexure P-7) passed by respondent No.3. Further, a writ of *mandamus* has been sought, directing respondent No.3-MARKFED to release the retiral benefits of the petitioner i.e. gratuity, leave encashment, arrears of salary on account of enhancement of pay, provident fund, staff security, etc. which has been withheld by respondent No.3, along with interest @ 18% per annum from the date it became due till actual realization.

2. Learned counsel for the petitioner, *inter alia*, contends that the petitioner joined the services of respondent No.3-MARKFED on 09.12.1975 and retired as a Field Officer on 31.10.2009, upon attaining

the age of superannuation. During his service tenure, the petitioner was charge-sheeted twice i.e. on 29.09.2004 and 10.05.2005, respectively. The said charge-sheets culminated into passing of punishment orders dated 28.02.2006 (Annexure P-2) and 28.02.2007 (Annexure P-3), respectively. Aggrieved, the petitioner preferred separate appeals against the said punishment orders, both of which were dismissed, as were the subsequent revision proceedings.

3. In the meantime, in the year 2007, respondent No.3-MARKFED initiated arbitration proceedings against the petitioner and other delinquent officers for recovery of Rs.1,77,03,518/- on account of the loss caused to it due to their alleged failure to maintain the health of the wheat stock. Eventually, arbitral award dated 30.09.2015 (Annexure P-4) was passed in favour of respondent No.3-MARKFED by the Additional Registrar (Admn.). However, an appeal filed against the arbitral award (Annexure P-4) was allowed and consequentially, the said award was set aside by the Registrar, Cooperative Societies, Punjab vide order dated 03.10.2016 (Annexure P-5). As a matter of fact, the revision preferred by respondent No.3-MARKFED against the same also stands dismissed.

4. Learned counsel further submits that since the punishment orders (supra) were implemented during the service tenure of the petitioner and the arbitral award (Annexure P-4) has been set aside, there is no justification to the act and conduct of respondent No.3-MARKFED in withholding the said retiral dues. Even so, the petitioner

was constrained to file CWP-10176-2012 before this Court, praying for the release of his retiral dues. The said petition was disposed of on 28.05.2012 (Annexure P-6) with a direction to the respondents therein to consider the claim made by the petitioner in the legal notice served by him. In purported compliance, the impugned order dated 26.10.2012 (Annexure P-7) was passed, justifying the withholding of retiral dues in view of the recoveries ordered against him. Learned counsel emphasizes that in the absence of any statutory mandate empowering respondent No.3-MARKFED to withhold the retiral benefits of the petitioner, the impugned order dated 26.10.2012 (Annexure P-7) is liable to be set-aside. As such, the petitioner is not only entitled to disbursement of the retiral benefits, but also interest on the same, in terms of the judgment rendered by the Full Bench of this Court in ***A.S. Randhawa Supg. Engineer (Retd.) vs. State of Punjab 1998 (1) SCT 343***.

5. *Per contra,* learned counsel for respondent No.3-MARKFED submits that respondent No.3-MARKFED has approached this Court in context of the arbitration matter, by way of CWP Nos.3266 and 3350 of 2019, which are currently pending consideration. Further, an amendment was brought about to Rule 4.6 of The Punjab State Cooperative Supply & Marketing Federation Employees (Common Cadre) Service Rules, 1990, on 03.01.2019, which allows for gratuity to be withheld from an employee against whom disciplinary and criminal proceedings are in process/pending as on the date of his retirement. The said provision also provides that the decision to release gratuity shall

depend upon the final outcome of such disciplinary/criminal proceedings.

6. Having heard learned counsel for the parties and after perusal of the record, it transpires that the petitioner retired from service on 31.10.2019. During his service tenure, he was charge-sheeted on 29.09.2004 and 10.05.2005, which culminated into passing of two punishment orders, respectively. Vide the punishment order dated 28.02.2006 (Annexure P-2), the salary of the petitioner was downgraded by five stages and vide the order dated 28.02.2007 (Annexure P-3), punishment of stoppage of three annual increments with cumulative effect was imposed upon the petitioner, besides recovery of financial loss in equal proportion from him and C.S. Longia. Admittedly, both the punishment orders (Annexures P-2 and P-3) were implemented and acted upon prior to the retirement of the petitioner. Further, on the eve of his retirement, neither disciplinary nor criminal proceedings of any kind were pending against the petitioner.

7. Further still, the gratuity and leave encashment of the petitioner cannot be withheld by invoking Rule 4.6 (*supra)*. An amendment was carried out therein on 03.01.2019, while the petitioner retired from service on 31.10.2009. Thus, the rights of the petitioner had already crystallized way before the amendment was introduced. Moreover, it is a trite law that the benefits already acquired under the existing rules constitute vested rights and cannot be taken away by retrospective amendments, unless the Rules expressly provide for such

operation and withstand the test of Articles 14 and 16(1) of the Constitution of India.

8. Reliance in this regard is placed on the judgment rendered by a Full Bench of this Court in ***Kaka vs. Hassan Bano, 1998(1) RCR (Criminal) 484***, wherein, speaking through Justice Swatanter Kumar, the following was held:

> ***"28.*** *…This rule is however, subject to a well recognised principle* ***that the benefits acquired under the existing rules cannot be taken away by an amendment with retrospective effect, that is to say, there is no power to make such a rule under the proviso to Article 309 which affects or impairs vested rights****. Therefore, unless it is specifically provided in the rules, the employees who are already promoted before the amendment of the rules cannot be reverted and their promotions cannot be recalled. In other words, such rules laying down qualifications for promotion made with retrospective effect must necessarily satisfy the test of Articles 14 and 16(1) of the constitution :* ***State of Mysore v. M.N. Krishna Murty, (1973) 2 SCR 575 : AIR 1973 Supreme Court 1146, B.S. Yadav v. State of Punjab, (1981) 1 SCR 1024 : AIR 1981 Supreme Court 561, State of Gujarat v. Ramanlal Keshavlal Soni, (1983) 2 SCR 287 : AIR 1984 Supreme Court 161*** *and* ***KC Arora v. State of Haryana, (1984) 3 SCR 623: 1984 Lab. IC 1015.****"*
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> *(Emphasis added)*

8.1. A two Judge bench of the Hon'ble Supreme Court in ***Punjab State Cooperative Agricultural Development Bank Ltd. vs. Registrar, Cooperative Societies and others (2022) 4 SCC 363***, has held that depriving an employee of his accrued or vested rights because of retrospective operation of an amendment, is violative of Articles 14 and 16 of the Constitution of India. Speaking through Justice Ajay Rastogi, the following was opined:

> *"47. The exposition of the legal principles culled out is that* ***an amendment having retrospective operation which has the effect of taking away the benefit already available to the employee under the existing rule indeed would divest the employee from his vested or accrued rights and that being so, it would be held to be violative of the rights guaranteed under Articles 14 and 16 of the Constitution.***
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> *48. In the instant case, the Bank pension scheme was introduced from 1st April 1989 and options were called from the employees and those who had given their option became member of the pension scheme and accordingly pension was continuously paid to them without fail and only in the year 2010, when the Bank failed in discharging its obligations, respondent employees approached the High Court by filing the writ petitions. The Bank later on withdrawn the scheme of pension by deleting clause 15(ii) by an amendment dated 11th March, 2014 which was introduced with effect from 1st April, 1989* ***and the employees who availed the benefit of pension under the scheme, indeed their rights stood vested and accrued to them and any amendment to the contrary, which has been made with retrospective operation to take away the right accrued to the retired employee under the existing rule certainly is not only violative of Article 14 but also of Article 21 of the Constitution.***
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> *49. It may also be noticed that there is a distinction between the legitimate expectation and a vested/accrued right in favour of the employees. The rule which classifies such employee for promotional, seniority, age of retirement purposes undoubtedly operates on those who entered service before framing of the rules but it operates in futuro. In a sense, it governs the future right of seniority, promotion or age of retirement of those who are already in service."*

(Emphasis added)

8.2. Additionally, a three-Judge bench of the Hon'ble Supreme Court in the case of ***S.R. Bhagwat vs. State of Mysore, (1995) 6 SCC***

***16**, s*peaking through Justice S.B. Majumdar, observed as follows in this regard:

> *"12. It is now well settled by a catena of decisions of this Court that a binding judicial pronouncement between the parties cannot be made ineffective with the aid of any legislative power by enacting a provision which in substance overrules such judgment and is not in the realm of a legislative enactment which displaces the basis or foundation of the judgment and uniformly applies to a class of persons concerned with the entire subject sought to be covered by such an enactment having retrospective effect. We may only refer to two of these judgments."*

9. In the view of the discussion above, the present petition is allowed and the order dated 26.10.2012 (Annexure P-7) is set-aside. The respondents are directed to release all the retiral benefits of the petitioner, including gratuity and leave encashment, along with interest @ 6% per annum, which shall be calculated after the expiry of a period of two months from the date of retirement of the petitioner till the date of actual realization. The aforesaid amount shall be released in favour of the legal heirs of the petitioner, within a period of 03 months from the date of receipt of a certified copy of this order.

10. Pending miscellaneous application, if any, also stands disposed of.

(HARPREET SINGH BRAR)
JUDGE

28.04.2026
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No