2026:PHHC:052348

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-26725-2023

Nalni Kant and others

.....Petitioner

VERSUS

State of Punjab and others

..Respondents

Reserved on: 28.01.2026
Pronounced on:06.04.2026
Uploaded on:06.04.2026

Whether only the operative part of the judgment is pronounced? No
Whether full judgment is pronounced? Yes

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. J.P. Rana and Mr. Sukhmandeep Singh, Advocates for the petitioners.

Mr. Vikas Sonak, AAG, Punjab.

Ms. Anamika Sheoran, Advocate for respondent No.2.

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HARPREET SINGH BRAR, J.

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India for the issuance of a writ in the nature of Certiorari for quashing the circular/clarification dated 22.12.2022 (Annexure P-4) issued by the Government of Punjab, Finance Department, which

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stipulates that Travel Concession and Old Age Allowance are not permissible to retired Government officials against whom departmental or judicial proceedings are pending and who are drawing provisional pension.

2. Learned counsel for the petitioners *inter alia* contended that the petitioners are retired employees of the Punjab State Warehousing Corporation (hereinafter 'PSWC') (respondent no.2-Corporation), having retired from their respective posts, such as Warehouse Manager, District Manager, and Godown Assistant. It was argued that the respondent-Corporation, through a notification dated 20.03.1996 (Annexure P-3), introduced a 'Pension & Gratuity Scheme' for its employees from 01.01.1986, which was explicitly stated to be "at par with State government employees" along with allied benefits like Gratuity, LTC, and medical facilities.

3. Learned counsel submitted that the Government of Punjab, vide letter dated 31.08.1989 (Annexure P-1), granted Travel Concession equal to one month's basic pension after every block of two years to its pensioners. Furthermore, under Rule 6.18 of the Punjab CSR Vol. II (Annexure P-2), the State Government provides Old Age Allowance to its pensioners on a graduated scale starting from 65 years of age. By virtue of the respondent-Corporation's pension scheme being at par with the State, the petitioners were entitled to these benefits.

4. However, it was contended that the respondents, by issuing the impugned clarification dated 22.12.2022 (Annexure P-4), have arbitrarily

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and illegally stopped the aforesaid benefits. Learned counsel argued that this clarification, which states that travel concession and old age allowance are not permissible to retirees drawing provisional pension due to pending departmental or judicial proceedings, has no sanction under any statutory rule. Unlike gratuity and leave encashment, for which specific provisions exist under Rule 2.2(c)(1) and Rule 9.14 of the Punjab CSR Vol. II, Part 1 (Annexures P-5 and P-6) to withhold payment during pending proceedings, there is no such enabling provision for withholding travel concession and old age allowance. Thus, it was contended that executive instructions cannot override statutory provisions.

5. Learned counsel argued that the impugned clarification is ultra vires, arbitrary, discriminatory, and violative of Articles 14 and 16 of the Constitution of India. It creates an unreasonable classification between retirees facing proceedings and those who are not, despite the fact that the rules governing provisional pension mandate that such retirees receive 100% provisional pension, which is equal in quantum to the regular pension of other retirees. Since the old age allowance is a component of pension, its denial results in the petitioners receiving less than 100% pension, thereby violating the parity mandated by Rules 2.2(c)(1) and 9.14.

6. *Per contra,* learned counsel for respondents submitted that the pension scheme, introduced vide notification dated 24.04.1996 (Annexure R-2/1), expressly provides that the retiral benefits of its employees shall be at par with those of State Government employees. Consequently, any

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instructions issued by the State Government from time to time would be equally applicable to the employees of the respondent–Corporation. It was, therefore, contended that the stoppage of Old Age Allowance and Travel Concession in respect of retired employees against whom departmental proceedings are pending, in terms of the instructions dated 22.12.2022 (Annexure P-4), does not suffer from any legal infirmity.

7. However, learned counsel was unable to dispute that the clarification dated 22.12.2022 (Annexure P-4) is in the nature of executive instructions, and that no corresponding statutory amendment has been carried out in the Punjab Civil Services Rules to provide for the withholding of travel concession and old age allowance. Learned counsel was also unable to point out any statutory provision under which the aforesaid benefits could be withheld.

OBSERVATION & ANALYSIS

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

9. Admittedly, the respondent-Corporation vide notification dated 24.04.1996 (Annexure R-2/1) had introduced a 'Pension & Gratuity Scheme' for its employees. The scheme explicitly states that Pension for retired/retiring employees of the respondent-Corporation shall be at par with that of State Government employees along with allied benefits such as Gratuity, LTC, medical facilities, etc., as amended from time to time, w.e.f 01.01.1986. The relevant portion of the notification dated 24.04.1996

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(Annexure R-2/1) is reproduced as under:

> *"With the approval of State Govt. vide their memo No.3/71/92- Agri. II(IX)/10258 dated 13.11.95 and the Punjab State Warehousing Corporation vide resolution No.74.19 and Supplementary Resolution No.74.1 in their meeting held on 2.1.96 and as stand notified in Punjab Govt. gazette of dated 29th March, 1996. 'PENSION & GRATUITY SCHEME' is hereby, introduced for the employees of the Corporation w.e.f. 1.1.89 on the following terms & conditions:-*
>
> *1) Pension scheme for the retired/retiring employees of the PSWC will be at par with that of State Government employees along-with allied benefits like gratuity, LTC, medical facilities etc. as existing and as may be amended from time to time with effect from 1.1.86. However, where benefits of gratuity under the payment of Gratuity Act are more favourable, the provisions of the Act will prevail;..."*

10. Thus, the Punjab Civil Services Rules are applicable to the employees of the respondent–Corporation, including the petitioners, and they are entitled to the benefits flowing therefrom. Furthermore, such employees are also entitled to Travel Concession and Old Age Allowance in terms of the letter dated 31.08.1989 (Annexure P-1) and Rule 6.18 of the Punjab Civil Services Rules, Volume II (Annexure P-2), respectively. It must be pointed out that Rule 6.18 expressly recognises Old Age Allowance as "***additional pension***"; and accordingly, it forms part of the pensionary benefits to which retired employees are entitled under the Punjab CSR Vol. II. Relevant portion of Rule 6.18 is reproduced hereunder for ready reference:

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"*6.18.* ***In addition to the pension or family pension admissible under these rules, the old pensioners or family pensioners shall be entitled to an additional pension calculated on the basis of their age and basic pension/family pension at the rates given below*** *:–*

Age of the pensioner or family pensioner	*Rate of additional pension or family pension*
From 65 years to less than 70 years	*Five percent*
From 70 years to less than 75 years	*Ten percent*
From 75 years to less than 80 years	*Fifteen percent*
From 80 years to less than 85 years	*Twenty-five percent*
From 85 years to less than 90 years	*Thirty-five percent*
From 90 years to less than 95 years	*Forty-five percent*
From 95 years to less than 100 years	*Fifty-five percent*
100 years or more	*Hundred percent"*

(Emphasis added)

11. However, vide clarification/instructions dated 22.12.2022 (Annexure P-4), the Finance Department, Government of Punjab decided not to disburse travel concession and Old Age Allowance to those retired officials/officers against whom departmental or judicial proceedings are pending and who are drawing provisional pension. It was further clarified that the aforesaid benefits shall be released to such employees only upon their complete exoneration in the pending proceedings. The relevant part of

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the clarification/instructions dated 22.12.2022 (Annexure P-4) reads as under:

> *"2. After considering the matter cited in the subject the Govt. has taken decision as under :-*
>
> > *The travel concession and old age allowance is not permissible to Punjab Govt. retired officials/officers against whom departmental or judicial proceedings might be pending and they might be drawing provisional pension.*
> >
> > *The officials/officers in whose favour decisions are taken to fully exonerate them in the pending matters against them shall be allowed payment of arrears of regular pension along with travel concession and Old age allowance due to them."*

12. This Court is of the considered view that it is settled law that executive or administrative instructions do not have the authority to amend or override statutory rules, nor can any such instructions be issued in derogation of the statutory framework. This is for the reason that administrative directions, being non-statutory in character, do not carry the force of law. On the contrary, statutory rules, framed under the authority of an enabling statute, have the binding force of law, provided they are consistent with and not repugnant to the parent Act. Thus, while statutory rules occupy the field with full legal sanctity, mere executive instructions cannot operate to curtail, modify, or expand their scope. Reliance in this regard can be placed on the judgements of the Hon'ble Supreme Court in ***Yash Charitable Trust vs. Union of India, 2026 INSC 96***; ***Paluru***

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Ramkrishnaiah vs. Union of India, AIR 1990 SC 166; ***State of U.P. vs. Babu Ram Upadhyaya, AIR 1961 SC 751***; ***Swapan Kumar Pal vs. Samitabhar Chakraborty, 2001(2) SCT 1104 (SC)***; and ***Ram Ganesh Tripathi vs. State of U.P., 1997(1) SCT 494 (SC)***.

13. A two-Judge Bench of the Hon'ble Supreme Court in ***Dr. Hira Lal v. State of Bihar, 2020(2) SCT 200***, speaking through Justice Indu Malhotra, has observed as follows in this regard:

> *"13.1 In our considered view, the Circulars dated 22.08.1974 and 31.10.1974, and Government Resolution No. 3104 dated 31.07.1980, were merely administrative instructions/executive orders. They were not issued in exercise of the power under Article 309 of the Constitution and cannot be said to have the force of law.*
>
> *The Government Resolution dated 31.07.1980 came up for consideration before this Court in* ***State of Jharkhand and Ors. v. Jitendra Kumar Srivastava and Ors., (2013) 12 SCC 210****. After considering Rule 43(b) of the Bihar Pension Rules and Government Resolution No. 3104 dated 31.07.1980, this Court held that the State had no authority or power to withhold the full amount of pension or gratuity of a Government servant during the pendency of judicial or departmental proceedings. This Court held that:*
>
> > *"9. Having explained the legal position, let us first discuss the rules relating to release of Pension. The present case is admittedly governed by the Bihar Pension Rules, as applicable to the State of Jharkhand. Rule 43(b) of the said Pension Rules confers power on the State Government to withhold or withdraw a pension or part thereof under certain*

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circumstances. This Rule 43(b) reads as under:

.....

From the reading of the aforesaid Rule 43(b), following position emerges:

(i) The State Government has the power to withhold or withdraw pension or any part of it when the pensioner is found to be guilty of grave misconduct either in a departmental proceeding or judicial proceeding.

(ii) This provision does not empower the State to invoke the said power while the department proceeding or judicial proceeding are pending.

(iii) The power of withholding leave encashment is not provided under this rule to the State irrespective of the result of the above proceedings.

(iv) This power can be invoked only when the proceedings are concluded finding guilty and not before.

.....

11. Reading of Rule 43(b) makes it abundantly clear that even after the conclusion of the departmental inquiry, it is permissible for the Government to withhold pension etc. ONLY when a finding is recorded either in departmental inquiry or judicial proceedings that the employee had committed grave misconduct in the discharge of his duty while in his office. ***There is no provision in the rules for withholding of the pension/gratuity when such departmental proceedings or judicial proceedings are still pending.***

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*14. .....**A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300A of the Constitution. It follows that attempt of the Appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced**.*

*15. **It hardly needs to be emphasized that the executive instructions are not having statutory character and, therefore, cannot be termed as "law" within the meaning of aforesaid Article 300A. On the basis of such a circular, which is not having force of law, the Appellant cannot withhold-even a part of pension or gratuity. As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different.**"*

(emphasis supplied)

***It was held that pension is 'property' within the meaning of Article 300A of the Constitution, and executive instructions which do not have any statutory sanction cannot be termed as "law" within the meaning of Article 300A. It was further held that in the absence of statutory rules permitting withholding of pension or gratuity, the State could not do so by way of executive instructions. It was observed that "So far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different"**.*

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14. ***In view of the above, we hold that the Respondent-State was unjustified in withholding 10% pension of the Appellant under administrative Circulars dated 22.08.1974 and 31.10.1974, and Government Resolution No. 3104 dated 31.07.1980 after the Appellant had superannuated on 31.03.2008****."*

(Emphasis added)

14. A Full Bench of this Court in ***Dr. Ishar Singh v. State of Punjab, 1994(1) SCT 563***, while interpreting the provisions relating to grant of pension under the Punjab Civil Services Rules, has categorically held that the Rules ought to be construed in a manner that favours the retiree, so as to secure the grant of retiral benefits rather than deprive him of his livelihood, particularly the element of social security ensured at the twilight of his life. However, at the same time, it cannot be overlooked that a balance must be maintained between securing social and economic justice for retirees and preserving the right of the State to enforce discipline and ensure good conduct among its employees, both during service and even after retirement. It was held that the State's interests stand adequately safeguarded under the Punjab Civil Services Rules, particularly in view of the power vested in it to withhold other retiral benefits, such as death-cum-retirement gratuity and leave encashment, in specified circumstances. Accordingly, the State Legislature never intended to deprive a pensioner of his right to pension except in strict accordance with the prescribed rules. The relevant extracts of

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the judgment are reproduced hereunder:

> *"51. Keeping in view what has been stated in the earlier part of judgment I would endorse the view that the pension rules need and must receive liberal construction inspired by broad and general spirit as the rules are meant for securing social and economic protection of life. Since justice is the prime consideration to a retiree, it should be real justice keeping in view the ground realities.* ***The rules should not be read in a way as it would render them into providing mere formality and therapeutic justice while interpreting rules providing for social security. The rules are to be read in a reasonable way according to the spirit. There may be some exaggeration for taking note of the rules of interpretation. There is no doubt that while interpreting the rules, the Court should lean in favour of retiree to grant the retiral benefits rather than to deprive him of his livelihood, particularly social security granted on the eve of one's duskin life. At the same time it cannot be ignored that once has to balance between securing social and economic freedom and justice and the right of the State to enforce good conduct among the Government employees during service and even after retirement. The State cannot be left high and dry and unable to punish a delinquent solely on the ground that he has retired.*** *The employees cannot be permitted to go scot free for his objectionable acts and conduct during his service or after retirement solely on the happening of the event of superannuation. I may add here that one of the objects of the rules in providing powers to the State to withhold pension is to enforce among the employees performance of duty faithfully, vigilantly, dutifully and loyally during the tenure of service and implied conditions of good conduct after the retirement.*
>
> *xx* *xx*

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60. Rule 2.2(c) postulates the right of the State with respect to affecting pension in a situation where the departmental proceedings initiated during service continue and the delinquent attains the age of superannuation before a finding is returned with respect to the charges attributed. It is enjoined by the rule that the State would grant provisional pension not exceeding the maximum pension which would have admissible. ***It would be reasonable to infer the intent of the rule keeping in view the provision of Chapter 9, particularly Rules 9.9 and 9.14 which provide that 100% provisional pension would be granted in either of the cases viz. when the State is unable to determine the pension for numerous reasons provided by the Rules of (sic) when departmental proceedings or judicial proceedings are pending. The only exception to the restrictions on the powers conferred on the State was with respect to withholding of gratuity till the conclusion of the departmental proceedings****...*

xx *xx*

xx

62. ***In view of the observations made above, keeping in view equity and object of pension after balancing the rights of the State and the pensioner and having regard to all the circumstances the cardinal tenets emerge (1) Pension is a substantive right. It is a right to property. It is a condition of service. It is an ordinary incident of retirement (2) State legislature never intended to denude the pensioner of his right to it on his retirement except in accordance with rules. (3) It is a completely protected right of a retiree. (4) Though the Rules preserved the power of the State at the time to sanctioning the pension to withhold or withdraw, either partly or wholly for specified period or permanently it can be exercised only***

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in the event of misconduct or for loss caused to State during service or in case of conviction in judicial proceedings.

63. The same power can be exercised after retirement not only for the same reason but also if the pensioner has committed a grave misconduct or has been convicted of serious crime. Reading of rules warrants an inference that pension shall be deemed to have been guaranteed on retirement irrespective of the fact whether it is granted provisionally or finally.

64. ***The grant of provisional pension has been provided only in limited situations i.e. when the departmental proceedings are pending or the State has been unable to determine the pension, though the State has provided a time table to complete the pension work commencing from 24 to 30 months before the date of retirement of the pensioner provided for by Chapter 9****.*

65. Since the statutory rules provide for sanction of 100% provisional pension, I fail to comprehend that the legislature would have intended to affect the pension in anticipation of finding the pensioner guilty of misconduct or his conviction in judicial proceedings or finding him having caused pecuniary loss to the State during the tenure of service. ***The State cannot escape its liability to pay pension solely in anticipation of the liability of the pensioner being fixed in disciplinary proceedings initiated. Allowing the State to pay reduced pension in anticipation of an adverse finding in a pending proceeding as suggested by the learned counsel for the respondents, in my considered view would be not only oppressive to the retiree but also amount to punishment before the trial. As regards protection of the State's interest, these have been sufficiently protected particularly when the State has been empowered to withhold all other retiral benefits like death-cum-retirement gratuity, salary etc. payment on account of leave encashment to which an employee is***

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entitled on the eve of retirement. The pension is granted and protected with a view to provide subsistence to the elder members of the society. Another significant factor which can be taken note of is that no recovery can be made from the pension except with the consent of the pensioner for any amount due to the Government from the pensioner. It is thus a deliberate and conscious provision enacted by the legislature in the rules. Petitioners enacted by the legislature in the rules. Petitioners cannot be deprived of their legitimate rights inferred by the statutory rules on excusals, etc.*"*

(Emphasis added)

15. Adverting to the facts of the present case, a perusal of the Punjab Civil Services Rules, Vol. II shows that as per Rule 2.2(c)(1) read with Rule 9.14, if any departmental or judicial proceeding is pending against an officer, he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceedings, final orders are passed, a provisional pension equal to the maximum pension which would have been admissible on the basis of his qualifying service up to the date of retirement or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension . However, the Rule explicitly states that no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceedings and of final orders thereon. Thus, the State has the power to withhold gratuity/death-cum-retirement gratuity during the pendency of such proceedings.

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16. Similarly, Rule 8.21(aa) of the Punjab Civil Services Rules, Vol I, Part I governs the payment and withholding of leave encashment to an employee. It states that the authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government employee who retires from service on superannuation while under suspension or while disciplinary or criminal proceedings are pending against him, if in the opinion of such authority, there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him.

17. However, there are no statutory provisions under the Punjab Civil Services Rules that empower the employer to withhold payment of Old Age Allowance and Traveling Concession during the pendency of departmental or judicial proceedings. Rather, the power to withhold the aforesaid benefits was introduced for the first time through the clarification/instructions dated 22.12.2022 (Annexure P-4). In light of the above-cited precedents, this Court is of the considered view that a person cannot be deprived of these retiral benefits without the authority of law, which is the Constitutional mandate enshrined in Article 300A of the Constitution. Thus, the attempt of the respondents to withhold traveling concession and old age allowance without any statutory provision and under the umbrage of administrative instructions cannot be allowed. The denial of post-retiral monetary benefits during the pendency of proceedings must be supported by a specific statutory provision, and in the absence of such

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authority, it would amount to an executive curtailment of an accrued statutory entitlement.

CONCLUSION

18. In view of the foregoing discussion, the present petition is allowed. The impugned circular/clarification dated 22.12.2022 (Annexure P-4) issued by the Government of Punjab, Finance Department hereby stands quashed and set aside. The respondents are directed to release the pending dues of Old Age Allowance and Traveling Concession to the petitioners and all other identically circumstanced employees within a period of six weeks from the date of receipt of a certified copy of this order. It must be clarified that since the impugned circular/clarification dated 22.12.2022 (Annexure P-4) stands quashed, the present judgement shall be treated as a *judgment in rem*, intending to give benefit to all similarly situated persons, whether they have approached this Court or not.

19. Pending miscellaneous applications, if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

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

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