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

CWP-38934-2025
Date of decision: 28.01.2026

Mahabir Singh ....Petitioner

Versus

State of Haryana and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Johan Kumar, Advocate
for the petitioner.

Mr. Piyush Khanna, Addl.A.G., Haryana.

Mr. Vikrant Pamboo, Advocate
for respondents No.3 & 4.

HARPREET SINGH BRAR, J. (ORAL)

1. The present civil writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing of charge sheet bearing No.28556 dated 08.12.2025 (Annexure P-5) and for issuance of directions to the respondents to release the retiral benefits of the petitioner from the date of entitlement i.e. 31.12.2023 along with interest @ 18% per annum. Further, for issuance of a writ in the nature of *mandamus* directing the respondents to grant the benefit of annual increment w.e.f. 01.07.2023 along with arrears of salary with interest @ 18% per annum.

2. On 23.12.2025, the following order was passed:-

> *"Learned counsel for the petitioner inter alia contends that at the time of retirement of petitioner there was no pending inquiry or charge-sheet against the petitioner. The charge sheet was issued after retirement of petitioner and beyond the 4 year*

> *statutory period. As such, the impugned order is not sustainable in the eyes of law and in violation of Regulation 10(2) of the Haryana Warehousing Corporation Pension Regulations, 1996. It is further contended that Regulation 10(2)* ***supra*** *mandates prior sanction and bars proceedings for events more than four years old. It is further contended that the case of the petitioner is squarely covered by the judgments rendered by this Court in* ***Anoop Singh Vs. State of Haryana and others 2020(1) SCT 89*** *and* ***CWP-9606-2022****, titled as* ***Khairati Lal Vs. State of Haryana and others****, decided on 13.10.2025 (Annexure P-7).*
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> *On advance notice Mr. Piyush Khanna, learned Additional Advocate General and Mr. Vikrant Pamboo, Advocate appear on behalf of respondents No.1, 2 and 3, 4 respectively and seek time to have complete instructions in the matter.*
>
> *Adjourned to* ***28.01.2026.***
>
> ***In the meantime, the operation of the charge-sheet dated*** *08.12.2025 (Annexure P-5) shall remain in abeyance till the next date of hearing."*

3. Learned counsel for respondents No.3 & 4 is not in a position to controvert the fact that at the time of the retirement of the petitioner, there was no pending inquiry or charge sheet pending against the petitioner.

4. I have heard learned counsel for the parties and after perusing the record of the case, it transpires that the charge sheet in question was issued after retirement of the petitioner. Further, the alleged misconduct occurred more than four years prior to the date of retirement. As such, it is beyond the statutory period of four years. The issue regarding the continuation of departmental proceedings after the superannuation of employees is no longer *res integra.*

5. The Hon'ble Supreme Court in '***Kadirkhan Ahmedkhan Pathan Vs. The Maharashtra State Warehousing Corporation and others***' 2026 INSC 16, has observed the following:-

"17. Rule 27 of the 1982 Pension Rules -

27. Right of Government to withhold or withdraw pension

(1) Government may, by order in writing, withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and also order the recovery from such pension, the whole or part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement:

Provided that the Maharashtra Public Service Commission shall be consulted before any final orders are passed in respect of officers holding posts within their purview:

Provided further that where a part of pension is withheld or withdrawn, the amount of remaining pension shall not be reduced below the minimum fixed by Government.

(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service,

(b) The departmental proceedings, if not instituted while the Government servant 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, and

(iii) shall be conducted by such authority and at such place as the Government may direct and in accordance with the procedure applicable to the departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of an event which took place, more than four years before such institution.

(4) In the case of a Government servant who has retired on attaining the age of Superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in rule 130 shall be sanctioned.

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On reading of the above, it is luculent that the Government has the right to withhold or withdraw the pension or any part thereof for a limited period or for the period as it deemed fit or recover the loss, if any, on account of grave misconduct or negligence of the pensioner during his employment or upon reemployment after retirement, after consultation with the Public Service Commission. While doing so, in case of *withholding or withdrawing the pension, remaining pension shall not be reduced to the threshold fixed by the Government.*

18. In case the departmental proceedings have not been instituted while government servant was in service or before his retirement or during his re-employment, and the Government wishes to institute the proceedings, it may be instituted with the sanction of the Government. It is also made clear that the institution of any proceeding after retirement can be for a cause which took place within four years prior to the institution. Similarly, if the proceedings are already instituted, but have not culminated, they can be continued in the same pace and manner as specified in Rule 27(1). After institution of the proceedings, if the government servant attains the age of superannuation and the proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 130 shall be sanctioned.

19. On appreciation of Rule 27(b), it can safely be observed that in cases where the departmental proceedings were instituted post-retirement without obtaining sanction of the government till culmination as specified in the rules and simultaneously if the cause of action of such proceedings arose prior to four years of date of institution, such proceedings could not have been instituted or continued. Therefore, the provision is benevolent in nature, as it regulates the State's discretion to institute or continue departmental proceedings."

6. Reliance in this regard can also be placed on the judgment rendered by this Court in '***Anoop Singh Vs. State of Haryana and others***' 2020 (1) SCT 89, which observes as under:-

"7. It is a settled principle of law that the position is to be seen on the day when an employee retires. In case, there are proceedings pending against an employee on the date of retirement, respondents will be well within their right to withhold the gratuity as well as the leave encashment. As per the settled principle of law settled by a Full Bench of Hon'ble Supreme Court of India in Union of India v. K.V. Jankiraman, 1991(3) SCT 317, the proceedings can only be termed as pending in case a charge sheet is served in a departmental proceeding or the charges have been framed in a criminal proceeding by the Competent Court of Law. The relevant paragraph of the judgement is as under :-

> *"16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have com-menced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many-cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges.*

> *What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy."*

8. Admittedly, in the present case, neither there was any charge sheet pending against the petitioner on the date of his retirement nor there was any proceeding pending before any Competent Court of Law where, charges have been framed against the petitioner, so as to entitle the respondents to withhold the pensionary benefits of the petitioner. Therefore, the position is clear that on the date of the retirement of the petitioner on 30.11.2014, there were no proceedings pending against the petitioner, which would have entitled the respondents to withhold the pensionary benefits.

9. The question as to whether, the issuance of a charge-sheet or putting up of a challan after the retirement of an employee will entitle the respondents to withhold his/her re-tiral benefits which they are bound to release immediately after retirement This question came up for consideration before this Court while deciding CWP No. 3493 of 1986 on 13.11.1995 titled as L.R. Dhawan v. State of Haryana and others, wherein this Court has held that the gratuity is payable to an employee on the date of retirement and the said payment can only be deferred in case an employee is facing departmental enquiry or judicial proceedings on the date of retirement but in case no judicial proceeding or departmental enquiry is pending on the date of his/her retirement, there is no authority with the employer/government to withhold the payment of the gratuity. The relevant paragraph of the said judgement is as under:-

"4. Gratuity due to an employee is payable to him on the date of retirement. Payment of the gratuity can be deferred in a case where the employee is under cloud at the time of his retirement, namely, in a case where he is facing departmental enquiry or judicial proceedings. If no enquiry of judicial proceeding is pending on the date of retirement of the employee, the Government/employer does not have any authority to withhold the payment of gratuity. Similarly, full pension payable to an employee

can be withheld during the pending of thewith the power to withhold the pension or a part thereof or recover any pecuniary loss caused to the Government from the pension payable to an employee in case such Government servant is found guilty of grave misconduct or negligence in the discharge of his duties during the course of service. Deduction from the pension can be made even on the basis of an enquiry which fulfilment of the conditions enumerated in proviso to Rule 2.2 (b). However, may be initiated against the employee after his retirement but subiect to the proceedings initiated against an employee under proviso to Rule 2.2(b) cannot be made a ground for withholding of death-cum-retirement gratuity or the pension pay-able to an employee on the date of his retirement. In the case in hand. no enquiry was pending against the petitioner on the date of his retirement. The proceedings have been initiated against him after over three years and nine months of his retirement from service. That may ultimately lead to the withholding of the pension or part thereof or recovery therefrom in terms of Rule for withholding of death-cum retirement gratuity payable to the petitioner on the ground that enquiry has been iniated against him under Rule 2.2(b) with the issue of notice dated 26.12.1986."

10. The same question again came up for consideration before this Court in CWP No. 20687 of 2012, titled as Amarjit Singh v. Punjab State Civil Supplies Corporation Limited and another, on 06.05.2016. This Court again held, after relying upon L.R. Dhawan's case (Supra), that in case there is no charge-sheet pending on the date of retirement, gratuity could not have been withheld. This Court further held that issuance of a charge-sheet under 2.2 (b) of the Punjab Civil Services Rules Vol. II, subsequent to the retirement, the gratuity of an employee cannot be withheld. The relevant paragraph of the said judgment is as under:

"2. To the extent gratuity is claimed by the petitioner, this petition must succeed. To claim such benefit, learned counsel for the petitioner relies appropriately on the case law in Narinder Dev Sharma v. State of Punjab & another, 1996 (1) SCT 623; L.R.Dhawan v. State of Haryana & others, 1996 (3) SCT 11 and Ram Narain Dua v. Dakshin Haryana Bijli Vitran Nigam Ltd. & others, 2007 (1) SCT 161. This is because the respondents admit that no charge-sheet was served on the petitioner prior to his

retirement and therefore, gratuity could not have been withheld. Neither can gratuity be withheld by initiating enquiry under Rule 2.2(b) of the Punjab Civil Services Rules, Volume II after employee retires and departmental proceeding were not contemplated during service. This is for the reason that gratuity is a one-time payment which falls due and payable on the date of retirement and is not a recurring right like pension. However, an enquiry based on a charge-sheet issued after retirement under Rule 2.2 (b) can be conducted and concluded. The charge-sheet was issued in this case on 02.04.2013 for an incident of alleged misconduct which occurred during the period 2009-10, while the petitioner retired from service on 30.04.2011. To that extent no court directions are called for in this petition to draw the curtains on the departmental proceedings.

3. For the foregoing reasons, this petition is allowed while setting aside the impugned decision withholding gratuity for no rhyme or reason. Since the amount of gratuity has been withheld for the wrong reason, the petitioner would be entitled to interest on delayed payment @ 8.7% p.a. ie. the rate payable on long term fixed deposits sitting invested in nationalized Banks."

11. Division Bench of this Court also had an occasion to consider the said question of law while deciding CWP No. 8095 of 2005, titled as Ram Narain Dua v. Dakshin Haryana Bijli Vitran Nigam Ltd. and others, on 21.09.2006. This Court again held that the amount of gratuity payable to an employee cannot be withheld keeping in view the allegations, which have been alleged against him after the date of retirement. The relevant portion of the said judgement is as under:-

"2. Having heard the learned counsel for the parties, we are of the considered view that the respondents could not have with-held any amount of gratuity payable to the petitioner on account of allegation which have emanated after the date of his retirement. Such a course is not available to the respondents. In some what similar circumstances, this Court has earlier also in the case of Hans Raj Sharma v. Uttar Haryana Bijli Vitran Nigam Limited and others (Civil Writ Petition No. 152 of 2004, decided on October 29, 2004) has allowed the writ petition by following the judgment of Hon'ble the Supreme Court in PR. Naik v. Union of India, AIR

1972 Supreme Court 554. It has been laid down in the aforementioned judgment that issuance of charge sheet for initiation of departmental enquiry is a sine qua non. In view of the above, we allow the writ petition and quash the impugned order dated March 1, 2005 (P-15). We further direct the respondents to release the 100% pension, arrears of pension, gratuity and commutation of pension amount to the petitioner within a period of one month from the date a certified copy of this order is presented to the respondents In case, the needful is not within one month, then the petitioner shall be entitled to interest at the rate of 6% per annum from the date the amount is payable till its actual payment."

12. The same question was again considered by this Court while deciding CWP No. 13449 of 2014, titled as Hans Raj v. Registrar, Cooperative Societies, Punjab and others, on 24.05.2017. This Court again held that a charge-sheet which has been served upon an employee after his/her retirement, cannot give a right to the employer to withhold the gratuity as the position is to be seen on the date of retirement and not subsequent. The relevant portion of the said judgement is as under:-

"Now, the further question would arise as to whether the gratuity of the petitioner could be withheld or not?

The petitioner retired from service on 30.9.2012. Charge sheet was served upon him on 11.4.2014 i.e. after more than one and half years of the said retirement. The gratuity is otherwise required to be released immediately on the retirement. It goes to show that the gratuity of the petitioner was probably not released immediately on account of the impending charge sheet. Petitioner is getting provisional pension and if the department finds that the charges are proved, they are always at liberty to impose a cut in the pension. However, the gratuity of the petitioner cannot be withheld for indefinite period on the basis of the charge sheet which is issued after more than one and half years of his retirement. Accordingly, the present writ petition is partly allowed to the extent that the gratuity of the petitioner is ordered to be released with interest @ 9% per annum starting three months from the date of retirement till the date of actual payment."

7. Admittedly, the charge sheet was issued after retirement beyond the statutory period of four years which is not sustainable in the eyes of law.

8. In view of the discussion above, the present petition is allowed. The charge sheet bearing No.28556 dated 08.12.2025 (Annexure P-5) is hereby set aside. The respondents are directed to release the retiral dues of the petitioner and other admissible benefits of the petitioner along with interest @ 6% per annum, to be calculated two months from the date of retirement till its actual realization.

(HARPREET SINGH BRAR)
JUDGE

28.01.2026
Neha

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