

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

2025:PHHC:032845-DB



Civil Writ Petition No.27273 of 2022 (O&M)

Reserved on : 20.01.2025

Date of Decision: 07.03.2025

Pritam Kaur

.....Petitioner

versus

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE SUDHIR SINGH, JUDGE**

Present : Mr. Bikramjit Singh Patwalia, Advocate with
Mr. Abhishek Masih, Advocate and
Mr. Gaurav Jagota, Advocate, for the petitioner.

Mr. Salil Sabhlok, Sr. Deputy Advocate General, Punjab.

Mr. Dhiraj Chawla, Advocate, for respondents No.2 to 4.

SHEEL NAGU, CHIEF JUSTICE

This petition is preferred by the widow of the deceased (late Gurnam Singh Sewak, Civil Judge Senior Division), who expired on 02.10.2021, claiming the following reliefs: -

- “i) *To issue an appropriate writ, order or direction, including a writ in the nature of mandamus directing the respondents to fix the pension and grant arrears of pension and all other admissible retiral dues of the petitioner’s husband including pension, gratuity, leave encashment and all other pensionary benefits uptill the date of death of the husband i.e. 02.10.2021 and with a further prayer to thereafter release the admissible family pension to the petitioner and arrears thereof, both of which have been withheld by the respondents without assigning any reason and in a illegal and arbitrary manner and completely contrary to the settled proposition of law in “Punjab State Civil Supplies Corporation Ltd. and others vs. Pyare Lal reported as 2013 (5) SLR 33 and also*

- keeping in view the notification dated 13.08.2021 (Annexure P-14) superannuating the husband of the petitioner w.e.f. 30.06.1999.*
- ii) *To issue a writ in the nature of mandamus directing the respondents to calculate and release the pension of the late husband of the petitioner after promoting him to the superior judicial service from 17.08.1996 i.e. the date junior to the husband of the petitioner namely Sh. B.S.Mehandiratta was promoted as such and to calculate all consequential benefits towards pay salary and retiral benefits and arrears thereof in the rank and pay of superior judicial services w.e.f. 17.08.1996 upto the date of his attaining the age of 58 years of superannuation 30.06.1999 keeping in view the decision of this Hon'ble Court in CWP No. 6377 of 2001 dated 09.03.2018.*
- iii) *To issue a writ in the nature of mandamus directing the respondents to also pay interest @ 18% per annum on the delayed of pensionary benefits and arrears thereof, in view of the judgment of this Hon'ble Court in R.S.Randhawa versus State of Punjab and others reported as 1998(1) SCT 343.*
- iv) *To issue a writ in the nature of certiorari quashing the letter dated 04.06.2022 (Annexure P-17) vide which the petitioner has been intimated that the family pension has been withheld till the finalization of the enquiry/complaints against her late husband which arbitrary action of the respondents cannot be sustained in the eyes of law keeping in view the decision of this Hon'ble Court in CWP No. 6377 of 2001 as also the fact that after the death of the husband of the petitioner all proceedings pending against him would automatically stand abated."*

2. To appreciate the factual matrix involved in the present petition, it would be apt to delineate the facts in tabular and chronological manner as follows:-

DATES AND EVENTS

1964 to 1972	Husband of petitioner, served as Upper Division Clerk (UDC) in the office of Accountant General, Punjab from October-1964 till November, 1972 whereafter he was appointed as Assistant Treasury Officer on 18.11.1972.
December-1973	Husband of petitioner successfully appeared in the Punjab Civil Services (Judicial) examination.
08.02.1977	Husband of petitioner joined as Civil Judge (Junior Division).
11.05.1996	Husband of petitioner was designated as Civil Judge (Senior Division).
01.06.1996	Husband of petitioner was posted as Civil Judge (Senior Division)-cum-Addl. Chief Judicial Magistrate, Bathinda.
28.06.1996	Husband of petitioner sought voluntary retirement.
17.08.1996	Husband of petitioner was placed under suspension contemplating departmental enquiry.
27.08.1996	High Court declined the request for voluntary retirement (Annexure P-1).
15.10.1996	The charge sheet for major penalty is issued against the deceased husband of the petitioner.
04.02.1998	Inculpatory Inquiry Report.
30.06.1999	Deceased husband of petitioner attains the age of superannuation. However, provisional pension was neither sanctioned nor paid.
CWP-13187-2000 (Gurnam Singh Sewak	Petition filed by deceased husband of petitioner assailing order dated 27.08.1996 and claiming pensionary benefits

vs. State of Punjab).	w.e.f. 30.06.1999 (date of superannuation) and consequential relief of promotion to Superior Judicial Service at par with juniors promoted w.e.f. 17.08.1996.
27.09.2000	Civil Writ Petition-13187 of 2000 was listed before the Court and later on admitted on 03.12.2002.
28.02.2001	The husband of petitioner dismissed from service after departmental enquiry.
CWP-6377-2001(Gurnam Singh Sewak vs. State of Punjab).	This petition was filed by deceased husband of petitioner assailing order of dismissal from service on 28.02.2001.
09.03.2018	CWP No. 6377 of 2001 was allowed, by quashing impugned order of dismissal from service, the charge sheet dated 15.06.1999 and the implicative enquiry report dated 04.02.1998, extending liberty to High Court to take action against Shri Gurnam Singh Sewak (deceased) in accordance with law in attending facts and circumstances.
09.03.2018	CWP No. 13187-2000 (O&M) was dismissed as infructuous in view of allowing of CWP No. 6377 of 2001.
06.10.2018	RA-CW-227-2018 in CWP-6377-2001 filed by deceased husband of the petitioner seeking review of order dated 09.03.2018, was dismissed.
07.05.2018	Representation made by husband of petitioner for release of pensionary benefits on the strength of order of Division Bench of High Court dated 09.03.2018 (Annexure P-6).
10.05.2019	SLP (Civil) Diary No. 8780-2019 filed by High Court assailing the order dated 09.03.2018 of DB is dismissed by the Apex Court (Annexure P-5).

09.07.2019 (Annexure P-7)	Another representation made by husband of petitioner informing High Court about dismissal of SLP and release of his pensionary benefits.
01.09.2019 (Annexures P-8, P-9 and P-10)	Legal notices/representations made by counsel for deceased husband of petitioner seeking release of pensionary benefits.
13.08.2021	Notification of State of Punjab notifying the deceased husband of petitioner to have attained age of superannuation on 30.06.1999 from Punjab Civil Services (Judicial Branch).
02.10.2021	Husband of petitioner expired.
05.04.2022	Daughter of deceased was called upon by District & Sessions Judge, Fatehgarh Sahib to submit first part of service book of her father to process and finalize the case of family pension.
From August-2021-till sanction of family pension in March-2024.	The High Court kept insisting the petitioner for recovery of amount of Rs.1,87,411/- received by deceased husband of petitioner as subsistence allowance during period of suspension from 17.08.1996 till 30.06.1999 and thus neither provisional pension was paid nor family pension was finalized and paid.
04.06.2022 (Annexure P-17)	Petitioner was informed by High Court that case of family pension was kept on hold till finalization of enquiry pending in the Vigilance Disciplinary Committee against deceased husband of petitioner.

24.03.2023	Vigilance Disciplinary Committee resolves to drop the charge-sheets dated 07.08.1997 and 30.03.1998 and recommends suspension period from 17.08.1996 to 30.06.1999 to be treated as a leave due and resultant service benefits be released in favour of legal heirs of deceased husband of petitioner.
13.07.2023	The High Court informs the Accountant General, Punjab about the date of superannuation of the husband of petitioner and the fact of husband of the petitioner having died and that no departmental/judicial enquiry is pending against deceased employee and also that No Due Certificate and Last Pay Certificate will be supplied in due course.
13.03.2024	The Accountant General, Punjab sanctioned superannuation pension and family pension to the petitioner and gratuity to the legal heirs.

SUBMISSIONS:-

1. Based on the aforesaid factual matrix, it is submitted by learned counsel for the petitioner that the pension payment order was released on 29.01.2024 while Certificate and Report cum Gratuity Payment Order was released on 13.03.2024 (Annexure R-4). Surprisingly, despite the order of dismissal from service having been set aside by the Division Bench of this Court on 09.03.2018, the deceased husband of petitioner neither received any provisional pension as per Rule 9.14 of Punjab Civil Services Rules, 1953 nor

the case of family pension qua petitioner was finalized immediately after the death of petitioner's husband.

1.1 Learned counsel for the petitioner also submits that the subsistence allowance received by the petitioner during the period of suspension from 17.08.1996 to 30.06.1999 is not recoverable as that would amount to deprivation of right to life since subsistence allowance is paid to the suspended employee to subsist and survive, which cannot be equated with salary and, thus, the same cannot be recovered.

1.2. It is also submitted that pension and pensionary benefits are not bounty to be disbursed by employer but are now recognized as precious right and are akin to constitutional right to property under Article 300-A of the Constitution of India which cannot be taken away without following due process of law.

1.3. In the conspectus of the above arguments, it is contended that delayed release of pensionary benefits and non-grant of pensionary benefits by the respondents is unsustainable in the eyes of law.

2. Per contra learned counsel for the High Court and the State of Haryana have justified non sanction and non-grant of pensionary benefits and family pension within reasonable time, by contending that pension case was not finalized and remained subjudice for quite sometime. It is submitted that in January and March-2024 vide Annexures R-4/7 and R-4/8 the arrears of pension w.e.f. 01.07.1999 to 02.10.2021 were sanctioned and paid soon thereafter, whereafter the retirement gratuity was also disbursed vide Annexure R-4/8.

FINDINGS

3.1 Reply of the respondents is silent as regards the reason for withholding even provisional pension on and after 09.03.2018 when the penalty of dismissal from service was set aside by allowing Civil Writ Petition No. 6377 of 2001 despite provision of Rule 9.14 of Punjab Civil Services Rules, 1953.

3.2 Reply of the respondents is conspicuously silent as to why family pension was sanctioned and released as late as in January-February-2024 whereas the same became due immediately after the death of husband of the petitioner on 02.10.2021.

3.3 The Division Bench in its judgment dated 09.03.2018 passed in Civil Writ Petition No. 6377 of 2001 has set aside the order of punishment of dismissal on the ground that no order of punishment of dismissal from service could have been passed after the husband of the petitioner attained the age of superannuation for which decision of the Apex Court in ***High Court of Punjab and Haryana vs. Amrik Singh 1995 Suppl. (1) SCC 321*** was relied upon.

In regard to the ratio in ***Amrik Singh's*** (supra), this Court has its reservations in view of three Judges Bench decision of the Apex Court in ***Chairman cum-Managing Director, Mahanadi Coalfields Limited vs. Sri Rabindranath Choubey, 2020 AIR Supreme Court 2978***, rendered on 27.05.2020, wherein while ironing out the difference of opinion between two earlier Benches of Apex Court, the said larger Bench of three Judges Bench by majority of 2 :1 held as under:-

“M.R. Shah, J. - The short but interesting questions of law which fell for consideration of this Court are, (i) as to whether is it permissible in law for the appellant (employer) to withhold the payment of gratuity of the respondent (employee), even after his superannuation from service,

because of the pendency of the disciplinary proceedings against him?, and (ii) where the departmental enquiry had been instituted against an employee while he was in service and continued after he attained the age of superannuation, whether the punishment of dismissal can be imposed on being found guilty of misconduct in view of the provisions made in Rule 34.2 of the CDA Rules of 1978?

10.32 *Thus considering the provisions of Rules 34.2 and 34.3 of the CDA Rules, the inquiry can be continued given the deeming fiction in the same manner as if the employee had continued in service and appropriate punishment, including that of dismissal can be imposed apart from the forfeiture of the gratuity wholly or partially including the recovery of the pecuniary loss as the case may be.*

11. *In view of the above and for the reasons stated above and in view of the decision of three Judge Bench of this Court in Ram Lal Bhaskar (supra) and our conclusions as above, it is observed and held that (1) the appellant - employer has a right to withhold the gratuity during the pendency of the disciplinary proceedings, and (2) the disciplinary authority has powers to impose the penalty of dismissal/major penalty upon the respondent even after his attaining the age of superannuation, as the disciplinary proceedings were initiated while the employee was in service. (emphasis supplied).”*

3.4 However, since the said decision of the Division Bench dated 09.03.2018 passed in Civil Writ Petition No. 6377 of 2001 has attained finality by dismissal of Special Leave Petition by the Apex Court on 10.05.2019, we say no more.

3.5 Return of the respondents is further silent on the point that under what circumstances the subsistence allowance which was paid for the period of suspension from 17.08.1996 to 30.06.1999, could be recovered. It is incomprehensible especially when the Vigilance Disciplinary Committee decided to drop the disciplinary proceedings pursuant to liberty extended by Division Bench of this Court, that under what provision of law is the

subsistence allowance being recovered. Conjoint reading of Rule 7.3(2) & (3) and Rule 7.3.A(1) of Punjab Civil Services Rules reveals that except in cases of setting aside of dismissal by Court of law and the employer deciding not to hold further inquiry (as is the case herein), then the period of absence and suspension is bound to be regularized, meaning thereby that no recovery of subsistence allowance can take place. Rule 7.3 (2) & (3) & Rule 7.3A(1) are reproduced below for ready reference and convenience:-

“7.3. (1) *When a Government employee, who has been dismissed, removed or compulsorily retired, is reinstated as a result of appeal, revision or review, or would have been so reinstated but for his retirement on superannuation while under suspension or not, the authority competent to order re-instatement shall consider and make a specific order—*

- (a) *regarding the pay and allowances to be paid to the Government employee for the period of his absence from duty including the period of suspension, preceding his dismissal, removal or compulsory retirement, as the case may be; and*
- (b) *whether or not the said period shall be treated as a period spent on duty.*

(2) *Where the authority competent to order re-instatement is of opinion that the Government employee, who had been dismissed, removed or compulsorily retired, has been fully exonerated, the Government employee shall, subject to the provisions of sub-rule (6), be paid his full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended, prior to such dismissal, removal or compulsory retirement, as the case may be:*

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government employee had been delayed due to reasons directly attributable to the Government employee it may, after giving him an opportunity to make representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government employee shall, subject to the provisions of sub-rule (7), be paid for the period of such delay only such amount (not being the whole) of pay and allowances, as it may determine.

(3) *In a case falling under sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.*

7.3-A. (1) *Where the dismissal, removal or compulsory retirement of a Government employee is set aside by a court of law and such Government employee is re-instated without holding any further inquiry, the period of absence from duty shall be regularised and the Government employee shall be*

paid pay and allowances in accordance with the provisions of sub-rule (2) or sub-rule (3) subject to the directions, if any, of the Court.”

3.6 Reply of the respondents is also silent in respect of entitlement of the petitioner to interest over the delayed payment of pensionary benefits which becomes payable due to undue withholding of pension and pensionary benefits sans authority of law.

4. The present case reflects a sorry state of affairs. The petitioner was placed under suspension on 17.08.1996 and after his request for voluntary retirement was declined, he was proceeded against in departmental enquiry for major misconduct by issuance of charge-sheet on 15.10.1996. During pendency of disciplinary proceedings, husband of the petitioner attained the age of superannuation on 30.06.1999. Thereafter vide order dated 28.02.2001, the petitioner was inflicted with penalty of dismissal from service. Dismissal order was set aside on 09.03.2018 by allowing Civil Writ Petition No. 6377 of 2001 whereafter the petitioner became entitled to superannuation pension or at least to provisional pension w.e.f. 30.06.1999, along with admissible retiral benefits. Records reveal that neither pension nor provisional pension was paid.

4.1 Even when Special Leave Petition filed by the High Court was dismissed on 10.05.2019 putting a stamp of approval to the Division Bench order dated 09.03.2018, neither provisional pension nor regular pension was released. The petitioner kept making repeated representations which is evident from Annexures P-6 to P-19 but to no avail.

4.2 In the absence of any provisional or regular pension, the petitioner, who was suffering from different ailments, expired on 02.10.2021.

4.3 Thereafter the petitioner (widow of the deceased judicial officer) preferred this petition, during the pendency of which Vigilance Disciplinary Committee of the High Court on 24.03.2023 dropped both the charge-sheets

dated 07.08.1997 and 30.03.1998 and resolved that the period spent during suspension from 17.08.1996 to 30.06.1999 be treated as leave due and the service benefits be released in favour of the legal heirs of deceased judicial officer.

4.4 As late as on 13.03.2024, superannuation pension and family pension were sanctioned and thereafter paid to the petitioner.

5. Least that can be said about this case is that neither the judicial officer nor his family after his death were treated with dignity and grace. It is settled law that pensionary benefits as and when become due and admissible, if not released, are liable to be paid with interest and cost. The pensionary benefits and retiral claims are akin to property which cannot be deprived without authority of law as stipulated in Article 300-A of the Constitution of India. Denial of provisional/superannuation pension to the husband of the petitioner and the petitioner from 09.03.2018 till March-2024 was not only without authority of law but also is blatant disregard of law.

6. Consequently, this petition deserves to be allowed with costs and interest in the following terms:-

- i) A writ of mandamus is issued to the respondents to pay interest over the arrears of regular pension and family pension paid late @ 10% per annum calculated from the date the regular pension became due w.e.f. 01.07.1999 and the family pension became due w.e.f. 03.10.2021 till realization.
- ii) The petitioner be also paid arrears arising out of revision in pension, if the same have taken place during the interregnum, if not already paid.

- iii) The respondents are further directed to pay interest at the rate of 10% per annum over the amount of gratuity paid late from the date it became due i.e. from 09.03.2018 till its realization.
- iv) Respondents are also directed to pay arrears of gratuity with interest at the rate of 10% per annum which may have arisen due to the pay revision, if not already paid.
- v) Respondents are liable to be fastened with exemplary costs quantified at Rs.25,000/-, which shall be paid to the petitioner (widow of the deceased judicial officer) within a period of 60 days, failing which the petition be put up as PUD before the appropriate Bench for execution. Apportionment of quantum of cost and responsibility of bearing the same, is left for the respondents to decide.
- vi) That as regards the claim for retrospective promotion to the higher judicial services, the petitioner is at liberty to prefer a representation before the High Court and if same is done within a period of 30 days from today along with a copy of this order, the same shall be considered and decided on its own merits without being dismissed on limitation alone.

7. The petition stands allowed with the aforesaid observations.

**(SHEEL NAGU)
CHIEF JUSTICE**

**(SUDHIR SINGH)
JUDGE**

07.03.2025

ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	Yes/No