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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(245)

CWP-14196-2021

Date of Decision : May 07, 2025

Kuldeep Kumar

.. Petitioner

Versus

The State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. S.K. Rattan, Advocate, for the petitioner.

Ms. Akshita Chauhan, Deputy Advocate General, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the grievance being raised by the petitioner is that the pensionary benefits admissible to him has not been released despite the fact that on 31.07.2018, when the petitioner retired, there was no proceeding pending against the petitioner so as to give jurisdiction to the respondent-State to withhold the pensionary benefits of the petitioner.

2. Learned counsel for the petitioner argues that as per the settled principle of law settled by the Full Bench of this Court in *A.S. Randhawa Vs. State of Punjab and others, 1997(3) SCT 468*, the pensionary benefits of an employee are to be released within a period of two months of retirement in case there is no impediment otherwise employee will be entitled for interest hence, the respondents be directed to release the retiral benefits of the petitioner along with interest.



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3. Upon notice of motion, the respondents have appeared and submitted that though on the date when the petitioner retired from service on 31.07.2018, there were no proceedings pending against the petitioner either before the Department or before any competent Court of law but there was a vigilance enquiry pending against the petitioner and ultimately, in the said vigilance enquiry, the petitioner has been named as an accused in FIR No.10 dated 17.08.2017 vide supplementary challan dated 04.09.2018.

4. Learned counsel for the respondents further submits that all the benefits admissible to the petitioner have already been released but keeping in view the pendency of the criminal proceedings, gratuity, leave encashment had been stopped however, 80% of the provisional pension has been released to the petitioner.

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

6. As per the rules governing the service, the retiral benefits of an employee can only be withheld in case at the time of retirement, any disciplinary proceedings or the criminal proceedings are pending against the employee.

7. As per the judgment of the Hon'ble Supreme Court of India in ***Union of India Vs. K.V. Jankiraman, (1991) 4 SCC 109*** , the disciplinary proceedings or the criminal proceedings can only be stated to be pending in case the charge-sheet has been served.

“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 commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in



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a disciplinary proceedings or a chargesheet 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 finalize 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. It was then contended on behalf of the authorities that conclusions nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows:

"(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;



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(2)

(3)

(4) the sealed cover procedure can be resorted only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before.”

8. In the present case, on the date when the petitioner retired from service on 31.07.2018, neither any disciplinary proceedings were pending nor in any criminal case, the charge-sheet had been framed against the petitioner. That being so, it cannot be said that there was any criminal proceedings/disciplinary proceedings pending against the petitioner on the date when the petitioner retired.

9. Keeping in view the fact that the jurisdiction to withhold the pensionary benefits can only exercised by the State in case the disciplinary proceedings or the criminal proceedings are stated to be pending on the date of retirement whereas, withholding of the pensionary benefits only on the ground that subsequent to the retirement, the charges were framed against the petitioner, cannot be made a ground to withhold the pensionary benefits of the petitioner. The factual aspect with regard to the pendency of the proceedings is to be seen on the date of retirement and not subsequent to the said date.

10. Keeping in view the above, the respondents have withheld the pensionary benefits of the petitioner contrary to the settled principle of law as well as the rules governing the service. The respondents are directed to release all the pensionary benefits of the petitioner which have been withheld along with interest @ 6% per annum from the date the petitioner retired from service till the actual payment of the same.



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11. At this stage, learned counsel for the petitioner submits that even the provident fund has not been released qua the entitlement of the petitioner hence, liberty be given to the petitioner to approach the respondents for the release of the same.

12. Ordered accordingly.

13. The present writ petition is allowed in above terms.

May 07, 2025

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No