

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

C.W.P. No. 17823 of 2008  
Date of decision: 02.12.2009

Ragbir Singh Jaglan

....Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Limited and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE VINOD K. SHARMA**

Present: - Mr. Jagbir Malik, Advocate,  
for the petitioner.

Ms. Neena Madan, Advocate,  
for Mr. R.S. Madan, Advocate,  
for the respondents.

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**VINOD K. SHARMA, J (ORAL)**

This writ petition under Article 226 of the Constitution of India has been moved to seek direction to release the withheld retiral benefits.

The petitioner was appointed as Shift Attendant on ad hoc basis on 4.1.1977 and his services were regularised on 7.8.1979. In October, 1997, the petitioner was promoted to the post of Sub Station Attendant. He retired from service on 30.9.2007 on attaining the age of superannuation.

On 26.5.2007 while the petitioner was posted in the office of Sub Divisional Officer Operation Sub Division, Uttar Haryana Bijli Vitran Nigam Limited, Israna, District Panipat, an accident took place at sub-station 33 KV Naraina. One Subhash Chand ALM expired due to

electrocution. The petitioner informed about the accident and on his statement FIR No. 163 dated 26.5.2007 under Section 304 IPC was registered against the owner of the Tower of Samsung Software Technology Hutch Company.

On 30.9.2007 i.e. on the date of retirement of the petitioner, no proceedings were pending against him. However, on 14.10.2007, on investigation by the police, the name of owner of Tower of Samsung Software Technology Hutch Company was deleted as accused and the petitioner was charged with the offence under Section 304-A IPC.

In view of the involvement of the petitioner in criminal case, he was departmentally proceeded against by issuing him a chargesheet. The department did not proceed against the petitioner for major penalty. On consideration of reply submitted by the petitioner, a minor punishment of stoppage of two annual increments without future effect was imposed. The request of the petitioner for release of pensionary benefits i.e. gratuity, commutation of pension, leave encashment and GIS was refused by invoking the provisions of Rule 2.2(b) of the Punjab Civil Services Rules Volume II Part I. Rule 2.2(b) of the Punjab Civil Services Rules reads as under: -

*“2.2(b) The Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings, to have been guilty of grave misconduct or to have caused pecuniary loss to Government by misconduct or negligence, during his*

*service including service rendered on re-employment after retirement.*

*Provided that-*

- (1) *such departmental proceedings, if instituted while the officer was in service whether before his retirement or during his re-employment shall after the final retirement of the officer, be deemed to be a proceeding under this rule and shall be continued and concluded by the authority by which it was commenced in the same manner and as if the officer had continued in service.*
- (2) *Such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment,-*
  - (i) *shall not be instituted save with the sanction of the Government;*
  - (ii) *shall be in respect of an event which took place not more than four years before the institution of such proceedings: and*
  - (iii) *shall be conducted by such authority and at such place or places as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal service could be made:*
- (3) *such judicial proceedings, if not instituted while the officer was on duty either before his retirement or during his employment, shall be instituted in respect of an event as is mentioned in clause (ii) of proviso (2): and*
- (4) *The Public Service Commission shall be consulted before final orders are passed.*

*Explanation: For the purpose of this rule-*

- (1) *Departmental proceedings shall be deemed to*

*have been instituted when the charges framed against the pensioner are issued to him or, if the officer has been placed under suspension from an earlier date, on such date; and*

(2) *Judicial proceedings shall be deemed to have been instituted.-*

(i) *in the case of criminal proceedings, on the date on which the complaint is made or a challan is submitted to a criminal court; and*

(ii) *in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made to civil court.*

*Note 1.- As soon as proceedings of the nature referred to in the above rule are instituted, the authority which institutes such proceedings should without delay intimate the fact to the Accountant General.*

*Note 2.- In a case in which a pension as such is not withheld or withdrawn, but the amount of any pecuniary loss, caused to Government is ordered to be recovered from the pension, the recovery should not ordinarily be made at a rate exceeding one-third of the gross pension originally sanctioned including any amount which may have been commuted.*

The petitioner has challenged the decision of the respondent to withhold his pension primarily on the ground that, provisions of Rule 2.2 (b) are not applicable to the case of the petitioner, firstly for the reason that on the date of his retirement, there was no departmental or judicial

proceedings pending against the petitioner. In support of this

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contention, the learned counsel for the petitioner placed reliance on the Hon'ble Full Bench judgment of this Court in ***Dr. Ishar Singh Vs. State of Punjab and another, 1994(3) Recent Services Judgments 543***, wherein the Hon'ble Full Bench was pleased to lay down as under: -

*“Held: 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 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 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.*

*Keeping in view the conceptual aspect of the pension and reading the rules whether in isolation or collectively, I cannot comprehend any basis or ground or circumstances provided statutorily or otherwise under which pension or any part thereof can be withheld on retirement. Further, I am of the view that granting a right to the State, as argued by the learned counsel for the respondents to withhold pension in anticipation of the action to be taken against the delinquent would result in obliterating the statutory provisions resulting in draconian rule of law and producing an unjust result. It would be rendering nugatory what the statute has expressly provided. It would render the object of pension as farce. Very laudable social protection granted would be rendered as threpeutical service.*

*Thus interpreting rules in a reasonable way keeping in view the object of the scheme of pension viz. alleviating hardship of a retiree by making provision for his subsistence, the only functional construction which can be put on the rules is that the retiree would be entitled to 10% provisional pension till the Government finally sanctions the pension or imposes any cut on the pension. In view of the observations made above, it is beyond comprehension particularly when pension cannot be affected in any circumstances and provisional pension has been allowed only in three eventualities, as reproduced above that the legislature even intended to confer on the Govt. the power of withholding pension. Further the deeming mandate provided Rule 2.1 of pension having been granted have to be given logical effect. Even otherwise the State cannot be permitted to do indirectly what it is debarred from doing directly.*

*In view of the observations made above I am of the considered view that though the State has preserved its right of withholding or withdrawing compensation of affecting it as a whole partly, permanently or temporarily, yet the State cannot withhold or postpone the payment of pension in anticipation of an enquiry nor can refuse to commute the pension permissible under the law, of course, gratuity can be withheld.*

*Thus I am of the view that the pension or commutation of it cannot be withheld, or postponed before a finding is returned that retiree is guilty of causing loss to the State during tenure of his service or during his re-employment. Mere pendency of enquiry or probability of the State exercising its power of withholding or withdrawing of pension by itself is not sufficient to withhold pension. Though other retiral benefits like gratuity can be withheld in anticipation of some amount found to be due to the State or in anticipation of likelihood of imposing of a cut in pension or withholding or withdrawal of pension. For the reasons recorded above, the authorities could withhold or postpone payment of other retiral benefits except the pension.”*

It is further the contention of the learned counsel for the petitioner, that in view of the order of punishment imposing minor punishment of stoppage of two increments without cumulative effect, it cannot be said that the petitioner was guilty of grave misconduct, which could entitle the respondents to invoke the provisions of Rule 2.2 (b) of the Punjab Civil Services Rules (as applicable to Haryana), to withhold his retiral benefits.

Learned counsel for the petitioner has also referred to the copy of letter from the Chief Secretary to the Government of Haryana, which

was addressed to all heads of the departments, laying down the Sections of the Indian Penal Code, which are considered serious offences involving moral turpitude. The Sections mentioned are Sections: -

“120-A, 121-A, 122, 123, 124, 160-A, 161, 161-A, 165, 167, 181, 182, 193, 194, 195, 196, 197, 198, 199, 200, 201, 205, 209, 292, 293, 302, 304, 307, 354, 359, 362, 363, 364, 365, 366, 366-A, 366-B, 367, 368, 369, 370, 371, 372, 373, 376, 377, 379, 380, 391, 392, 398, 399, 400, 403, 404, 406, 407, 408, 409, 417, 418, 419, 420, 421, 449, 450, 453, 454, 455, 456, 457, 458, 465, 466, 467, 468, 471, 472, 473, 474, 475, 476, 477-A, 489-A, 489-B, 489-C, 489-D, 489-E, 493, 494, 495, 496, 497, 498 of IPC.”

It would be seen, that charge under Section 304-A IPC is not one which involves moral turpitude.

Learned counsel for the respondents contends that an employee of the department had lost life, therefore, the charge against the petitioner is very serious, which justifies the invoking of Rule 2.2(b) to deny pension to the petitioner.

On consideration, I find force in the contentions raised by the learned counsel for the petitioner. Facts stated above show, that on the date of retirement of the petitioner there were no departmental proceedings or criminal charge pending against the petitioner, which entitle the respondents to invoke the provisions of Rule 2.2(b), in view of the Hon'ble Full Bench judgment of this Court in ***Dr. Ishar Singh Vs. State of Punjab and another*** (supra).

Furthermore, once the department treated it to be a minor misconduct, it does not lie in the mouth of the respondents now to say that petitioner is guilty of grave misconduct. The withholding of

pensionary benefits is also hit by principle of double jeopardy, as  
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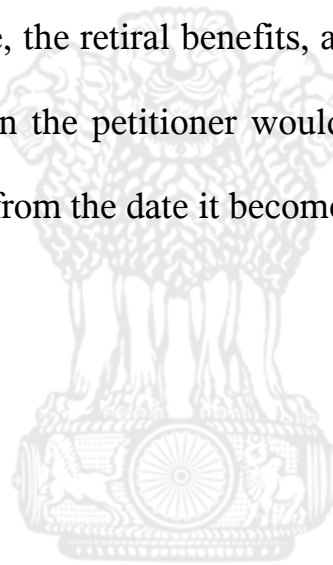
petitioner has been punished departmentally, the withholding of retiral benefits, therefore, cannot be sustained.

It is also clear from the facts and the contentions noted above, that charge under Section 304-A IPC is not such, which involves moral turpitude, which could entitle withholding pension of the petitioner.

Consequently, this writ petition is allowed, writ of mandamus is issued to the respondents to release the retiral benefits of the petitioner within two months of the receipt of certified copy of this order. It is made clear, that, in case, the retiral benefits, as directed, are not released within two months, then the petitioner would be entitled to interest on retiral benefits @ 12% from the date it becomes due till its realization.

(Vinod K. Sharma)  
Judge

December 02, 2009  
R.S.



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