
(2013) 10 P&H CK 0382
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 810 of 2013 (O&M)

Amrita Bhardwaj

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 31-10-2013

Acts Referred:

Citation : (2014) 3 SCT 209

Hon'ble Judges : Ajay Tewari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajay Tewari, J.—The petitioner joined Haryana Civil Medical Service (HCMS) on 23.04.1986. After putting in 22 years of service without any break, she sought voluntary retirement on 31.07.2008. She made several requests orally as well as in writing for release of her retiral dues but to no avail. Ultimately she served a legal notice dated 06.04.2011 (Annexure P-1) on the respondents but no decision was taken thereon which compelled her to file a C.W.P. No. 16129 of 2011 which was disposed of by passing the following order:-

This writ petition was filed by the petitioner claiming that her request for voluntary retirement has not been accepted by the respondents.

Upon notice, reply has been filed by the respondents wherein it has been stated that the request of the petitioner stands accepted and she is permitted to take her voluntary retirement. Her retirement has been accepted with effect from 31.10.2008.

Counsel for the State informs that the pension papers and other related documents have also been submitted by the petitioner and the consequential benefits shall be released to the petitioner within a period of 30 days from today.

In the light of the statement made by the counsel for the State, present petition has been rendered infructuous. Ordered accordingly.

In pursuance to the abovesaid order of this Court the retiral benefits of the petitioner were released but without any interest on the delayed payment. She made repeated requests for the release of amount of interest but to no effect. Ultimately she issued an Advance Notice of Writ Petition-cum-Final Demand Notice for Justice Annexure P-6) upon the respondents through her counsel but the same was declined. Hence this petition.

2. In reply the stand taken by the respondents is that the petitioner served notice for voluntary retirement on 31.07.2008 which was accepted by the competent authority w.e.f. 31.10.2008 vide office order dated 13.12.2011 and all the admissible retiral benefits were released to her well in time in compliance of the orders of this Court passed in C.W.P. No. 16129 of 2011.

The petitioner has also issued a receipt (Annexure R-1) on 17.02.2012 under her hand in token of receipt of her retiral benefits. As per Annexure R-1 all the retiral benefits have now been released to the petitioner and nothing is due to her. It is averred in the reply that due to her negligence in performance of duties qua one patient Smt. Shalu Sharma, the petitioner was burdened with costs of Rs. 20,000/- by the State Government and for which she has been chargesheeted and the said chargesheet is still pending.

3. Learned counsel for the petitioner has argued that the petitioner retired on 31.07.2008 and the retiral dues were paid to her in the year 2012 and the delay in payment of retiral benefits is due to the inaction of the respondents for which the petitioner is entitled to interest thereon. He has relied upon Gurcharan Singh Vs. State of Punjab wherein a Division Bench of this Court held as follows:-

6. We have heard learned counsel for the parties. In our opinion, there is no legal justifications to withhold the amount of GPF payable to the petitioner because what he is claiming is his own property which was kept in trust with the government. That apart, the unequivocal admission made by the respondents about the preparation of documents on the issue of payment of GPF, there does not remain any justification for nonpayment of the amount due to the petitioner which must be treated as his property in view of the various decisions of the Supreme Court.....

4. Learned AAG has defended the pleas taken in the written statement and has argued that before the petitioner served a notice for voluntary retirement viz. 31.07.2008, she was facing a charge-sheet under Rule 8 of the Haryana Civil Services (Punishment & Appeal) Rules, 1987 and she voluntarily retired on 13.12.2011 and all the dues were paid to her well in time in compliance of the orders of this Court in C.W.P. No. 16129 of 2011 and she is not entitled to any interest.

5. To counter this argument of learned AAG, learned counsel for the petitioner has argued that the charges levelled by the respondents against the petitioner were dropped later on. The respondents illegally withheld the retiral benefits of the petitioner for a period of three and a half years. He has argued relied upon

the judgment in the matter of Ram Narian v. State of Haryana and another, passed in LPA No. 1993 of 2011, decided on 16.02.2012, wherein a Division Bench of this Court held as follows:-

However, once the charge has been found to be without any basis and he is acquitted, then the writ petitioner appellant cannot be subjected to double punishment firstly, by harassing him in criminal proceedings and then by withholding his retiral benefits. Once he is exonerated then, by fiction of law, he has to be treated as innocent....

6. In my opinion, the argument of learned counsel for the petitioner carries more weight. It is now trite to say that retiral benefits are akin to property. Once that is so, they cannot be retained except for valid cause. A charge-sheet which is ultimately filed obviously does not answer that description and therefore it has to be held that retiral dues were retained without any authority and justification.

7. Keeping in mind the factual matrix and in view of the decision in Gurcharan Singh's case (supra) and Ram Narian's case (supra), I deem it appropriate to grant interest @ 8% p.a. to the petitioner w.e.f. the date on which the provisional pension was released till the date of payment on the other retiral dues. Let the necessary exercise of computing the interest and disbursement be made within a period of two months from the date of receipt of a certified copy of this order. It is made clear that if this time limit is not adhered to then the petitioner would be entitled to claim the amounts due with further interest @ 2% p.a. till the date of payment.

Petition stands allowed in the above terms.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.