(2009) 07 P&H CK 0028

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 11860 of 2008

Harbhajan Singh Riar		APPELLANT
	Vs	
State of Punjab and Others		RESPONDENT

Date of Decision : 23-07-2009

Acts Referred:
Constitution of India, 1950 — Article 226, 227
Punjab Civil Services Rules — Rule 8.21, 9.14

Citation : (2009) 2 ILR (P&H) 1054 : (2009) 8 SLR 99

Hon'ble Judges : Ajai Lamba, J

Bench : Single Bench

Advocate : Jatin Salwan, for the Appellant; B.S. Chahal, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

Ajai Lamba, J.—Harbhajan Singh Riar has approached this Court by way of filing civil writ petition under Articles 226 and 227 of the

Constitution of India praying for issuance of a writ in the nature of mandamus directing the Respondents to release the retiral benefits to the

Petitioner as per Rules applicable. Specific prayer has been made for release of full provisional pension for which the Petitioner is entitled and

release of payment of leave encashment.

2. Learned Counsel for the Petitioner contends that pension and payment of leave encashment cannot be withheld by the Respondents. Learned

Counsel in this regard has referred to Rule 9.14 of the Punjab Civil Servies Rules, Vol. II reproduced in para No. 8 of the petition. The provisional

pension is being paid in part and payment of leave encashment has been withheld. Learned Counsel further states that the claim of the Petitioner finds support from Full Bench judgment of this Court rendered in Dr. Ishar Singh v. State of Punjab and Anr. 1993 (3) PLR 499.

3. Without referring to the facts in detail, learned Counsel for the Respondent, from the affidavit of Sarabjit Singh, Administrative Officer, Food,

Civil Supplies and Consumer Affairs Department dated 23rd July, 2009 filed in Court and taken on record today, states that there are 13

disciplinary cases pending against the Petitioner. At the stage of finalization of retiral benefits, the Respondents might have to effect recovery in

regard to the loss to State Exchequer and, therefore, only 40% provisional pension has been sanctioned. Learned Counsel for the Respondent

further contends that the Petitioner cannot claim payment of leave encashment becuase there is a specific rule which allows the State to withhold

the said amount.

4. I have heard learned Counsel for the parties and have considered the issue raised. While the Petitioner, during the period when disciplinary

proceedings are pending against him, claims retiral benefits i.e. 100% provisional pension and payment of leave encashment, the stand taken on

behalf of the Respondents is that these benefits cannot be released

5. Before proceeding any further, the relevant Rules need to be extracted.

6. In regard to payment of provisional pension, Rule 9.14 of Punjab Civil Services Rules, Vol. II, is relevant and reads as under:

9.14. Provisional pension where departmental or judicial proceedings may be pending.--(a) In respect of Government employee referred to in

Clause (c) of Rule 2.2, the Head of Office shall authorise the provisional pension equal to the maximum which would have been admissible on the

basis of qualifying service up to the date of retirement of the Government employee or if he was under suspension on the date of retirement, up to

the date of immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorised by the Accountant-General, Punjab during the period commencing from the date of retirement up to

and including the date on which, after the conclusion of department or judicial proceedings, final orders are passed by the competent authority.

7. So far as the claim for payment of leave encashment is concerned provisions of Rule 8.21 (aa) of Punjab Civil Services Rules, Volume I, Part I

Chapter VIII, are required to be considered which reads as under:

[(aa) Notwithstanding anything contained in Sub-rule (a) the authority competent to grant leave may withhold whole or part of cash equivalent of

earned leave in the cash of Government employee who retires from service on superannuation while under suspension or while disciplinary or

criminal proceedings are pending against him, if in the opinion of such authority, there is a possibility of some money becoming recoverable from

him on conclusion of the proceedings against him and on conclusion of the proceedings, he will become eligible to the amount so withheld after

adjustment of Government dues, if any.]

8. Full Bench of this Court has considered the issue of release of retiral benefits, when departmental proceedings or other cases are pending

against an employee, while dealing with the case of Dr. Ishar Singh (supra). Paras No. 45 (relevant) and para 47 of the same need to be extracted

for reference, which read as under:

45. 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 of pay reduced pension in anticipation of an adverse finding in a

pending proceedings 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''s 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 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 circunstances 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 aganist the delinquent would result in obliterating the statutory provisions resulting in draconian rule of law and producing an unjust result.

It would be rendering negatory what the statute has expressly provided, It would render the object of pension as farce. Very laudable social

protection granted would be rendered as therapeutical service.

47. In view of the observations made above I am of the considered view that thought 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.

9. Considering the resultant position it transpires that under Rule 9.14 of the Punjab Service Rules, Head of office is required to authorize the

provisional pension equal to the maximum which would have been admissible to an employee on the basis of his qualifying service up to the date of

retirement. The rule has been duly considered by this Court in Dr. Ishar Singh''s case. It has been clearly held that payment of pension cannot be

withheld.

10. I am of the considered opinion that because the statutory rules provide for release of 100% provisional pension, Respondents have no right or

authority to withhold the same and to take a plea that only 40% is being released so as to safeguard the interest of the State Exchequer, pending

departmental proceedings. The Respondent cannot in anticipation of a liability deny payment of pension to the Petitioner. Action of the

Respondents being against the provisions in the Rules is not only illegal but also unreasonable, unjust and inequitable. An employee works for the employer so that at the eve of his life, he can provide for himself and his family. It seems that considering the right of a human being to live and exist

and considering equitable right of an employee, it has been provided in the statutory provisions that provisional pension equal to maximum which

would have been admissible on the basis of qualifying service up to the date of retirement of the Government employee, shall be authorised. The

action of the Respondents in denying this right is clearly arbitrary. The provisional pension of the Petitioner could not have been withhold in view of

provisions of Rule 9.14 of Punjab Civil Services Rules, Vol. II.

11. So far as the claim of the Petitioner for payment of leave encashment is concerned. Rule 8.21 (aa) of Punjab Civil Services Rules, Volume 1,

Part 1 Chapter VIII provides that the same may be withheld wholly or in part while disciplinary proceedings are pending against an employee. If in

the opinion of the authority, there is a possibility of some money becoming recoverable from the employee on the conclusion of the proceedings

against him, the Respondents have a right to withhold the payment of leave encashment. Under the circumstances, at this stage, the Petitioner as a

matter of right cannot claim payment of leave encashment. Prayer in this regard is therefore rejected.

12. In view of the above, the petition is allowed to the extent that the Respondents would release 100% provisional pension to the Petitioner

forthwith. The arrears of the amount of the pension withheld shall also be released to the Petitioner within six weeks of receipt of certified copy of

the order.

13. An undertaking has been given on behalf of the Respondents in the affidavit filed today that within six months'' period, all the departmental

proceedings pending against the Petitioner shall be finalized. It is directed that the Respondents shall remain bound by that undertaking considering

the fact that the Petitioner superannuated on 31st October, 2005.

