(2016) 02 P&H CK 0030

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 13154 of 2014

Jai Bhagwan Sharma — APPELLANT

Vs

Municipal Corporation Ambala — RESPONDENT

Date of Decision : 11-02-2016

Acts Referred:

Citation : (2016) 02 P&H CK 0030

Hon'ble Judges : Ritu Bahri, J.

Bench : Single Bench

Advocate : Raman Sharma, Advocate, for the Appellant; Avnika Gupta for Ashwani Bhardwaj, Advocates, for the Respondent

Final Decision : Partly Allowed

Judgement

Ritu Bahri, J. (Oral) - Petitioner is seeking quashing of the order dated 18.03.2014 (Annexure P-6) and issuance of directions to the respondent to release pension and commutation of pension along with payment of interest @ 18%.

2. The petitioner had retired from service on 31.12.2011. At the time of his retirement, no departmental proceedings were pending or proposed against him. The respondent has withheld the pension and other benefits of the petitioner without any sufficient reasons. In this regard, the petitioner had served a legal notice dated 23.9.2013 (Anenxure P-2) upon the respondent but no order has been passed thereupon. Consequently, the petitioner has approached this Court by way of CWP No.1721 of 2014 titled Jai Bhagwan Sharma v. Municipal Corporation, Ambala and this Court issued directions to the respondent to consider the legal notice (Annexure P-2) and pass necessary orders in accordance with law. In compliance of order of this Court dated 30.01.2014, the petitioner was offered a personal hearing and his claim for provisional pension has been declined by the respondent on account of registration of FIR under Section 409, 467, 468, 389 and 511 read with Section 120-B IPC and the punishment under Section 409 IPC for life imprisonment is for 10 years and fine,

vide impugned order dated 18.03.2014 (Annexure P-6).

3. Learned counsel for the petitioner argued that the petitioner was facing FIR No.193 dated 11.05.2010 and during the pendency of this writ petition he was acquitted from the said FIR. However, the trial in FIR No.56 dated 15.02.2008 is still pending. The law on this point is settled that mere registration of FIR cannot be made basis to deny or withhold pension of pensionary benefits of a retired employee. On this point, the law in question for releasing of provisional pension to the employee, who is facing criminal charges has been settled by this Court in case Parkash Chand Sharma v. State of Haryana, 1991(2) SCT 487 whereby while referring to Rule 2.2.(c) (1) of Punjab Civil Services Rules, Vol. II, as applicable to Haryana (hereinafter to be referred as "the Rules") it was held that a delinquent officer, who has retired but judicial proceedings are continued or instituted after his retirement, is entitled to only provisional pension till final orders are passed in the judicial proceedings and not pension. The liability of the State Government to withhold pension in its entirety or a part thereof arises when the order to that effect is passed and till that order is not passed, the petitioner would not be ipso facto entitled to pension but only to provisional pension till final orders are passed in the judicial proceedings. The relevant Rules 2.2(c) (1) and (2) of the Rules is as under: -

"(c) (1) Where any departmental or judicial proceeding is instituted under clause (b) of rule 2.2. or where a departmental proceeding is continue, under clause (I) of the proviso thereto against an officer who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceedings, final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service up to the date of retirement or if he was under suspension on the date of retirement up to date immediately preceding to the date on which he was placed under suspension; but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceedings and of final orders thereon. The gratuity, if allowed to be drawn by the competent authority on the conclusion of the proceedings, will be deemed to have fallen due on the date of issue of final orders by the competent authority.

(2) Payment of provisional pension made under Sub-clause (1) shall be adjusted against the final retirement benefits sanctioned to such officer upon conclusion of the aforesaid proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period."

4. In the present case, the petitioner is facing trial in FIR No.56 dated 15.02.2008, under Section 420, 467, 468 and 471 read with Section 120-B IPC.

5. Hence, applying the ratio of above-said judgment, the respondent is bound to release the provisional pension to the petitioner under Rule 2.2(c)(1) of the

Rules. Accordingly, the present writ petition is partly allowed and the direction is given to the respondent to release the arrears of provisional pension along with 9% interest in view of judgments of Hon''ble the Supreme Court of India in cases D.D. Tewari (D) through LRs v. Uttar Haryana Bijli Vitran Nigam Ltd. and others, 2014 AIR (SC) 2861 and Megh Varan Sharma v. State of U.P and others, 2015 (1) S.C.T (12), within a period of three months from the receipt of this order.

