

(2015) 10 P&H CK 0001
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 133 of 2013

Krishan Lal

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 12-10-2015

Acts Referred:

Citation : (2017) 2 SCT 38

Hon'ble Judges : G.S. Sandhawalia, J.

Bench : Single Bench

Advocate : L.S. Virk, Addl. A.G., Punjab, for the Respondents; Madhav Pokhrel, Advocate, for the Petitioners

Final Decision : Allowed

Judgement

G.S. Sandhawalia, J. - Petitioner seeks the relief of quashing of the reply of the respondent-Department dated 17.07.2012 (Annexure P3), whereby the petitioner has been denied the payment of GPF, GIS and arrears of revised payscale, as due, as per the recommendations of the 6th Pay Commission. Further relief in the nature of mandamus is also sought, directing the respondents to release the service benefits, as denied, on account of enhanced pay-scale.

2. It is the case of the petitioner that he had been serving as a Draftsman with the respondent-Department since 24.04.1971 and was due to retire on 30.09.2011. The petitioner was involved in FIR No.275 dated 29.06.2003 under Section 304-B IPC, along with his family members including his unmarried daughter. He was convicted for 10 years by the Trial Court at Ludhiana on 20.10.2010. The appeal was filed before this Court, which has been admitted and this Court has suspended the sentence of the petitioner. Due to his conviction, he was dismissed from service on 24.01.2011 and has not been given any of his service benefits. The petitioner made a representation for his service benefits but those have been denied on account of the conviction order. Resultantly, the said deprivation of the retiral benefits has been challenged.

3. While issuing notice of motion, this Court, on 08.01.2013, had restricted the relief to the extent of the entitlement of the petitioner to the General Provident Fund (GPF) amount as the same was not dependent upon the outcome of the fate of the service.

4. State, in response, has taken the plea that on account of the dismissal, he is not entitled for the benefits of service. The claim of the amount of the GPF has also been resisted by placing reliance upon Rule 13.13 of the Punjab General Provident Fund Rules (for short, the " PF Rules") and the plea of alternative remedy has also been put-forth that the petitioner can approach the Appellate Authority for the necessary benefits. Rule 13.13 of the PF Rules reads as under:

"Rule 13.13

Note 1: A - When a subscriber is dismissed, removed, retired prematurely or compulsorily from the service of Government, the balance at his credit shall not be paid to him until he declares that the appeal review of memorial or judicial proceedings as the case may be, provided under the relevant rules against such order, has been finally decided confirming the decision of dismissal, removal or premature or compulsory retirement or until a certificate to the effect that no such appeal, review, memorial or judicial proceeding is pending or would be filed, is furnished."

Thus, the balance of the GPF has been denied on the ground that there are judicial proceedings pending in the form of criminal appeal before this Court.

5. The above contention of counsel for the State is without any basis. The amount which has been deposited by the petitioner in the GPF is his savings. It is not disputed that against the order of dismissal of service dated 24.01.2011 (Annexure P1), the petitioner has not filed any appeal. The only appeal pending is regarding the conviction recorded by the Trial Court against him in which the issue does not pertain to the service benefits and therefore, the above quoted rule cannot be read against the petitioner, as such.

6. The Division Bench of this Court in Gurcharan Singh v. State of Punjab 1999 (2) SCT 817 held that the amount in the GPF is the property which was kept in trust with the Government and there is no justification for the nonpayment of the amount. Relevant observations read as under:

"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 non-payment of the amount due to the petitioner which must be treated as his property in view of the various decisions of the Supreme Court including the following:-

(i) Deokinandan Prasad v. State of Bihar, AIR 1971 Supreme Court 1409;

(ii) State of Punjab v. K.R.Erry and Sabhog Rai Mehta, AIR 1973 Supreme Court 834; and

(iii) State of Kerala v. M.Padmanabhan Nair, AIR 1985 Supreme Court 356.

7. However, other reliefs sought by him cannot be granted to the petitioner in view of his conviction by the trial Court and dismissal of appeal by this Court.

8. For the reasons mentioned above, the writ petition is partly allowed. The respondents are directed to pay the amount of GPF due to the petitioner along with interest at the rate of 18% within a period of one month of the submission of certified copy of this order, failing which the respondents shall have to pay interest at the rate of 24% per annum."

7. Accordingly, the present writ petition is allowed and the communication dated 17.07.2013 (Annexure P3), whereby the relief was denied to the petitioner, is quashed. The respondents are directed to refund the amount of GPF to the petitioner along with interest @ 8% per annum, from the date of demand, i.e., 06.06.2012 (Annexure P2), till its realisation. Needful be done within a period of 2 months from the receipt of a certified copy of this order, failing which, the rate of interest will be 10% per annum.