

PUNJAB STATE CIVIL SUPPLIES CORPORATION LTD. AND OTHERS 289
v. PYARE LAL AND OTHERS (A.K. Sikri, J.)

Before A. K. Sikri -CJ, Ranjit Singh & Rakesh Kumar Jain, JJ.

**PUNJAB STATE CIVIL SUPPLIES CORPORATION LTD.
AND OTHERS,—Petitioners**

versus

PYARELAL,—Respondent

LPA No. 113 of 2012

9th November, 2012

Letters Patent Appeal, 1919 - Cl. X - Punjab Civil Services Rules Vol.-II - Rl. 2.2(c) - Retiral benefits - Employee entitled to Leave encashment on superannuation - Appellant/employer withholding the same on account of employee facing departmental action - Which of those retiral benefits is the employer entitled to withhold during pendency of departmental proceedings - Held, there is no doubt that gratuity of retired employee can be withheld during pendency of disciplinary proceedings - However there is no rule which empowers the appellants to withhold the benefit of encashment of leave - As per rule 2.2(c) Punjab Civil Service Rules Vol.-II only gratuity or death cum-retirement gratuity can be withheld and no other retiral benefits - Amount of leave encashment is payable to retiring employee notwithstanding pendency of departmental enquiry or criminal proceedings.

Held, that what is to be seen in the present case is as to whether there is any rule which empowers the appellants to withhold the benefit of encashment of leave. On this issue, we may point out that Full Bench in Dr. Ishar Singh's case (supra) referred to Rule 2.2.(c) of the Punjab Civil Services Rules, Volume-II, which is applicable to the appellants as well, and that Rule reads as under:-

"Rule 2.2 (c).

- (1) Where any departmental or judicial proceeding is instituted under Clause (b) of Rule 2.2. or where a departmental proceedings is continued 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 of 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."

As per the aforesaid rule, only gratuity or death-cum-retirement gratuity can be withheld and no other retiral benefit is stipulated. Learned counsel for the appellants also could not point out any other rule authorizing the appellants to withhold the benefit of encashment of leave.

(Para 11)

Further held, that we are, therefore, in agreement with the view taken by the Division Bench of this Court in B.S. Gupta's case (*supra*) holding that amount of leave encashment is payable to the retiring employee notwithstanding the pendency of the departmental enquiry or criminal proceedings.

(Para 12)

Ms. Deepali Puri, Advocate, for the appellants.

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P.K. Gupta, Advocate, *for the respondent.*

A.K. SIKRI, C.J.

(1) The factual matrix of this appeal is in a narrow compass, but it gives rise to an important question of law which needs to be decided in this LPA. The question is as to whether retiral benefits of an employee, who at the time of his superannuation was facing departmental action, can be withheld and, if so, which of those retiral benefits, the employer is entitled to withhold. We may point out, at the outset, that the parties are unanimous and accept the position that insofar as gratuity of such an employee is concerned that can be withheld during the pendency of the disciplinary proceedings. In the present case, we are concerned with encashment of earned leave and the question is as to whether this benefit can also be withheld or it is the right of the employee to get his earned leave encashed on the date of his superannuation, as retiral benefit, notwithstanding the disciplinary action which he is facing.

(2) When this appeal came up before the Division Bench in the normal course on October 05, 2012, after hearing counsel for the parties, the Division Bench was of the opinion that the matter needs to be considered by a larger Bench. That is the reason present Full Bench has been constituted to decide the appeal. Reasons for consideration of the matter by the Full Bench are given in the said order. Before we refer to the same, for clear understanding of the matter, facts of the present appeal, which lie within a narrow compass and on which there is no dispute, need to be noted.

(3) The respondent herein was the employee of the appellant M/s Punjab State Civil Supplies Corporation Limited. He was served with two charge-sheets during his employment with the appellant. However, when the enquiry proceedings relating to these chargesheets were still in progress, the respondent attained age of 58 years on 30.4.2006, which is the retirement age as per the service rules of the appellant and orders dated 13/20th April, 2006 were passed allowing the respondent to retire from service on attaining the age of superannuation with effect from 30.4.2006. This order also stipulated that the retiral benefits of the respondent be withheld as per the rules till the decision of the pending charge-sheets. These enquiries are still pending. The appellant decided to withhold all the retiral

benefits of the respondent. The respondent submitted that his retiral benefits cannot be withheld and, therefore, preferred departmental appeal against the aforesaid decision contained in order dated 13/20.4.2006. His appeal was, however, dismissed. Respondent filed writ petition in this Court and the learned single Judge has directed the appellants to release payment of retiral benefits with the exception of gratuity alone. Against this order, present appeal is preferred. While giving these directions, the learned single Judge relied upon the Full Bench judgment of this Court in **Dr. Ishar Singh versus State of Punjab and another (1)**, and also referred to Division Bench judgment in **Gurdial Singh versus Punjab State Civil Supplies Corporation Limited and others CWP-7041/2007, decided on 26.8.2008.**

(4) In the case of **Dr. Ishar Singh** (supra), certain issues were referred to the Full Bench for its consideration, which are as under:-

- “(i) Whether withholding or postponing the payment of pension or gratuity amount due to account of commutation of pension is permissible in law?
- (ii) Whether the authorities could withhold or postpone the payment of retiral benefits?
- (iii) Whether the Government can initiate or continue with the departmental enquiry long after the date of alleged lapse in spite of the fact that the officer had retired from service many years back?
- (iv) Should the enquiry proceedings be quashed on the ground of long pendency alone?”

(5) When this appeal came up for hearing before the Division Bench on 5.10.2012, submission of the learned counsel for the appellants was that in addition to gratuity, appellant could also withhold benefit of encashment of earned leave. It was argued that appellants were entitled to do the same in view of the ratio of **Dr. Ishar Singh's** case (supra) itself and the principle laid down therein was not correctly applied by the learned single Judge.

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(6) Insofar as first issue is concerned, the answer given by the Full Bench was that even when the departmental enquiry is pending, on the retirement of the employee, pension cannot be withheld and 100% pension is to be given, even though provisionally. However, as far as gratuity is concerned that can be withheld.

(7) As far as second issue is concerned with which we are directly concerned, we find that there is no separate and independent discussion in the said judgment. However, this question is answered while summing up the position in Para-81 which reads as under:-

- “(i) The Government has no right to withhold or postpone pension or the payment on account of commutation of pension. The State is bound to release 100 per cent pension at the time of superannuation, may be provisionally.
- (ii) The Government can withhold the gratuity or other retiral benefits except pension or postpone payment of the same during pendency of an enquiry.
- (iii) Pension cannot be adversely affected before a finding of guilt is returned.
- (iv) The Government can initiate departmental enquiry after long lapse before retirement, rather there is no limitation for initiating the departmental enquiry from the date of incident before retirement. The delay and the explanation for the same may reasonably be taken note Of keeping in view its likelihood to cause prejudice to the delinquent if the enquiry is challenged in appropriate proceedings.
- (v) The enquiry proceedings cannot be quashed solely on the ground of long pendency.
- (vi) There is no effect of superannuation on the pendency of the enquiry proceedings.
- (vii) The recovery of the Government dues can be made from gratuity or other retiral benefits only.”

Faced with the aforesaid situation, the Division Bench was persuaded by the following considerations in referring the matter to the larger Bench:-

“As per the aforesaid conclusion of the Full Bench, the Government is empowered to withhold “gratuity or other retiral benefit except pension” or can even postpone the payment thereof during the pendency of the enquiry. A reading thereof gives an impression that it is only the pension which has to be released and cannot be withheld and gratuity as well as other retiral benefits can be withheld. This is fortified by reading this conclusion along with conclusion on issue No.1. We, however, find that a Division Bench of this Court in “**B.S. Gupta Vs. Uttar Haryana Bijli Vitran Nigam Limited and others**” 2006(8) SLR 690, directed release of amount of leave encashment as well while relying upon the same judgment of the Full Bench in *Dr. Ishar Singh (supra)*. A perusal of this order of the Division Bench shows that after extracting Para No.81 of *Dr. Ishar Singh (supra)* case, the Division Bench observed that the pension of the petitioner in the said case could not be withheld or postponed nor any other benefit could be denied to him merely because some departmental proceedings or criminal proceedings are pending and for this reason directed release of amount of leave encashment as well. This order of the Division Bench is followed by another Single Judge in “**Dayal Singh vs. Uttar Haryana Bijli Vitran Nigam, Panchkula and others**” 2010 (1) SLR 221. However, another Single Judge of this Court in the case of “**Harbhajan Singh Riar Vs. State of Punjab and others**” 2009(8) SLR 99, dealt with the issue of leave encashment and interpreted the judgement of *Dr. Ishar Singh (supra)* in a different manner, holding that except pension, gratuity and other retiral benefits could be withheld. Adverting to the payment of leave encashment, the learned Single Judge took the issue that payment of leave encashment could be withheld wholly or in part during the pendency of the disciplinary proceedings giving following reasons in support of this conclusion:

“So far as the claim of the petitioner for payment of leave encashment is concerned, Rule 8.21 (aa) of Punjab Civil

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Services Rules, Volume I, Para I, Chapter VIII provides that the same may be withheld wholly or in part while disciplinary proceedings are pending against the 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.”

From the aforesaid, it becomes clear that the Courts have given different interpretation to the dicta laid down in the case of *Dr. Ishar Singh (supra)*. It needs a clarification and valid determination as to whether other retiral benefits including amount of leave encashment can also be withheld and it is only the pension which is to be released.

We are of the opinion that the matter needs to be considered by the Full Bench. We accordingly direct that Registry may place the matter before the Chief Justice on the Administrative side for constituting a Full Bench in this behalf.”

(8) From the aforesaid discussion one thing which becomes clear is that the Full Bench in *Dr. Ishar Singh's* case (supra) had formulated 7 principles. Though the entire judgment deals with the question of withholding or postponement of pension, Principle (ii) without any separate or independent discussion was laid down in the following terms:-

“(ii) *The Government can withhold the gratuity or other retiral benefits except pension or postpone payment of the same during pendency of an enquiry.*”

Though while concluding Principle (ii), it was stated to the effect that the Government can withhold the gratuity and other retiral benefits except pension and postpone payment of same during the pendency of enquiry, literal reading of this provision would indicate that not only gratuity, but other retiral benefits can also be withheld and it is only pension which is to be

released even when departmental enquiry is pending. It, however, becomes clear that while interpreting this judgment, Division Bench in the case of **B.S. Gupta (2)** (supra), held that as per Full Bench judgment in **Dr. Ishar Singh's** case (supra), not only the pension but even retiral benefits could not be withheld because of some departmental proceedings or criminal proceedings pending against the retiree and only the amount of gratuity could be withheld. Since the judgment in **Dr. Ishar Singh's** case (supra) is read in different manner by other single Judges, the issues needs to be finally resolved to and settled.

(9) The matter was argued before this Bench on 19th October, 2012. At that time, counsel for the parties also expressed their desire to supplement their oral submissions with written arguments. Ten days' time was granted for this purpose. However, neither of the parties have filed their written submissions. We, therefore, proceed to decide the matter on the basis of oral submissions. As pointed out above, the discussion in **Dr. Ishar Singh's** case (supra) revolved around pension only. However, in the absence of any discussion on other benefits, we would like to take note of the case law which has emerged on this aspect.

(10) In **Bengali Babu Misra vs. State of U.P. and Ors.** reported as (3), decided on 5.12.2002, Division Bench of Allahabad High Court held that post retiral dues cannot be withheld in the absence of any provisions in service rules or Government orders or any other law authorising so. It was specifically held that post retiral dues, may be of gratuity, pension or other dues of the retiree, can be withheld only in accordance with any rule. In that case, since there was no such rule, the Court permitted release of retiral benefits, be it pension or other dues. Same view is taken by the High Court of Jharkhand in **Dr. Dudh Nath Pandey versus The State of Jharkhand and others** (4). The specific question formulated in the said case was as under:-

“Whether in absence of any rule/guideline, the State Government has jurisdiction to withhold leave encashment or part of it, permanently or temporarily, or can recover the leave encashment, on the ground of pendency of a departmental or criminal proceeding or on the ground that the retired employee

(2) 2006 (8) SLR 690

(3) 2003 (3) AWC 1760 & MANU/UP/1042/2002

(4) 2009 (2) SLJ 105 (Jharkhand)

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has been convicted in a judicial proceeding or found guilty in a departmental proceeding?”

After scanning through various case laws on the subject, the Division Bench culled out the following principles:-

“17. The various guidelines which have been given by the decisions, referred to above, are as follows:

- (i) The conditions precedent for imposing penalty of withholding pension is that there should be a finding in departmental enquiry or judicial proceeding that the pensioner committed grave misconduct in the discharge of his duty while in office.
- (ii) Before the power under Rule 43(b) can be exercised in connection with alleged misconduct of the retired government servant, it must be shown that in departmental proceeding or judicial proceeding, the concerned Government servant has been found guilty of grave misconduct.
- (iii) Unless the pensioner is found guilty of misconduct in departmental or judicial proceeding any part of his pension cannot be withheld.
- (iv) The employee's right to pension is a statutory right. The measure of deprivation of his pension must be commensurate with the gravity of misconduct as it offends the right to assistance as framed under Article 41 of the Constitution.
- (v) *The pensionary dues payable to the employees including Gratuit; which is also pension within the meaning of Bihar Pension Rules cannot be withheld. Similarly, Leave Encashment cannot also be withheld since that is paid in lieu of unutilized leave as it partakes the character of salary.*
- (vi) The power under Rule 43(b) cannot be exercised before the pensioner is found in departmental or judicial proceeding guilty of grave misconduct.

- (vii) The bare reading of the Rule 43(a) of the Bihar pension Rules would make it evident that the power to withhold or withdraw pension is permissible only when the pensioner is found to be guilty of grave misconduct and not that during the pendency of such proceedings.”
[Emphasis added]

The Court in that case was concerned with the leave encashment. Finding that there was no rule permitting the Government to withhold the benefit of leave encashment, the Court held that it could not be withheld. Reason given was that leave encashment partakes the character of salary, which is a property and, thus, withholding thereof in the absence of statute would mean depriving a person of his property without statute or law which would be violative of Article 300A of the Constitution of India. This is so stated in the following terms:-

“25. Before we go into the legal sanctity of the circular, it must be remembered that the Leave Encashment is paid on account of unutilized leave and therefore, it partakes the character of salary. Pension is no longer considered as a bounty. The salary is a property given to the hands of the State which cannot be withheld except under the powers derived by a statute or law as contemplated under Article 300A of the Constitution of India as laid down by the Supreme Court in MANU/SC/0046/1988: AIR1988SC1407 [State of U.P. v. Haji Ismail Noor] and MANU/SC/0325/2003: [2003]3SCR779 [K.S.R.T.C. v. K.O. Varghese].

.....

28. The above executive instruction is not a law under Rule 300A of the Constitution of India. In the absence of any statutory rule, how can it be claimed that the Leave Encashment can be withheld by the Government on the strength of the executive instructions?”

(11) According to us, the aforesaid enunciation is in accord with the correct legal position. Therefore, what is to be seen in the present case is as to whether there is any rule which empowers the appellants to withhold

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the benefit of encashment of leave. On this issue, we may point out that Full in **Dr. Ishar Singh's** case (*supra*) referred to rule 2.2.(c) of the Punjab Civil Services Rules, Volume-II, which is applicable to the appellants as well, and that rule reads as under:-

“Rule 2.2 (c).

- (1) Where any departmental or judicial proceeding is instituted under Clause (b) of Rule 2.2. or where a departmental proceedings is continued 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 of 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 Subclause (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.”

As per the aforesaid rule, only gratuity or death-cum-retirement gratuity can be withheld and no other retiral benefit is stipulated. Learned counsel for the appellants also could not point out any other rule authorizing the appellants to withhold the benefit of encashment of leave.

(12) We are, therefore, in agreement with the view taken by the Division Bench of this Court in **B.S. Gupta's** case (supra) holding that amount of leave encashment is payable to the retiring employee notwithstanding the pendency of the departmental enquiry or criminal proceedings.

We do not find any merit in the present appeal, which is accordingly dismissed.

J. Thakur

Before K.Kannan, J.

**BATALA COOPERATIVE SUGAR MILLS LTD.,
BATALA,—Petitioner**

versus

STATE OF PUNJAB & OTHERS,—Respondents

CWP 100 of 2011

6th December, 2011

1. Constitution of India, 1950 - Art. 14, 226 - Punjab Sugarcane (Regulation of Purchase and Supply) Rules 1958 -RL 10-Sugarcane (Control) Order 1966, Clause 6 - Guidelines for Cane Commissioner - Cane Commissioner - Challenge by certain co-operative sugar mills notifying area of various sugar mills and the manner of allocation of villages to their detriment - Grant of State largesse -Article 14 of Constitution of India mandates no arbitrariness in decision making and no unreasonable discrimination to benefit one over the others

Held, That in the matter of grant of State largesse, there has to be a certain play in the joints in the State authority to identify the beneficiaries and no one shall have a vested interest to demand what the State shall do. However, there is a very important constitutional limitation through Article 14 to ensure that there is no arbitrariness involved in the decision and no