

(2001) 03 P&H CK 0044

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 7558 of 2000

D.D. Sharma

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: March 15, 2001**Acts Referred:**

- Punjab Civil Services Rules, 1970 - Rule 10, 2.2, 5, 9.14(C)

Hon'ble Judges: J.S. Narang, J**Bench:** Single Bench**Advocate:** Mr. R.C. Satia and Mr. Naveen Daryal, for the Appellant; Mr. B.S. Sawak, AAG, for the Respondent

Judgement

J.S. Narang, J.

The short question involved is as to whether the respondents are justified in with-holding amount payable on account of death- cum-retirement gratuity and leave encashment as the charge-sheet has been admittedly issued after the date of retirement of the petitioner. Learned Assistant Advocate General has made reference to Rule 9:14(C) which reads as under :

2. No gratuity shall be paid to the Government em- ployee until the departmental or judicial proceedings and issue of final order therein ; Provided that where departmental proceedings have been instituted under Rule 10 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 for imposing any of the penalties specified in clauses (i), (ii) and (iy) of Rule 5 of the said rules, the payment of gratuity shall be authorised to be paid to the Government employee. 3. The argument is that gratuity can be with-held until the conclusion of the departmental or judicial proceedings and issu : of final order thereon. The peti-lioner had retired on February 15, 1998 and that the charge-sheet had been served on October 25, 2000. Admittedly, no departmental or judicial proceedings were pending against the petitioner. In this regard, my aitenion has been drawn to Rule 2.2(b) which reads as under:

(b) The Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if, in a departmental or judicial proceeding, the petitioner is found guilty of grave mis-conduct or negligence during the period of his service, including service rendered upon re-employment after retirement:

(1) Such departmental proceedings, if instituted while the officer was in service, whether before his retirement or during his re-employment, shall after the final retirement of the officer, be deemed to be a proceeding under this article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service;

(2) Such departmental proceedings, if not instituted while the officer was in service whether before his retirement or during his re-employment -

(i) shall not be instituted save with the sanction of the Government;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the officer during his service.

(3) No such judicial proceedings, if not instituted while the officer was in service, whether before his retirement or during his re-employment shall be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution; and The Public Service Commission should be consulted before final orders are passed.

3. I am of the considered opinion that the respondents are not justified in withholding the gratuity and leave encashment due and payable to the petitioner and on the whole the petitioner is entitled to receive the same alongwith interest which is statutorily payable. However, in the facts and circumstances of this case, Learned Assistant Advocate General has stated that the enquiry which has been initiated after retirement of the petitioner can be completed within three months. The respondents are directed to complete the enquiry within three months from today and upon conclusion of the enquiry the amount due and payable to the petitioner on account of gratuity and leave encashment shall be paid accordingly alongwith interest (& 18% from the date when it fell due. It is made clear that the aforesaid observations shall not effect the merits of the enquiry at all. But if the enquiry is prolonged beyond the period of three months from today the amount shall be disbursed to the petitioner alongwith interest as aforesaid within one week

from the said date.

4, Copy of the order under the signature of Special Secretary of this Court be supplied to the learned Assistant Advocate General for onward transmission and compliance.