

Before : G. R. Majithia, J.

H. O. KAUSHIK,—Petitioner.

*versus*

STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ Petition No. 3407 of 1988.

28th May, 1991

*Punjab Civil Services (Punishment & Appeal) Rules, 1970—Effect of premature retirement on retiral benefits—Retiral benefits cannot be refused on ground that disciplinary proceedings are to be initiated against that person—Person entitled to such benefits.*

*Held*, that pension is not a bounty but a right defeasible in accordance with law. Respondent No. 1 could not refuse to release the retiral benefits to the petitioner only on the ground that it intended to initiate disciplinary proceedings against him. It could remove or dismiss the petitioner from service in accordance with the provisions of the service rules. Removal or dismissal from service generally implies that the officer/official is regarded in some manner as blame worthy or deficient, that is to say, that he has been guilty or capacity or the will to discharge the duty as he should do. Dismissal or removal is a punishment and is imposed as penalty. It involves loss of benefit already earned. An officer who is compulsorily retired does not lose any part of benefit that he has earned. On compulsory retirement, he will be entitled to the pension etc. that he has actually earned. There is no such element of charge or imputation in the case of compulsory retirement. Respondent No. 1 ought to have released retiral benefits to the petitioner. Failure to do so has resulted in mental agony and harassment to him. The action of respondent No. 1 not releasing the retiral benefits to the petitioner cannot be sustained.

(Para 5)

*Petition Under Article 226 of the Constitution of India praying that this Hon'ble Court may be pleased to:—*

- (1) *Issue a Writ, order or direction in the nature of mandamus and/or otherwise, upon the respondents for:*
  - (a) *the release of selection grade of XEN to the petitioner from due date;*
  - (b) *appropriate decision with regard to the two periods of his compulsory waiting;*
  - (c) *correct fixation of the petitioner's pay on his promotion as S.E. and the grant of three annual increments to him in that grade;*

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- (d) determination of the correct rate of pension/gratuity admissible to the petitioner in accordance with law;
- (e) granting the benefit of leave encashment to the petitioner;
- (f) settlement of his G.P. Fund a/c including the interest payable thereon;
- (g) expeditious release of all dues thus found payable to the petitioner including his retiring dues of pension (inclusive of its commuted value) and gratuity;
- (2) issue a similar writ, order or direction to the respondents for allowing all consequential benefits flowing from the afore-mentioned directions, as also for the grant of penal interest to compensate the petitioner for delayed payment of his legal dues, at the market rate of 15 per cent per annum compounded half yearly;
- (3) grant any other relief that this Hon'ble Court may in the circumstances of the case deem fit and proper;
- (4) dispense with the filing of originals/certified copies of the documents, 'P/1' to 'P/15', of which true copies have been annexed; and
- (5) award the costs of the writ petition in favour of the petitioner.

*APPLICATION under Section 151 of the Code of Civil Procedure praying that in the interest of justice between the parties, necessary permission to place the enclosed affidavit on the record may very kindly be granted.*

*No affidavit in support of the above application is necessary.*  
C. Misc. No. 1987 of 1989

*Application under Sec. 151 of the Code of Civil Procedure praying that pending final disposal of the writ petition, respondents may kindly be directed, by way of an interim order, to release at least the provisional pension of the applicant so that he can have something to go by. Affidavit of the applicant is enclosed herewith.*

*K. K. Jagia, Advocate with Amar Vivek, Advocate, for the petitioner.*

*Rameshwar Malik, Advocate, for A.G. Haryana, for the respondents.*

## JUDGMENT

In this writ petition under Articles 226/227 of the Constitution of India, the petitioner has sought a mandate from this Court to the respondents to release the retiral benefits and other dues to him.

(2) The facts:—

The petitioner joined as a temporary Engineer in the Irrigation Department of erstwhile State of Punjab on November 5, 1956. On reorganisation of the erstwhile State of Punjab, the services of the petitioner were allocated to respondent No. 1; that he was confirmed as an Assistant Engineer (HSE II) and was promoted as Executive Engineer (HSE I) on November 14, 1969 and as Superintending Engineer on October 28, 1981; that he was prematurely retired from service on January 22, 1985 in public interest; that he challenged the order of premature retirement in this Court in Civil Writ Petition No. 396 of 1985, which was dismissed in limine on July 19, 1985; that,—*vide* Memorandum No. 23/2/84-3IE, dated January 23, 1986, issued by the Joint Secretary to Government, Haryana, Irrigation and Power Department, he was informed that respondent No. 1 proposed to take action against him under Rule 2.2(b) of Civil Services Rules, Vol. II on the grounds set out in the statement of charges enclosed therewith; that he filed reply to the chargesheet on June 2, 1986 and that Enquiry Officer was appointed on March 9, 1990, but he has not proceeded with the enquiry.

(3) In the written statement respondent No. 1 has taken the plea that the retiral benefits have not been released to the petitioner since he did not co-operate with the Department for finalization of recovery cases against him.

(4) The approach of the respondents is illegal and once a decision to retire an official compulsorily is taken it is expected that it would be a clean decision to order compulsory retirement without anything more and after dropping or closing all pending or contemplated proceedings in regard to matters which form the background motive to the decision. The statement of allegations intimated to the petitioner,—*vide* memorandum dated June 23, 1986, indicates that the recovery sought to be effected from the petitioner is based on the allegation pertaining to the year 1982. Respondent No. 1 did not think it proper to institute regular inquiry against the petitioner before ordering his premature retirement. If there was any substance in the allegations, it would have been apt for respondent No. 1 to frame proper charge sheet against the petitioner and hold

the enquiry. It might have been apt for respondent No. 1 to frame proper charge-sheet against the petitioner and hold the enquiry. He might have been exonerated. If found guilty, any major penalty under the Punjab Civil Services (Punishment and Appeal) Rules, 1970 could have been imposed. Respondent No. 1 did not think it proper to proceed with the inquiry presumably for want of evidence. The same might have weighed with respondent No. 1 to order premature retirement of the petitioner. Respondent No. 1 having once taken the decision to compulsory retire the petitioner, it should have dropped all the pending or contemplated proceedings against him. The order of compulsory retirement does not cast a stigma and the right of respondent No. 1 to order compulsory retirement of civil servants under the statutory rules in public interest is unassailable. After having taken the decision to order compulsory retirement, it was not fair for respondent No. 1 to proceed to issue charge-sheet to the petitioner. The charge-sheet was issued on January 23, 1986; reply to the chargesheet was filed by the petitioner on June 2, 1986 and the Enquiry Officer was appointed on March 9, 1990 after a lapse of approximately four years. The Enquiry Officer has not proceeded with the inquiry so far. Under these circumstances, it will meet the ends of justice if the respondent drops the inquiry proceedings. It is ordered accordingly. This conclusion of mine is supported by a Division Bench decision of Allahabad High Court in *Mahesh Chand Jindal v. The State of U.P. and another* (1), wherein the Bench held thus:—

“The power to order compulsory retirement is a facet of the pleasure doctrine. If exercised *bona fide* it is not justiciable. A government servant is ensured a minimum period of service after the authorities may direct his compulsory retirement. By itself it does not carry any stigma and is not treated as penal in nature. However, whenever a decision to retire an officer compulsorily is taken it is expected that it would be a clean decision to order compulsory retirement without any proceedings in regard to the matters which form the background motive to the decision. He should be given full proportionate pension so that whatever pension he has earned in respect of the period of his service already rendered is given to him in full. If simultaneously any action is to be taken to sanction only reduced pension under para 470(b), then it

cannot be said to be a clean order of compulsory retirement. It is only a decision to order compulsory retirement simpliciter which carries neither any stigma nor any loss of "pensionary benefits nor is coupled with initiation of any penal departmental proceedings that can be treated as a legitimate exercise of the pleasure of the government to retain an officer or not beyond the minimum prescribed period of service. xxx xxx xxx xxx"

(5) Pension is not a bounty but a right defeasible in accordance with law. Respondent No. 1 could not refuse to release the retiral benefits to the petitioner only on the ground that it intended to initiate disciplinary proceedings against him. Respondent No. 1 could remove or dismiss the petitioner from service in accordance with the provisions of the service rules. Removal or dismissal from service generally implies that the officer/official is regarded in some manner as blame worthy or deficient, that is to say, that he has been guilty or capacity or the will to discharge the duty as he should do. Dismissal or removal is a punishment and is imposed as penalty. It involves loss of benefit already earned. An officer who is compulsorily retired does not lose any part of benefit that he has earned. On compulsory retirement, he will be entitled to the pension etc., that he has actually earned. There is no such element of charge or imputation in the case of compulsory retirement. Respondent No. 1 ought to have released retiral benefits to the petitioner. Failure to do so has resulted in mental agony and harassment to him. The action of respondent No. 1 cannot be sustained. The petitioner has also claimed release of selection grade which was illegally denied to him when he was working as Executive Engineer. He also urged that his pay was not correctly fixed on his promotion as Superintending Engineer. He has also claimed that he was kept on compulsory waiting from February 5, 1980 to October 27, 1980 and from December 29, 1981 to March 3, 1982 and was not paid salary for these intervals. The claim has been controverted by the respondents. The claim being belated cannot be gone into in writ jurisdiction. Respondent No. 1 is duty bound to grant him the benefit of leave encashment and release of gratuity in accordance with Rules of retiral benefits.

(6) For the reasons aforesaid, the writ petition succeeds and is allowed partly. The charge-sheet served upon the petitioner is quashed. No further proceedings will be taken by the Enquiry Officer pursuant to the charge-sheet. Respondent No. 1 will sanction retiral benefits to the petitioner in accordance with law within three

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months from the date of receipt of a copy of this judgment, failing which the same will be released along with interest at the rate of 12 per cent per annum. There will be no order as to costs.

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J.S.T.

Before : G. R. Majithia, J.

EMPLOYEES STATE INSURANCE CORPORATION,  
CHANDIGARH,—Appellant.

versus

M/S NIRBHAI ROADWAYS PVT. LTD., LUDHIANA,—Respondent.

First Appeal From the Order No. 276 of 1988.

28th May, 1991.

*Employees' State Insurance Act, 1948—Ss. 2(22), 44 & 45—Commission paid to drivers and conductors when they take buses out of station—Such commission, held, is in the form of incentive and falls within the definition of 'wages'—Management, therefore, liable to make payment of employer's contribution—Ad hoc assessment made by Corporation—No evidence shown as to employer not maintaining records—In the circumstances, Corporation directed to make de novo assessment of contributions payable to employee.*

*Held, that the employer in the instant case adopted a novel method to come out of the rigour of the Act by labelling D.A./T.A. as commission payable on the actual booking when the drivers and conductors take the buses outside Ludhiana. The commission is nothing else but an incentive to the drivers and conductors when they take the buses outside Ludhiana. It is an additional remuneration paid to the employees as laid down under S. 2(22) of the Act. There is no escape from the conclusion that the commission allegedly paid by the Management to the employees falls within the definition of 'wages' and the Management is liable to make payment of the employer's contribution.*

(Para 6)

*Held further, that there is no allegation by the Corporation that any Inspector or other official of the Corporation was obstructed by the management in exercising his functions or discharging his duties so as to attract the second part of S. 45-A of the Act. So far as the first part is concerned, there is not even an iota of evidence on the record to show that the employer is not maintaining the record in accordance with the provisions of S. 44 of the Act. The employer has disputed the liability to pay the contributions*