Before Hemant Gupta,
Rakesh Kumar Jain &
Kuldip Singh, JJ.

PUNJAB STATE CIVIL SUPPLIES CORPN. LIMITED AND OTHERS—*Appellants*

versus

PYARE LAL—*Respondent*

LPA No. 113 of 2012

August 11, 2014

Punjab Civil Service Rules, Volume-I, Part-I, Chapter-VIII - R. 8.21 (aa) - Leave encashment - Payment or withholding of other retiral benefits is subject matter of applicable rules - Rule 8.21(aa) provides for withholding of leave encashment - When disciplinary/ criminal proceedings are pending against a retiring employee - Leave encashment cannot be released, as the recoverable amount, if any, could be recovered from such benefits - Judgment in Harbhajan Singh Riar's case approved - View taken in Gudial Singh's case overrulled - Reference answered.

Held, that the judgment in *Dr. Ishar Singh's* case (supra), is applicable only in respect of payment of provisional pension pending disciplinary or criminal proceedings and has no applicability in respect of withholding of other retrial benefits. The payment or withholding of other retrial benefits is subject matter of applicable Rules, if any. Since in the present case, Rule 8.21(aa) provides for withholding of leave encashment, the same cannot be released to an employee, as the amount, if any, could be recovered from such benefits.

(Para 9)

Further held, that since the right to withhold leave encashment is part of the Statutory Rules, it satisfies the test laid down by the Supreme Court. Thus, we approve the judgment in ***Harbhajan Singh Riar's*** case while overruling the view taken in ***Gurdial Singh's*** case (supra). The judgments in two other cases i.e. ***B.S. Gupta's*** case (supra) and ***Dayal Singh's*** case (supra), pertain to Haryana. Since, the Rules

applicable to Haryana, have not been brought to our notice, we leave the said matter open, to be adjudicated at an appropriate stage.

(Para 11)

Amit Rawal Senior Advocate and Ms. Deepali Puri, Advocate, *for the appellant.*

P.K. Gupta, for the respondent.

HEMANT GUPTA, J.

(1) The present Letters Patent Appeal has been placed before this Bench after noticing divergent views of this Court in the judgments rendered in ***Gurdial Singh v. Punjab State Civil Supplies Corporation Limited and others(1)***; ***B.S. Gupta v. Uttar Haryana Bijli Vitran Nigam Limited and others(2)***; ***Dayal Singh v. Uttar Haryana Bijli Vitran Nigam. Panchkula and others(3)*** and ***Harbhajan Singh Riar v. State of Punjab and others(4)*** interpreting earlier Full Bench judgment reported as ***Dr. Ishar Singh v. State of Punjab and others(5)*** in different manner.

(2) Earlier, the Full Bench of this Court in the judgment dated 9.11.2012, agreed with the view taken by the Division Bench in B.S. Gupta's case (supra), holding that the amount of leave encashment is payable to the retiring employees and cannot be withheld notwithstanding the departmental inquiry or criminal proceedings pending against an employee. However, a review application was filed by the appellant pointing out that Rule 8.21(aa) of the Punjab Civil Service Rules, Volume-I, Part-I, Chapter- VIII, adopted by the appellant, provides for withholding of leave encashment, but such Rule was not brought to the notice of the Court. Considering the aforesaid fact, the order dated 9.11.2012 was recalled on 1.8.2014 and the matter was ordered to be placed for hearing before the Full Bench and that is how we are seized of the present matter.

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(1) 2009(8) SLR 99

(2) 2006(8) SLR 690

(3) 2010(1) SLR 221

(4) 2009(8) SLR 99

(5) 1993(3) PLR 999

(3) In ***Dr. Ishar Singh's*** case, the entire controversy was in respect of withholding or postponing of payment of pension and gratuity amount, during the pendency of the departmental inquiry. The Court considered Rule 2.2 and 9.9 of the Punjab Civil Service Rules Volume-II to hold that the gratuity can be withheld but State cannot withhold or postpone the payment of pension in anticipation of an enquiry nor can refuse to commute the pension, permissible under law. It concluded as under:—

> "68. In view of the observations made above, I am of the considered view that though the State has preserved its right of withholding or withdrawing compensation of affecting it as a whole partly, permanently or temporarily, yet the State cannot withhold or postpone the payment of pension in anticipation of an enquiry nor can refuse to commute the pension permissible under the law, of course, gratuity can be withheld."
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> 81. As a result of the above discussion, I would conclude as under:—
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> (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.
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> (ii) The Government can withhold the gratuity or other retiral benefits except pension or postpone payment of the same during pendency of an enquiry.
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> (iii) Pension cannot be adversely affected before a finding of guilt is returned.
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> (iv) The Government can initiate departmental enquiry after long lapse before retirement, rather there is no limitation for initiating departmental enquiry from the date of incident before retirement. The delay and the explanation for the same may reasonable 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."

(4) The conclusions (ii) and (vii), was the subject matter of interpretation in the earlier judgments. In some of the judgments, it is held that the amount of leave encashment cannot be withheld whereas, in another judgment, it has been held that the amount of leave encashment can be withheld during the pendency of departmental or criminal proceedings. The question to be examined is whether the leave encashment is the retiral benefits from which recovery can be effected in terms of the applicable Rules such as Rule 8.21(aa) inserted on 11.2.1987 in Punjab. The said Rule reads as under:-

"8.21(a) Leave at the credit of a Government employee in his leave account shall lapse on the date of his retirement:

Provided that the Government employee;—

** ** **

(aa) Notwithstanding anything contained in sub-rule (a) the authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of Government employee who retires from service on superannuation while under suspension or while disciplinary or criminal proceedings are pending against him, if in the opinion of such authority, there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him and on conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any."

(5) Since Rule 8.21(aa) provides withholding the amount of leave encashment when disciplinary and/or criminal proceedings are

pending against an employee, therefore, the amount of leave encashment can be withheld to meet out the possibility of recovery from such amount.

(6) In ***B.S. Gupta's case*** (supra), the petitioner was paid 75% of the pension pending criminal proceedings and was denied the benefit of leave encashment. While relying upon the Full Bench judgment in ***Dr. Ishar Singh's*** case, it was held as under:-

> "3. For the reasons mentioned above, this petition succeeds. The respondents are directed to release 100% provisional pension to the petitioner and also the amount of leave encashment in accordance with law within a period of three months from the date a certified copy of this order is provided before them. The petitioner shall also be entitled to interest at the rate of 8% per annum on the arrears of pension with effect from the date it was payable till the time of its payment. Copy of the order be furnished dasti on payment of usual charges."

(7) It is the said judgment, which was followed later in ***Gurdial Singh's case*** (supra) and by a Single Bench in ***Dayal Singh's*** case (supra). However, in ***Harbhajan Singh Riar's case*** (supra), the learned Single Bench examined Rule 8.21(aa) of the Punjab Civil Services Rule, Volume-I, Part-I, Chapter-VIII and held as under:-

> "11. So far as the claim of the petitioner for payment of leave encashment is concerned, Rule 8.21(aa) of Punjab Civil Services Rules, Volume-I, Part-I, Chapter VIII provides that the same may be withheld wholly or in part while disciplinary proceedings are pending against an 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."

(8) In ***B.S. Gupta's case*** (supra) and ***Dayal Singh's case*** (supra), the employee was of an undertaking, an instrumentality of State of

Haryana, governed by separate set of Rules. No Rule analogous to Rule 8.21(aa) was brought to the notice of the Court in those cases. Similarly, in ***Gurdial Singh's case*** (supra), the Rule 8.21(aa) was not brought to the notice of the Court.

(9) In view thereof, we find that the ratio laid down in the said judgments cannot be extended in respect of the claim of leave encashment governed by the Punjab Civil Service Rules or the analogous Rules. In fact, in terms of the conclusion (i) in para No.81 of the judgment in ***Dr. Ishar Singh's case*** (supra), the State 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% pension at the time of superannuation. It is conclusion No. (ii) which permits the Government to withhold gratuity or other rerital benefits. The pension is to be paid, may be provisionally, during the pendency of the enquiry. Similarly, conclusion (vii) provides recovery of Government dues from gratuity and other retiral dues. Therefore, the judgment in ***Dr. Ishar Singh's case*** (supra), is applicable only in respect of payment of provisional pension pending disciplinary or criminal proceedings and has no applicability in respect of withholding of other retiral benefits. The payment or withholding of other retiral benefits is subject matter of applicable Rules, if any. Since in the present case, Rule 8.21(aa) provides for withholding of leave encashment, the same cannot be released to an employee, as the amount, if any, could be recovered from such benefits.

(10) In fact the above view gets support from the recent Supreme Court Judgment reported as ***State of Jharkhand v. Jitendra Kumar Srivastava(6)***, wherein the court held as under: -

> "16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognised as a right in "property". Article 300-A of the Constitution of India reads as under:
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> **"300-A.** *Persons not to be deprived of property save by authority of law.*—No person shall be deprived of his property save by authority of law."

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(6) (2013) 12 SCC 210

> Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.
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> 17. It hardly needs to be emphasised that the executive instructions are not having statutory character and, therefore, cannot be termed as "law" within the meaning of the aforesaid Article 300-A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold even a part of pension or gratuity. As we noticed above, so far as Statutory Rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these Rules, the position would have been different."

(11) In view thereof, since the right to withhold leave encashment is part of the Statutory Rules, it satisfies the test laid down by the Supreme Court. Thus, we approve the judgment in Harbhajan Singh Riar's case while overruling the view taken in Gurdial Singh's case (supra). The judgments in two other cases i.e. B.S. Gupta's case (supra) and Dayal Singh's case (supra), pertain to Haryana. Since, the Rules applicable to Haryana, have not been brought to our notice, we leave the said matter open, to be adjudicated at an appropriate stage.

In view of the above, the present LPA is allowed; the order dated 7.7.2011 passed by the learned Single Judge, is set aside and the writ petition filed by the respondent is dismissed.

V. Suri