IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No.6403 of 2014
Date of Decision: 24.04.2015

Bhagwant Singh ....Petitioner

Versus

The Pepsu Road Transport Corp. & others ....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

1. **Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
2. **To be referred to reporters or not ? (Yes/No)**
3. **Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. R.K. Arora, Advocate
for the petitioner.

Mr. Aman Sharma, Advocate
for the respondents.

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DAYA CHAUDHARY, J.

The present petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of *mandamus* directing the respondents to release the retiral benefits to the petitioner such as Gratuity, Leave Encashment, GPF, Commutation of pension etc. along with interest on the delayed payment in view of judgment of full Bench of this Court in case ***R.S. Randhawa vs State of Punjab and others 1997(3) RSJ 318.***

The petitioner had initially joined the Pepsu Road Transport Corporation (here-in-after called the `PRTC') as Driver on 10.01.1983 and retired from service on 30.04.2011 on attaining the age of superannuation. The claim of the petitioner, in the present petition is that, in spite of the fact that he retired from service on 30.04.2011, his retiral benefits have not been released to him.

Learned counsel for the petitioner submits that no complaint or charge sheet or any other disciplinary proceeding was pending against the petitioner on the date of his retirement. He served a legal notice but still the retiral benefits have not been released to him. Learned counsel also submits that the petitioner is entitled for interest on the delayed payment in view of ***R.S. Randhawa's*** case (supra). Learned counsel further submits that one similarly situated employee, namely, Ashok Kumar and some others approached this Court by way of filing ***CWP No.6971 of 2013***, wherein, the counsel appearing for the respondent-Corporation made a statement to release the retiral benefits within a period of four months from the date of receipt of certified copy of the order.

Learned counsel for the respondents submits that the case of the present petitioner is under consideration and the retiral benefits shall be released to him within reasonable time.

Heard the arguments of learned counsel for the parties and have also perused the documents available on the file.

The submissions made by learned counsel for the petitioner have not been disputed by learned counsel for the respondents as the petitioner retired from service on 30.04.2011 on attaining the age of his superannuation.

Admittedly, the retiral benefits like gratuity, leave encashment, GPF, Commutation of pension have not been paid to the petitioner even after four years of his retirement. The petitioner made a representation and ultimately, he served a legal notice upon the respondents but in spite of that, no payment has been released to him and hence, he was compelled to file the present petition for release of retiral benefits.

It has been held by Hon'ble the Apex Court as well as by this Court in various judgments that pension and other retiral benefits are not bounty to be distributed to the employees by the employer but it is a valuable right and property and that should have been paid immediately on retirement or within some reasonable time. It is the duty of the employer to get completed all the formalities well in advance before the date of his/her retirement.

In ***R.S. Randhawa's*** case (supra), it was held that the maximum normal period for the release of pensionary benefits to an employee is two months from the date of his retirement and thereafter, the employee will be entitled for interest @ 12% which may be extended up to 18%, in case, the circumstances of a particular case warrant. The observations made in ***R.S. Randhawa's*** case (supra), in paras No.8 and 9, are reproduced as under :-

> "*8. Since a Government employee on his retirement becomes immediately entitled to pension and other benefits in terms of the Pension Rules, a duty is simultaneously cast on the State to ensure the disbursement of pension and other benefits to the retiree in proper time. As to what is proper time will depend on the facts and circumstances of each case but normally it would not exceed two months from the date of retirement which time limit has been laid down by the Apex Court in M. Padmanabhan Nair 1995(1) RSJ 70. If the State commits any default in the performance of its duty thereby denying to the retiree the benefit of the immediate use of his money, there is no gainsaying the fact that he gets a right to be compensated and, in our opinion, the only way to compensate him is to pay him interest for the period of delay on the amont as was due to him on the date of his retirement. Again, as to what should be the rate of interest, it should, in our view, be generally 12% unless the circumstances of a particular case warrant the payment of a higher rate which may be extended to even 18%.*

9. The question that no arises for our consideration is whether a retiree can approach this Court under Article 226 of the Constitution to claim interest only on the delayed payment of pension and other retiral benefits. As observed earlier, there is a duty cast on the State to disburse pension and retiral benefits immediately when they become due and it is the non-performance of this statutory duty which gives rise to the retiree to claim compensation by way of interest. This right to claim interest partakes the nature and character of the retiral benefits and is indeed a concomitant of the right to claim pension and retiral benefits and cannot be separated there from. This being so, a claim for interest by a pensioner cannot be equated with a claim for money simplicitor or any interest thereon arising out of contractual obligations. Moreover, in a claim for recovering pension or other retiral benefits which the State has wrongfully withheld or even when interest is claimed on those amounts the plea of bar of limitation cannot be permitted to be raised because the State has defaulted in the performance of its duty in not paying the amount when it became due. In this view of the matter, it follows that when a retired government employee can seek his remedy be invoking the jurisdiction of this court under Article 226 of the Constitution of claim pension and retiral benefits by the issuance of a writ of mandamus or any other order or direction, he is equally entitled to seek relief in the same way for claiming interest only on delayed payments which is an enforcement of an incident of the same right. It will, of course, be open to the State to plead and prove that there has been no delay much less culpable delay on its part in disbursing the amount so as to entitle retired employees to any interest as claimed by him. To put it differently, if a retired government employee can show that there was delay in payment of pension or any other retiral benefit to him, the onus would be on the State to show that it is not guilty of *any culpable delay and if it is unable to discharge the onus or satisfy the court as to the reasons for the delay a direction to pay interest for the period of delay would invariable issue.”*

Hon’ble the Apex Court in ***State of Kerala and others vs M. Padmanabhan Nair AIR 1985 SC 356*** has held as under :-

“Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment.”

In the present case, no reason, whatsoever, has been given by the respondents as to why the delay is there in releasing the pension to the petitioner. This is not a case, where the delay is of months, whereas, it is of four years as the petitioner got retired from service on 30.04.2011 and still, the retiral benefits have not been released to him, which shows that the respondents are taking the case of present petitioner in a casual manner and no efforts have been made so far for releasing the retiral benefits to the petitioner. Even no response to the legal notice has been given, whereas, the respondents are duty bound to consider and pass necessary order on the same.

Accordingly, the present petition deserves to be allowed and the respondents are directed to release all retiral benefits to the petitioner along with interest @ 9% after expiry of period of three months till the payment is released, within a period of three months from the date of receipt of certified copy of this order.

(DAYA CHAUDHARY)
JUDGE

24.04.2015
gurpreet