IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.399 of 2011(O&M)
Date of decision: July 03, 2015

Smt.Karmi Devi ----Appellant

Versus

State of Punjab and others ----Respondents

Coram: Hon'ble Mr. Justice Satish Kumar Mittal
Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr.S.S.Katnoria, Advocate for the appellant.

Mr.K.K.Gupta, Additional AG, Punjab..

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HARINDER SINGH SIDHU, J.

This intra-Court appeal under Clause X of the Letters Patent has been filed against the judgment dated 19.01.2011 passed by the Learned Single Judge in CWP No.12221 of 2010 to the extent that interest on delayed payment of retiral benefits has been awarded at lower rate of 6% per annum instead of as prayed for at the rate of 15% per annum and that instead of quashing the deduction of an amount of Rs.37,470/- from the DCRG, the appellant has been permitted to make a representation to the respondents regarding the said deduction.

The husband of the appellant was working as Superintendent Grade-I in the office of respondent No.2. He expired on 29.1.2007. The appellant being the widow and being entitled to family pension and death-cum-retirement gratuity and other retiral benefits under the Punjab Civil Service Rules, submitted an application dated 26.12.2007 requesting for release of family pension, gratuity and other retiral benefits. Thereafter, repeated reminders were sent to respondent No.2 on 22.4.2008, 23.10.2008 and 10.3.2009, 14.9.2009, but to no avail.

Aggrieved by the non-release of the family pension and other retiral benefits, the appellant filed the aforementioned writ petition on 12.7.2010. The respondents filed short reply by way of affidavit stating that ex-gratia grant of Rs.50,000/- had been given to the appellant on 18.04.2007. She had been paid leave encashment of Rs.1,72,155/- on 21.06.2007 and GP Fund Rs.3,06,469/- on 30.03.2007 and deposit linked insured scheme of Rs.10,000/- on 30.04.2007 and Rs.30,000/- towards GIC insurance fund on 24.04.2007. It was further mentioned in the reply that DCRG of Rs.3,50,000/- and family pension of Rs.8,915/- per month w.e.f. 30.01.2007 to 30.04.2008 and thereafter of Rs.5349/- per month has been calculated and sanctioned by respondent No.3 vide order dated 10.08.2010. It was stated that a small amount of Rs.37,470/- has been withheld. This amount is regarding the stepping up of the pay of the deceased with his junior Sh.Ram Murti without the approval of finance department and the case is under consideration of respondent No.1. It was further mentioned that sanction regarding release of DCRG of Rs.3,12,530/- has been issued vide letter dated 11.08.2010. Similarly, respondent No.3 also filed short reply by way of affidavit dated 19.08.2010 in which it was stated that incomplete family pension case of the appellant was received in their office on 26.09.2007 and was returned to respondent No.2 on 29.10.2007 with some observations for compliance and hence they are not liable to pay the interest.

The writ petition was disposed of on 19.1.2011 on the statement of the Ld. State counsel that all the benefits accruing to the appellant including family pension had been paid except Rs.37,470/-, which had been withheld from the gratuity amount payable to the deceased employee on account of wrong payment of the stepped up pay to the deceased employee at par with his junior employee. It was argued that there was no challenge to the order passed by the respondents regarding deduction of this amount from gratuity.

In view of the aforesaid statement, the writ petition was disposed of with a direction that the appellant is entitled to interest on the delayed payment of gratuity and GPF. The appellant was also held entitled to interest @ 6% per annum on the payment of other retiral benefits including arrears of family pension. With regard to the deduction made from the gratuity amount, the appellant was given liberty to make an appropriate representation to the respondent or approach the Court, as she may be advised.

In this appeal, it has been urged that the amount of interest awarded for the delayed payment of retiral benefits at the rate of 6% per annum is inadequate and on the lower side. It is contended that interest @ 12% per annum at least ought to have been awarded. It is further argued that the deduction of Rs.37,470/- from the DCRG ought to have been quashed, instead of permitting the appellant to make a representation regarding the same.

During the pendency of the appeal, an affidavit of Deputy Inspector General of Prisons, Punjab, Chandigarh has been filed, wherein, it is stated that in compliance with the directions dated 19.01.2011 of this Court, the office of respondent No.2 vide order dated 28.6.2013 had sanctioned the payment of interest to the appellant at the rate of 6% per annum on delayed payment of other retiral benefits including arrears of family pension and the same had been sent to the District Treasury Office, Punjab, Chandigarh on 2.7.2013 to release the interest amount to the petitioner. The District Treasury Office, Punjab, Chandigarh on 11.7.2013 had sent back the case with some observations. The observations were complied with and thereafter an amount of Rs.61,650/- was deposited in the account of the petitioner on 9.5.2014, being interest @ 6% as directed by the Court.

With regard to the withheld amount of Rs.37,470/-, it is stated that the petitioner had given representation dated 20.4.2011 to the office of respondent No.2 for the payment of that amount. It is stated that respondent No.1 had already rejected the case of the petitioner vide memo dated 4.4.2011 and the same was intimated to the petitioner on 10.06.2011.

Ld. Counsel for the appellant has stated that there was no justification for withholding the amount of Rs.37,470/- from the gratuity payable to the appellant. He has referred to Annexure P-6 which is a communication dated 12.02.2008 sent from the o/o The Director General of Police (Jails) Punjab to the Principal Secretary, Punjab Government, Department of Home Affairs and Justice (Jails Branch). Vide this communication sanction with retrospective effect has been sought to refix the pay, in the pension case of late Sh.Khushi Ram, Superintendent Grade-I (deceased husband of the appellant) who was the senior employee, as equal to the pay drawn by the junior employee. It has been stated that the pay of Late Sh.Khushi Ram, Superintendent Grade-I was fixed equal to the pay drawn by Sh.Ram Murti Superintendent Grade-I vide order dated 10.07.2001. But mistakenly, while doing so, the Administrative Department did not seek the sanction of the Finance Department. It was requested that the sanction of the Finance Department with retrospective effect be sought in the light of the Punjab Government instructions dated 21.06.2000. It was pointed out that the officer had died and the pension case is already late.

Ld. Counsel urges that it is clear from the above communication that the pay of Late Sh.Khushi Ram had been rightly stepped up at par with that of his junior. There was only a procedural lapse on the part of the Administrative Department in not taking prior approval of the Finance Department, for rectifying which, the above communication had been addressed. He states that there was no misrepresentation on the part of the deceased husband in regard to the stepping up of his pay at par with his junior, which was done as per the Government instructions. He states that it is settled that even in cases where amount in excess of what was due, is wrongly paid, and there is no misrepresentation or fraud on the part of the employee, recovery cannot be effected. In the present case, there is no excess payment, the amount was legitimately payable and only a procedural requirement had not been complied with. He further states that interest awarded is on the lower side and interest @ 12% per annum is liable to have been awarded.

On the other hand, the Ld. State Counsel justifies the impugned order with regard to payment of interest as being fair and just. He further states that the writ petition was filed praying only for release of pensionary benefits with interest. There was no specific challenge therein to the deduction of the amount from the gratuity and the Ld. Single Judge rightly gave liberty to the appellant to make a representation regarding the same or approach the Court. Now, that the representation of the appellant has been rejected, it is open to the appellant to challenge the same in accordance with law.

We have heard the Ld. Counsel for the parties and perused the record, and agree with the contentions of the Ld. Counsel for the appellant.

The question as to whether the amount mistakenly paid in excess of the entitlement, without any misrepresentation on the part of the employee can be recovered has been considered by the Hon'ble Supreme Court in many cases and in a Full Bench by this Court in **Budh Ram v. State of Haryana** , **(P&H)(FB) 2009(3) S.C.T.**

333 as well. The law on the subject has been summed by the Hon'ble Supreme Court in **State of Punjab vs. Rafiq Masih, Appeal (civil) No.11527 of 2014** decided on 18.12.2014, by holding:-

> *"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*
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> *(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
>
> *(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
>
> *(iii)* ***Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.***
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> *(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
>
> *(v)* ***In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.***
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> *13. We are informed by the learned counsel representing the appellant - State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above.*

The husband of the appellant had expired on 29.01.2007. It is clear from Annexure P-6, that his pay was fixed equal to the pay drawn by Sh.Ram Murti Superintendent Grade-I vide order dated 10.07.2001. The deduction was sought to be made at the time of release of DCRG in the year 2010. Clearly, this is a case of hardship which falls in categories (iii) and (v) as mentioned in para 12 of the above judgment and recovery/ deduction in such a case is clearly impermissible in law. Further, as per paragraph 12(ii), recovery from retired employees cannot be made. In this case, the employee has died. A fortiori, in this case deduction could not have been made. Hence, we hold that there was no justification in withholding the said amount from the DCRG payable to the appellant and the action of the respondents in this regard was illegal.

The Full Bench of this Court in **R.S.Randhawa v. State of Punjab and others 1997(3) R.S.J. 318** has held that a writ for retiral benefits including interest is maintainable and that the pensionary benefits, if released after a delay, entitles the incumbent to interest at the rate of 12%, which may even go upto 18% p.a.

Likewise, the Hon'ble Supreme Court in **Vijay L.Mehrotra v. State of U.P. 2000(4) S.C.T. 267** while considering the appeal only on the question of grant of interest on the delayed payment of retiral dues has held that in case of delay of payment, interest has to be paid on the delayed payment of retiral dues, in case there is no reason or justification for not making payment. It observed:

> ***"3.*** *In case of an employee retiring after having rendered service, it is expected that all the payment of the retiral benefits should be paid on the date of retirement or soon thereafter if for some unforeseen circumstances the payments could not be made on the date of retirement.*

> ***4.*** *In this case, there is absolutely no reason or justification for not making the payments for months together. We, therefore, direct the respondent to pay to the appellant within 12 weeks from today simple interest at the rate of 18 per cent with effect from the date of her retirement, i.e., 31-8-1997 till the date of payments."*

In ***Ex. Capt. R.S. Dhull v. State of Haryana*, (1998) 4 SCC 379,** the Hon'ble Supreme Court **:**

> ***10.*** *... ... He submitted that while provisional pension has been fixed, but other benefits like GP Fund dues, gratuity etc. have not so far been paid to him. He rightly argued that the respondents were not justified to withhold the GP Fund and the gratuity more particularly in view of the directions given by us on 15-10-1997. We, therefore, direct that while the case of fixation of proper pension of the appellant shall be decided by the respondents within three months from the date of this order, the GP Fund, gratuity and other retiral benefits (which remain unpaid) shall also be paid to the appellant within the aforesaid period of three months.* ***The appellant shall also be entitled to interest at the rate of 12% per annum on the withheld GP Fund and gratuity etc. from the date the same became payable to him on his attaining the age of superannuation till the date the payment is made to him****."*

We feel that in the present case, there is absolutely no reason and justification for the inordinate delay in release of the retiral benefits to the appellant. Accordingly, it is held that she is entitled to interest @ 12% per annum on the delayed payment of all retiral benefits including gratuity, GPF, arrears of family pension, etc. w.e.f., date it became due till the payment is made.

This case highlights the hardship that the families of deceased employees face in getting their legitimate dues and also reveals the extreme apathy and insensitivity of those in charge to the woes and sufferings of the families of deceased employees. For getting what should have been sanctioned to them promptly, in normal course, and despite there being instructions and innumerable judicial pronouncements on the point, the families are forced to make endless visits to offices, send repeated communications/ representations to the officials and as a last resort knock the doors of the Court. One can only imagine the plight of those who are not able to afford judicial redress. It baffles us as to how in the face of clear judicial pronouncements that no recovery can be effected where amount has been paid in excess and there is no misrepresentation or fraud, in the present case, deduction is being made from the gratuity payable to the widow of the deceased employee. It is nobody's case that the amount was not due. Annexure P-6 clearly suggests that there was a procedural irregularity on the part of the administrative Department and communication was addressed as far back as 12.02.2008 to seek retrospective approval. It is strange as to why there was no prompt follow up on the communication sent on behalf of the DGP (Jails) to the Principal Secretary, Department of Home Affairs and Justice (Jails Branch), wherein, it is specifically mentioned that the retrospective approval be sought **as the officer has died and his pension case is already late.** At the hands of sensitive and conscientious public servants such communications should have received the most urgent consideration. After all, the test of a responsive administration is, how it responds to the needs of the ordinary citizen, and most of all the poor, helpless and the needy, for and in whose name the entire edifice of our democratic republic has been erected.

Thus, this appeal is allowed. The order of the Ld. Single judge is modified . The deduction of Rs.37,470/- from the retiral dues/ DCRG payable to the appellant is declared to be illegal. The appellant is held entitled to the payment of her retiral dues without deduction of that amount. The appellant shall be entitled to interest @ 12% p.a. on the delayed payment of gratuity, GPF, arrears of family pension and other retiral dues instead of interest @ 6% as awarded by the Ld. Single Judge. It is directed that the entire amount as payable in terms of this order be paid to the appellant within two months from today.

For the extremely insensitive and illegal approach of the respondents, we allow this appeal with costs of Rs.50,000/-.

(SATISH KUMAR MITTAL) **(HARINDER SINGH SIDHU)**
JUDGE **JUDGE**

July 03, 2015
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