

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.14886 of 2012
Decided on : 19.01.2016

Surinder Pal

... Petitioner

Versus

State of Punjab & another

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr.J.P.S.Sidhu, Advocate, for the petitioner.

Mr.Aman Bahri, Addl.A.G., Punjab.

Mr.K.V.Aggarwal, Advocate, for respondent No.2.

G.S. Sandhawalia , J. (Oral)

The petitioner seeks the benefit of interest on the delayed pay and allowances, which have been paid to the petitioner after a delay of 20 years, after the termination order was set aside and the petitioner was reinstated vide judgment and decree dated 24.08.1988 (Annexure P1).

It is not disputed that the petitioner's services, as an Octroi Clerk, was terminated by the Municipal Council-respondent No.2, though he was a confirmed employee. He filed a Civil Suit on 16.05.1985, which was decreed in his favour on 24.08.1988. The said order was upheld in appeal on 27.10.1989 and the Regular Second Appeal No.82 of 1990 was preferred before this Court. It is not disputed that during the pendency before this Court, the respondents were under an obligation to deposit 50% of the arrears of pay, upto the date of decree in the Executing Court, within 2 months and the amount was to be paid to the petitioner on furnishing security. Interim order dated 01.03.1990 reads as under:

“The suit of Surinder Pal was decreed declaring the order of terminating his services as illegal by the trial Court and the appeal filed before the lower appellate Court. The Municipal Committee, Mansa has come up in second appeal in this Court. An ex parte order staying operation of the appellate Court's decree and judgment was passed and notice for the stay was given. Counsel for Surinder Pal respondent states that no reply need be filed to the application; otherwise he has contested the same.

After hearing counsel for the parties, in the peculiar circumstances of the present case, I direct that operation of the judgment and decree of the trial Court shall stand stayed subject to deposit of 50 per cent of the arrears of pay upto the date of decree of the appellate Court in the executing Court within two months and the said amount will be paid to the respondent on furnishing security for restitution in case of success of the appeal. The security will be accepted after notice to the appellant.

The records of the case be immediately called and the appeal be listed for hearing within six months if possible. The C.M. is disposed of.”

Thereafter, the petitioner was successful before this Court as the appeal was dismissed on 21.07.2004 and before the Apex Court, SLP was dismissed on 03.01.2005. Instead of honouring the decree dated 24.08.1988, immediately, the Committee did not pay the balance amount to the petitioner and allowed him to join duty in June, 2005. The petitioner, thereafter, filed execution application, in which, he claimed the principal

amount of Rs.12,91,658/- and the interest and other expenses were claimed to the tune of Rs.15,88,892/- and the total amount was, thus, Rs.28,80,500/-.

Admittedly, an amount of Rs.11,00,754/-, was paid by way of cheques dated 20.06.2010 (Annexure P4), in the execution proceedings on 20.05.2010 (Annexure P4). Thereafter, the petitioner's claim for the balance amount was rejected vide order dated 12.11.2012 (Annexure R2/1) on the ground that the Executing Court cannot go beyond the decree and it had only been held that the petitioner was still in service of the Committee and was entitled to all pay and allowances etc. The said order was challenged in appeal, which was also upheld on 27.04.2012 (Annexure R2/2). Resultantly, the present writ petition was filed.

An objection has been raised that the writ petition is not maintainable since the petitioner had filed execution application which had been dismissed and secondly, the said fact was not mentioned.

The said argument is without any basis. Admittedly, the pay and allowance from the date of termination till his reinstatement have been duly satisfied by the Executing Court, pertaining to the amount which was as per the judgment and decree. However, the element of interest which the petitioner, now, seeks, is on account of the delay which is on account of the fault of

the Committee itself. Admittedly, the Regular Second Appeal was dismissed on 21.07.2004 (Annexure P2) and nothing has been shown that any stay was granted in the SLP which was dismissed on 03.01.2005. The payment has been made after a period of almost 6 years, on 20.06.2010, by way of post dated cheques, tendered in Court on 20.05.2010. The amount which belonged to the petitioner was lying with the Committee, which it continued to utilize and therefore, the petitioner is entitled for the interest element, specifically for the period from 21.07.2004 till the date the payment was made on 20.06.2010. After all, interest is to be given on account of a person being deprived the amount and is by way of compensating a person being based on the principle of restitution. In the absence of valid justification for the delay in payment, the petitioner would be entitled for the same. Reference can be made to the judgment of the Apex Court in **S.K.Dua Vs. State of Haryana & another 2008 (3) SCC 44.** Relevant observation reads as under:

“11. Having heard the learned counsel for the parties, in our opinion, the appeal deserves to be partly allowed. It is not in dispute by and between the parties that the appellant retired from service on June 30, 1998. It is also un-disputed that at the time of retirement from service, the appellant had completed more than three decades in Government Service. Obviously, therefore, he was entitled to retiral benefits in accordance with law. True it is that certain charge- sheets/ show cause notices were

issued against him and the appellant was called upon to show cause why disciplinary proceedings should not be initiated against him. It is, however, the case of the appellant that all those actions had been taken at the instance of Mr. Quraishi against whom serious allegations of mal- practices and mis-conduct had been levelled by the appellant which resulted in removal of Mr. Quraishi from the post of Secretary, Irrigation. The said Mr. Quraishi then became Principal Secretary to the Chief Minister. Immediately thereafter charge-sheets were issued to the appellant and proceedings were initiated against him. The fact remains that proceedings were finally dropped and all retiral benefits were extended to the appellant. But it also cannot be denied that those benefits were given to the appellant after four years. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well-founded that he would be entitled to interest on such benefits. If there are Statutory Rules occupying the field, the appellant could claim payment of interest relying on such Rules. If there are Administrative Instructions, Guidelines or Norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence Statutory Rules, Administrative Instructions or Guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of bounty is, in our opinion, well-founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents.”

On the issue of concealment also, the same cannot be given much weightage since, admittedly, the petitioner himself has placed on record the order of the Executing Court, whereby the amount of Rs.11,00,754/- was paid to him. It is the case of the petitioner that he was not allowed to join duty of the Committee, as per the order of the Trial Court.

A perusal of the order of the Executing Court dated 12.11.2011 would also go on to show that the petitioner himself had approached the judgment debtor on 24.05.2005 and thus, the respondents were well aware that they had to comply with the directions of the Court. It was not for them to hold back the amount and contest the execution for a period of 5 years and it is, thus, necessary for them to pay the interest element, for the said period. Accordingly, the petitioner is entitled for the interest element.

Accordingly, the present writ petition is allowed, with a direction to the respondent No.2-Municipal Committee to pay the interest on the principal amount of Rs.11,00,754/- which has been paid to the petitioner @ 8% per annum from 21.07.2004, till 20.06.2010. Needful be done within a period of 3 months from today. In case the amount is not paid within the said period, the interest element will increase to 10% per annum.

JANUARY 19, 2016
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(G.S. SANDHAWALIA)
JUDGE