IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.11101 of 2016
Date of Decision: 30.05.2016

Sukhdev Singh Sarpal ... Petitioner

Versus

State of Punjab and others ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Pawan Kumar Goklaney, Advocate,
for the petitioner.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. The petitioner retired from Government service on attaining the age of superannuation on April 30, 2010. Before he retired he faced a criminal trial for commission of offences under the Prevention of Corruption Act, 1988 and the Indian Penal Code in FIR No.21 of February 03, 2001 registered at Police Station Sirhind for committing the offence of embezzlement of money. The trial ended in acquittal on March 06, 2010 by the Special Judge, Fatehgarh Sahib vide judgment and order dated March 06, 2010. This was about a month and half before he retired. Other than the criminal trial, the petitioner was issued a charge-sheet independently on the same charge/grounds as were charged in the criminal proceedings. The

MANJU
2016.06.09 14:01
I attest to the accuracy and
authenticity of this document
High Court Chandigarh

enquiry Officer made a report on April 07, 2008 and while exonerating the petitioner held that the charges levelled against him were partly proven and he was held guilty of negligence in performance of official duty. It may be noticed that the petitioner was placed under suspension on October 17, 2000 and was reinstated to service on 29/30.12.2003. On acquittal from the criminal Court, the petitioner submitted numerous representations in October 2010, June 2012 and July 2012 to the department for release of pensionary and other benefits due to him. The representations had not been decided when the petitioner filed CWP No.20332 of 2012 for release of pensionary benefits and other service benefits including arrears of revised pay scale following recommendations of the Fifth Punjab Pay Commission. The petition was disposed of on October 10, 2013 with a direction to the respondents to decide the representation dated October 13, 2010 in accordance with law and by passing a speaking order. Even those orders were not complied with which constrained petitioner to file COCP No.1354 of 2013 complaining of want of implementation of the orders. During the contempt proceedings the department passed an order dated June 19, 2013 by which the charge-sheets were dropped and the suspension period from October 17, 2000 to December 29, 2003, the date when he was reinstated, was ordered to be regularized by treating it as period spent on duty. He was given his back-dated promotions vide order dated August 05, 2013 as Senior Assistant w.e.f. November 26, 2002 and as Superintendent on March 30, 2010 while he was out of service. Similarly, vide office order dated August 02, 2013 read with the order dated August 14, 2013 the salary of the petitioner was revised.

MANJU
2016.06.09 14:01
I attest to the accuracy and
authenticity of this document
High Court Chandigarh

2. With the grant of these benefits the petitioner appears to have been satisfied for about two and half years till he served the legal notice dated January 25, 2016 on the respondents to pay interest @12% per annum on delayed payments of service and pensionary benefits. The claim has been rejected by serving a reply to the legal notice.

3. The petitioner has approached this Court impugning the order denying interest on delayed payments. Admittedly, the principal claims have long since stood satisfied. To claim interest alone, the petitioner has relied on the decisions of this Court delivered in CWP No.6291 of 2000, *S.K. Punchhi (Surinder Kumar Punchhi) v. The State of Haryana and another* and CWP No.22392 of 2010, *Daya Singh v. State of Haryana and another*, where interest has been ordered to be paid on delayed payments in cases involving acquittal from charges of criminal offences. The learned Single Judge in *S.K. Punchhi case* relied upon the Division Bench judgment in LPA No.1993 of 2011, *Ram Narian v. State of Haryana and another* decided on February 16, 2012 (of which I was a member). The Bench observed as under:-

> *"However, once the charge has been found to be without any basis and he is acquitted, then the writ petitioner-appellant cannot be subjected to double punishment firstly, by harassing him in criminal proceedings and then by withholding his retiral benefits. Once he is exonerated then, by fiction of law, he has to be treated as innocent ...."*

4. The justification for interest lies always in the fact that money belonging to one person is being put to use by another. If that is compounded by negligence then there may be a claim for even higher interest as was put neatly by Brother Ajay Tewari, J. in one of afore cited

MANJU
2016.06.09 14:01
I attest to the accuracy and
authenticity of this document
High Court Chandigarh

cases. It may be mentioned that against the acquittal, a criminal appeal is pending in this Court filed by the State. The claim in this petition is restricted to interest. To consider this aspect a few dates would be relevant. FIR was lodged on February 03, 2001. The acquittal came on March 06, 2010. The petitioner superannuated on April 30, 2010. The first representation was made on August 12, 2010 for grant of pensionary benefits namely DCRG, pension and leave encashment. The charge-sheet was issued on August 24, 2001. An enquiry officer was appointed on February 24, 2004. The enquiry report was submitted on April 07, 2008 holding the petitioner partly guilty of charge against him. However, the charges were dropped on June 19, 2013 after retirement. The dues were released soon thereafter. The claim for interest was made for the first time through legal notice dated January 25, 2016. Never before did the petitioner raise a claim for interest. The principal amounts were paid by August 2013. There was no complete exoneration of the charges as indisputably negligence was proven in the departmental proceedings. The prayer in this petition at (b) does not specify the period of the claim for interest. The prayer is generalized to grant interest on delayed payment of pensionary benefits to the petitioner. Neither in the legal notice is there a specific prayer from which date interest is claimed. The petitioner goes by the date of acquittal i.e. March 06, 2010 recorded a month and a half before he superannuated. Ordinarily interest would run only after superannuation and denial of pensionary benefits. The petitioner has placed a chart at Annex P-4 giving details of pensionary benefits with the dates of release. The chart is as follows:-

MANJU
2016.06.09 14:01
I attest to the accuracy and
authenticity of this document
High Court Chandigarh

"DETAIL OF PENSIONARY BENEFITS

DATE OF RETIREMENT : 30.4.2010

	DUE DATE OF PAYMENT	*DRAWN*	*AMOUNT*
DCRG	*01/06/10*	*24.1.2014*	*541728-00*
Revised Leave Encashment	*01/06/10* *1.6.2010*	*18.9.2013* *16.9.2013*	*42660-00* *20250-00*
Arrears of increment	*26.11.2002*	*18.9.2013*	*274823-00*
Arrears of 8/16 years (Prop-up)	*1.1.1994 to 31.12.2001 (8 Yrs)* *1.1.2002 (16 Yrs)*	*18.9.2013*	*107130-00*
Arrears of 4 years (Prop-up)	*01/11/06*	*18.9.2013*	*100130-00*
Arrears of promotional increment	*26.11.2002*	*23.7.2015*	*70954-00*

DIFFERENCE OF ARREARS IN PROVISIONAL/REGULAR PENSION

1.5.2010 to 30.11.2013	*7077-00*
1.7.2010 to 30.11.2013	*202217-00*
1.1.2011 to 30.11.2013	*24059-00*
1.7.2011 to 30.11.2013	*24844-00*
1.1.2012 to 30.11.2013	*27198-00*
1.7.2012 to 30.11.2013	*26794-00*
1.1.2013 to 30.11.2013	*29880-00*
1.7.2013 to 30.11.2013	*21026-00*

5. The departmental proceedings were dropped on June 19, 2013. By September 2013 five heads of payment had been made, hence, there is no culpable delay in satisfaction of debt. However, DCRG was released on January 24, 2014 in a sum of Rs.5,41,728/-. There may be delay in payment

MANJU
2016.06.09 14:01
I attest to the accuracy and
authenticity of this document
High Court Chandigarh

of DCRG. The arrears of promotional increments were paid on July 23, 2015 which are claimed from November 26, 2002 in a sum of Rs.70,954/-. There is some delay in this as well. Gratuity could have been withheld pending departmental proceedings and the right to gratuity would accrue on the date of dropping of the charge-sheet i.e. June 19, 2013. The delay in payment of gratuity would run from June 19, 2013 to January 24, 2014 when it was paid. The petitioner may be entitled to interest for this period subject to other conditions as are warranted in exercise of extraordinary jurisdiction which also mandates that an order will not be passed only because it is lawful to do so. Similar, would be the case of claim for interest on arrears of promotional increment w.e.f. November 26, 2002 when the petitioner was retrospectively promoted on acquittal till it was drawn on July 23, 2015. But no claim for interest was made till the legal notice was served on January 25, 2016 which is rather belated. The claim for interest in this petition is non-statutory and is not based on an agreement, rule or regulation. Therefore, interest does not run automatically as a matter of right and become a corresponding obligation on the State to discharge by legal necessity. The statutory basis of claim for interest is as per provisions of the Interest Act, 1978 where Court is asked to award interest. The power of Court to allow interest is conferred by section 3 of the Act which reads as follows:-

> ***"3. Power of court to allow Interest.-***
>
> *(1) In any proceeding for the recovery of any debt or damage or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not*

MANJU
2016.06.09 14:01
I attest to the accuracy and
authenticity of this document
High Court Chandigarh

exceeding the current rate of interest, for the whole or part of the following period, that is to say;-

(a) If the proceedings relate to a debt payable by virtue of a written instrument at a certain time ,then from the date when the debt is payable to the date of institution of the proceedings;

(b) if the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled orthe person making the claim to the person liable that interest will be claimed to the date of institution of the proceedings:

***Provided** that where the amount of the debt or damages has been repaid before the institution of the proceedings, interest shall not be allowed under this section for the period after such repayment.*

(2) Where in any such proceedings as are mentioned in sub-section (1):-

(a) judgment, order or award is given for a sum which, apart from interest on damages, exceeds four thousand rupees, and

(b) the sum represents or includes damages in respect of personal injuries to the plaintiff or any other person or in respect of a person's death. then, the power conferred by that sub-section shall be exercised so as to include in that sum interest on those damages or on such part of them as the court considers appropriate for the whole or part of the period from the date mentioned in the notice to the date of institution of the proceedings, unless the court is satisfied that there are special reasons why no interest should be given in respect of those damages.

(3)Nothing in this Section;-

(a) shall apply in relation to:-

(i) any debt or damages upon which interest is payable as of right, by virtue of any agreement; or

(ii) any debt or damages upon which payment of interest is barred, by virtue of an express agreement;

(b) shall affect:-

(i) the compensation recoverable for the dishonour of a bill of exchange, promissory note or cheque, as defined in the Negotiable instrument Act, 1881: or

(ii) the provisions of rule 2 of Order II of the First Schedule to the Code of Civil Procedure, 1908;

(c) shall empower to court to award interest upon interest."

MANJU
2016.06.09 14:01
I attest to the accuracy and
authenticity of this document
High Court Chandigarh

6. Section 3 does not apply to any debt or damages upon which interest is payable as a right, by virtue of an agreement. Section 3(1) pre-supposes a claim for interest in respect of any debt already paid is made, then Court may, if it thinks, allow interest to the person entitled to the debt at a rate not exceeding the current rate of interest, for the whole of part of period specified in Section 3 (i) (a). When interest is claimed the proceedings are in the nature of recovery of money, called interest. Though the writ petition lies to claim interest even when the principal amount stands paid in cases of pension to Government servants in view of the decision in A.S. Randhawa vs. State of Punjab and others, 1997(3) SCT 468 but the nature of jurisdiction is still discretionary and a writ would not issue merely, to reiterate, because it is lawful to do so in making an order on the assumption that right to interest exists. However, even in claims for money delay and laches are also significant factors which may dissuade the writ Court from granting the relief. It is not a disputed fact that the claim for interest was made for the first time through legal notice issued on January 25, 2016 after inordinate delay and unexplained laches of two and a half years. The petitioner has not pleaded anywhere in the petition that a claim for interest was made prior to January 25, 2016. This Court can also not lose sight of the fact that the charges were dropped in the departmental proceedings in June 2013. The previous litigation was filed to secure the principal amounts and the authorities were directed to decide representation dated October 13, 2010 with regard to pensionary benefits i.e. gratuity, leave encashment, commutation of pension etc. The orders were passed on October 10, 2012. It is not that in every case of delayed payment, interest

MANJU
2016.06.09 14:01
I attest to the accuracy and
authenticity of this document
High Court Chandigarh

would follow as a natural consequence. A claim for interest is not a matter of right and much less a fundamental right enforceable by Part III of the Constitution. The non-statutory character of such an issue would have to be decided on facts from case to case and interest would not follow as a consequential and inevitable result.

7. I would, therefore, not think it fit to interfere in discretionary writ jurisdiction in this case and leave the petitioner to claim interest before the civil court where the question of justification may be tried as an issue on evidence adduced by the parties to measure rights of both the parties, one claiming, while the other resisting.

8. Dismissed with the liberty granted.

(RAJIV NARAIN RAINA)
JUDGE

30.05.2016
manju

MANJU
2016.06.09 14:01
I attest to the accuracy and
authenticity of this document
High Court Chandigarh