

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

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CWP-1997-2015

Decided on : 09.05.2016

Shashi Prabha and others

... Petitioners

Versus

State of Punjab and others

.. Respondents

CORAM : HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present : Mr.V.K.Sharma, Advocate
for the petitioners.
Mr.Harkesh Manuja, Addl.AG, Punjab.
Mr.J.S.Ahluwalia, Advocate for respondent No.3.

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

RAJIV NARAIN RAINA, J. (Oral)

The petitioners retired from service of the respondents, a privately managed aided college on different dates ranging from 2009 to 2011. They came to this Court aggrieved by the action of the respondents in denying them gratuity, encashment of accumulated leave and arrears of revised pension.

The petitioners had earlier approached this Court by way of CWP No.5751 of 2011, in which the principal amounts were claimed together with interest. During the pendency of the writ petition, the principal amounts were paid and the petition was rendered infructuous in the presence of the petitioners' counsel on 12.11.2013 without pressing for anything more.

The petitioners returned to Court claiming interest on delayed payment by filing CWP No.13496 of 2014, which was disposed of by this Court vide order dated 16.07.2014, with a direction to respondent No.3 to pass an order on the legal notice served by the petitioners praying for award of interest on delayed payments.

The present writ petition has been filed against the decision taken by the competent authority under the directions of the Court. The claim of the petitioners has been declined. The ground of rejection of the claim in the legal notice is that in the earlier writ petition filed by the petitioners i.e. CWP No.5751 of 2011, no interest was awarded by the Court and, therefore, they have no subsisting right to claim interest.

Learned counsel for the petitioners states that if no interest was awarded to the petitioners in the previous writ petition, it does not mean that the petitioners have no right to claim interest. The petitioners rely on a Full Bench decision of this Court in case titled as A.S.Randhawa v. State of Punjab and others, 1997(3) SCT 468, to contend that the writ court can always allow interest on delayed payments of pension in an independent action.

Counsel for the other side argues that if this is so, the provisions of Order 2 Rule 2 of Code of Civil Procedure 1908 would come into play in writ jurisdiction. The fundamental principles enshrined in the Code have been made applicable to writ jurisdiction

by the Full Bench of this Court in the case Teja Singh v. Union Territory of Chandigarh & Others, AIR 1982 Pb & Hry 169 which encompass the principle of Order 2 Rule 2 CPC. He also relies on a judgment of the single Judge of this Court in Ajmer Singh Vs. Municipal Council, Maur and others, 2014(4) SCT, 238. This was a case arising out of a suit. The nature of appellate and writ jurisdiction are different in quality and content. When a claim is made for recovery of the principal amount in a money suit claiming also interest but the decree is silent on interest and is appealed against then the 1st appellate court exercises concurrent and plenary jurisdiction in awarding interest despite the fact that trial court had not awarded interest when it made the decree. The attention of the writ court is mostly engaged in the right-duty relationship between the disputing parties. There must be an existing right and a corresponding duty or legal obligation to grant relief on the State. Interest is not one such right unless it has a statutory basis.

Learned Single Judge in Ajmer Singh case (supra) held that the court had miserably failed to apply the law of awarding interest and therefore, the matter qua award of interest on delayed payments is no longer *res integra* and can well be decided and granted by exercising the extra ordinary jurisdiction Article 226 of the Constitution. However, the right to interest is not a fundamental right. It is partible by act and conduct. No interest was awarded in the earlier two writ petitions none can be inferred by necessary

implication. Since interest on delayed payment is not a substantive and conclusive right, it is open to waiver. The petitioners did not press for interest in CWP No.5751 of 2011, the claim is thus barred by Order 2 Rule 2 of the Code of Civil Procedure by necessary implication. It would be taken that this Court declined to decree interest in the first writ petition. The right to sue for interest is no longer available to them having been given up as not pressed in the earlier writ to which they were parties.

For the said reasons, this writ petition is without merit and is hereby dismissed.

[RAJIV NARAIN RAINA]
JUDGE

09.05.2016
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