122

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2283 of 2016
Date of decision: February 04, 2016

Santokh Singh

.......Petitioner

Versus

Food Corporation of India and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Arvinder Singh, Advocate
for the petitioner.

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SABINA, J

Petitioner has filed this petition under Article 226 of the Constitution of India seeking a writ in the nature of certiorari for quashing the letter dated 31.10.2015 (Annexure P-10) and letter dated 28.12.2015 (Annexure P-11), whereby, respondents have demanded interest to the tune of ₹82,690/- from the petitioner. It has further been prayed that the respondents be directed to calculate the total Contributory Provident Fund ('CPF' for short) liable to be paid to the petitioner and pay balance amount along with interest at the rate of 18% per annum.

The case of the petitioner, in brief, is that he was appointed as Assistant Grade-III (D) with Food Corporation of India on 29.07.1976. Petitioner opted for Voluntary Retirement Scheme ('VRS' for short) in the year 2004, but before his request could be accepted, he submitted that he may be permitted to withdraw his request for VRS. However, petitioner was retired on 31.12.2004. Petitioner challenged the said decision of the respondents by way of CWP No.638 of 2005 and the said writ petition was allowed by this Court vide order dated 16.03.2006 (Annexure P-1). During the pendency of the petition, respondents sent cheque in the sum of ₹2,06,959/- as payment towards CPF to the petitioner and the same was duly returned by the petitioner vide letter dated 31.01.2007. Since the petitioner was not reinstated in service, he filed COCP No.1404 of 2007 in this Court. The said petition was disposed of by this Court vide order dated 15.05.2008 (Annexure P-4). While disposing of the contempt petition, it was observed by this Court as under:-

> *"Consequently, having regard to the fact that the respondents have substantially complied with the orders passed by this Court and have no intention to willfully or deliberately disobey the same, this contempt petition is disposed of with a clarificatory direction that as soon as the amounts of VRS compensation, i.e., Rs.4,59,987/- and EL encashment of Rs.27,795/-, i.e., total Rs.4,87,782/- is refunded by the petitioner to the Corporation by way of adjustment of the arrears of his pay, the respondents shall start paying full emoluments to the petitioner forthwith."*

Against the order Annexure P-4 passed by this Court, respondents preferred SLP (CC) No.13907 of 2008 and the same was disposed of vide order dated 09.02.2009 (Annexure P-5). The said order reads as under:-

> *"It is stated by the learned counsel for the*

petitioners that since the respondent has been reinstated in service, respondent is liable to refund the amount of leave encashment, gratuity and provident fund which are to be paid on his retirement only.

Without expressing any opinion on the merits of the dispute, we are of the opinion that if the above statement of the learned counsel for the petitioners is correct and respondent is not refunding the amount received on account of leave encashment, gratuity and provident fund which he was supposed to receive at the time of his retirement, petitioners can take appropriate steps in appropriate proceedings for recovery of the same.

The special leave petition is disposed of accordingly."

Ultimately, petitioner was reinstated in service on 11.10.2007. Respondents deducted the salary amount to the tune of ₹4,02,052/- from the retiral benefits of the petitioner. In March, 2013, petitioner applied for withdrawal of 90% of his CPF. Since the said amount was not paid to the petitioner, he filed CWP No.24362 of 2013, which was disposed of by this Court vide order dated 08.11.2013 (Annexure P-6). The said order reads as under:-

"The prayer in this writ petition is for a direction to the respondents to permit the petitioner to withdraw a portion of his CPF as has been permitted to other employees.

Learned counsel states that on the application (Annexuere P- 3)of the petitioner no order has been passed.

In my opinion, at this stage it would be appropriate for me to direct respondent No.2 to consider and decide the application (Annexure P- 3) of the petitioner in accordance with law and, in case he is found entitled to any relief, to grant the same to him within a period of one month from the date of receipt of a certified copy of this order. Ordered accordingly. Petition stands disposed of."

Thereafter, respondents released an amount of ₹4,29,000/- to the petitioner. Petitioner retired from service on 31.03.2014 on attaining the age of superannuation. Petitioner was paid all the retiral benefits except his remaining CPF. Again petitioner filed CWP No.17904 of 2014 before this Court and the same was disposed of vide order dated 01.09.2014 (Annexure P-7). The operative part of the said order reads as under:-

"Accordingly, a direction is issued to respondent no.2 to take a decision on the legal notice dated 25.7.2014 (Annexure P/8) regarding his aforesaid claim within a period of two months from the date of receipt of a certified copy of this order in accordance with law. If the petitioner is found entitled for the benefit claimed, the same be paid to him expeditiously thereafter within one month. In case the petitioner is to be denied the said relief then a reasoned order be passed and the same be communicated to him within the above said period."

Further, the case of the petitioner is that so far as the other employees like Harjit Singh and Satish Kumar are concerned, they have been paid CPF to the tune of

₹23,00,000/-, whereas, the petitioner had been paid ₹13,43,465/-. Petitioner served a legal notice dated 23.07.2015 (Annexure P-8) asking the respondents to release the balance amount of CPF. The respondents vide reply dated 22.09.2015 (Annexure P-9) said that the case of the petitioner could not be compared with Harjit Singh and Satish Kumar as the said employees had never sought voluntary retirement. Further, the respondents demanded ₹82,690/- from the petitioner on account of interest, which was liable to be paid by the petitioner on account of retention of gratuity and leave encashment amount. Petitioner received letter dated 31.10.2015 (Annexure P-10), whereby, ₹62,300/- had been adjusted from the Performance Link Account ('PIL' for short) and petitioner has been further directed to deposit the remaining amount of ₹20,300/- in the account of the defendants vide letter dated 28.12.2015 (Annexure P-11).

I have heard learned counsel for the petitioner and have gone through the record available on the file carefully.

In the present case, petitioner has sought two reliefs. First relief sought by the petitioner is that the respondents be directed to pay him ₹23,00,000/- by way of CPF as had been released to other employees. In this regard, a perusal of Annexure P-9 reply submitted by the respondents to the legal notice served by the petitioner reveals that as per record maintained by the respondents, no one had been paid ₹23,00,000/- towards CPF. Since it is specific case of the respondents that no one has been paid ₹23,00,000/- by way of CPF, the prayer made by the petitioner for release of ₹23,00,000/- to him by way of CPF cannot be allowed.

So far as the second relief sought by the petitioner is concerned, he has challenged the letters Annexure P-10 and Annexure P-11. Relevant portion of Para-6 and Para-8 of Annexure P-9 reply submitted by the respondents to the legal notice of the petitioner, read as under:-

> *"Fact of the matter is that your client has not disclosed all the material facts while getting the present legal notice served upon my client rather has concealed very important information from your good office. It is mentioned here that your client applied for VRS and thereafter went on VRS on 31.12.2004 and at that time your client paid all the dues including CPF amount payable to you client. Your client was paid Rs. 2,98,000/-, called 90% CPF advance but latter on your client had filed a writ petition in the Pb & Hry High court at Chandigarh and had challenged his VRS and as per the orders of the Hon'ble High Court the writ petition filed by your client was allowed and accordingly your client was reinstated on 10.10.2007/considered on job from 31.12.2014.*
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> *The said CPF amount remained with your client from 08/2005 to 12/2009 which means interest of Rs.2,98,000/- for such long period can not be credited in the CPF account of your client. Thereafter to comply the Hon'ble SUPERME COURT order dated 10.02.2009 against SLP No.4031 of 2009 arising out of COPCP No.1404 of 2007 in CWP No.638/2005, your client started returning the*

benefits (Gratuity/leave encashment and said CPF) received by him in monthly small installments from his salary without interest. Accordingly the CPF amount remained with your client for considerable time and thereafter was returned in very small installment as such the amount which has been paid to your client is the actual payable amount after his retirement on 31.3.2014. As far as the other employees Harjit Singh and Satish Kumar referred to in the para under reply are concerned it is replied that your client can not be treated at par with them as they had competed their service without any break and had not obtained the VRS, as such both the cases fall under totally different category.

Para 8 of the legal notice is replied that it has came to notice of my client department from record that no interest on gratuity amount of Rs.1,81,973/- and on leave encashment of Rs.27795/- (paid to client on VRS) has been recovered from your client till date when the said amount remained with your client at the time of receipt of benefits during VRS. The overall amount of Rs.82690/- as interest on said Gratuity/leave encashment remains to be recovered from your client as on 01.07.2013 i.e. till last date of recovery because as per record your client remained in litigation with FCI and also threatened staff of my client many time. To comply the ibid Supreme Court orders recovery of said interest is mandatory for Corporation. Moreover your client has already paid the due amount as such in question of his going to the court of law does not arise without any justification and reasonable cause."

Thus, in the present case, petitioner was paid his dues by the respondents after his request for VRS was accepted. The amount to the tune of ₹2,98,000/- remained with the petitioner from August 2005 to December 2009. Since the said amount was retained by the petitioner for a long period, the respondents are entitled to claim interest on the said amount, which was utilised by the petitioner. Vide Annexure P-10, out of due amount of interest, (i.e. ₹82,690/-), ₹62,300/- were thus, rightly adjusted from the account of the petitioner. Petitioner was requested to deposit the balance amount within 30 days of the receipt of the notice. Vide Annexure P-11, reminder was issued to the petitioner to deposit the balance amount. Petitioner is liable to pay the said amount as he had retained the amount of ₹2,98,000/- for more than four years.

In the facts and circumstances of the present case, no ground for interference by this Court, is made out.

Dismissed.

(SABINA)
JUDGE

February 04, 2016
mahavir