

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-4879-2013 (O&M)
Date of decision: 13.12.2016

Sat Narain

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Ramesh Sindhar, Advocate for the petitioner
Mr.Ravi Partap Singh, AAG Haryana

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

Petitioner joined as Constable in Haryana Police on 26.3.1970. He was ultimately promoted as Sub Inspector on 14.7.1990 and confirmed as such in the year 1998. It comes out that on 6.11.1997, a departmental inquiry was initiated. As a result of the departmental inquiry, he was reverted to the post of Assistant Sub Inspector on 7.4.1998. However, in appeal, the appellate authority vide order dated 14.7.1998 and 7.4.1998, set aside the reversion of the petitioner and instead stopped two annual grade increments of the petitioner with cumulative effect. The petitioner challenged the said order by way of filing a Civil Suit. However, in the meanwhile, the petitioner was compulsorily retired from service vide order dated 20.11.2000 under Rule 9.18(2) of Punjab Police Rules 1934. Petitioner challenged the said order of premature retirement by filing CWP No.1118 of 2001.

Civil Suit of the petitioner was ultimately decreed on 7.4.1998.

Appeal against the said decree was dismissed and Regular Second Appeal No.3206 of 2001 filed against the said order was dismissed on 20.2.2009. In the meanwhile, in CWP No.1118 of 2001, order dated 20.11.2000 of premature retirement of the petitioner was set aside by this Court vide judgment dated 20.2.2009. The period from the date of premature retirement till reinstatement was treated as duty period. Consequence thereof, the government reconsidered the matter. As the petitioner had already attained the age of superannuation on 31.1.2008, therefore, he was given ad hoc promotion to the post of DSP w.e.f. 22.2.2007 and later on promoted as regular DSP w.e.f. 5.9.2007. It comes out that when the petitioner was initially compulsory retired on 20.11.2000, he was paid leave encashment, gratuity and the pension was also released to him. After his compulsory retirement order was set aside and he was given proforma promotion to the post of DSP, all the arrears were recalculated. It comes out that due to some error of the office of the Superintendent of Police, inadvertently arrears from 01.2.2008 to 31.12.2008 were also released to him, whereas his date of superannuation was 31.1.2008. The stand of the respondents is that as per government instructions dated 19.10.1981 (Annexure R1), the government was entitled to simple interest on the DCRG already received by such retired employee for the period the same has been retained by him. The amount of pension drawn in the intervening period between premature retirement/ compulsory retirement and the date of reinstatement was to be adjusted against the salary payable for the period provided that such period is treated as duty period. In this case, intervening period is treated as duty period. Arrears of pay and allowances for the period from 6.12.2000 to 31.1.2008 were paid to the petitioner by Superintendent of Police but the adjustment of

pension already drawn by the petitioner was not made from the arrears of pay and allowances in terms of the instructions dated 19.10.1981. Interest on the gratuity was to be recovered but it was also not recovered. It is further stated that case of the petitioner for revised pension, revised gratuity and revised commutation was sent to the office of Accountant General (A&E) Haryana along with the excess payment inadvertently made for the concerned period from 1.2.2008 to 31.12.2008. Details of which is as under:-

Sr. No	Nature of payment	Amount paid by the office of SP/Sirsa inadvertently	Detail of pension actually admissible	Excess payment recovered by AGT (A&E), HR, Chd while issuing revised PPO
	Pension w.e.f. 12/2K to 31.8.2011	6,87,447/-	Pension= 11355/- PM	The AG(A&E) HR, Chd has issued directions to TO/Rohtak vide PPO No.11123248832488 that a sum of Rs.3,06,081/- on account of over payment and arrear of pension may be recovered from old PPO
2. i)	DCRG	1,48,368/-	DCRG=4,19,678/-	192613(0071 Head)
	DCRG interest	1,19,132/-		227065/- (055 Head)
ii)	Excess payment of leave salary on account of arrear of pay and allowances drawn inadvertently	2,27,065/-		
3			Commutation= 4,56,253/-	456253/- 0071 (Head)
	Grant Total	11,82,012	(DCRG + CVP) = 875931	(875931+ 306081) = 11,82,012/-

I have heard learned counsel for the parties and have also carefully gone through the file.

Admittedly, the petitioner was prematurely retired from service on 20.11.2000. All the pensionary benefits were released to the petitioner.

In pursuance to the order of this Court, setting aside the order of compulsory retirement, he was reinstated in service. He was given proforma promotion to the post of DSP and the pay was accordingly fixed. As he already had attained age of superannuation on 31.1.2008, now the revised pay, DCRG and pension was to be released. Certainly, the government is entitled to recover the excess payment of pay made from 01.02.2008 to 31.12.2008. However, so far as interest is concerned, there was no fault on part of the employee and he is to simply refund the excess amount and the government is not entitled to claim any interest on the said excess payment.

So far as DCRG is concerned, the petitioner was to be released only the difference between the DCRG already paid to him at the time of his premature retirement and on the date of superannuation. For the DCRG already received by the petitioner on account of orders of compulsory retirement passed by the respondents, no interest can be claimed as even otherwise, the petitioner having compulsory retired was entitled to the said amount.

So far as arrears of pay are concerned, as per government instructions itself, the pension already paid was to be deducted from each month's salary and thereafter, balance pay of arrears were to be released. However, office of Superintendent of Police inadvertently released entire pay without deducting the pension. Therefore, the State is entitled to deduct the said pension already paid to the petitioner from the said salary of the petitioner for each month after adjusting the same.

However, now the question would arise as to whether the State can claim interest on the amount of pension part, which was to be adjusted and wrongly released to the petitioner. In this regard also, the petitioner is

not at fault. It is not the claim of the respondents that the petitioner knew that the payment is being wrongly made. Therefore, the State cannot claim interest on the said payment. The State could claim the interest if the State had issued notice to the petitioner explaining as to on which account the excess payment has been made and after issuing show cause notice and thereafter hearing the petitioner, pass the order to refund the said amount. In the present case, as the show cause notice was issued much later in which, reply of the petitioner is stated to have been filed but no order was passed asking the petitioner to refund the excess payment.

In these circumstances, the present writ petition is allowed. The respondents are held not entitled to claim interest on the payment of gratuity, arrears of pay and the wrong payment of the salary from 01.02.2008 to 31.12.2008. However, the State can adjust the said amount in the arrears payable to the petitioner and release the remaining amount within a period of two months from the date of receipt of a certified copy of this order.

Learned counsel for the petitioner further claims that a sum of Rs.1,91,412/- has been withheld by the respondent without assigning any reason. If it is so, the said amount shall also be released along with the remaining arrears and interest as per government instructions.

13.12.2016*gk***(Kuldip Singh)
Judge**

Whether speaking/ reasoned:

Yes

Whether Reportable:

No