
IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.5183 of 2013

Reserved on 18.2.2016.

Date of decision: 02.3.2016

Balbir Singh Bajwa

...Petitioner

Versus

State of Punjab and others

...Respondents

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

Present: Mr. Naresh Prabhakar, Advocate for the petitioner.

Mr. Avinit Avasthi, Assistant Advocate General, Punjab.

Mr. Athar Ahmed, Advocate for respondent no.2.

G.S.SANDHAWALIA, J.

The petitioner challenges order dated 15.11.2012 (Annexure P/3) whereby he has been denied the interest element on the delayed payment of retiral dues.

It is pleaded case of the petitioner that he was on deputation with respondent no.3-Corporation in July, 1989 and on account of shortage of wheat he was charge sheeted in which he was exonerated. A civil suit was, however, filed by the Corporation for recovery on account of shortage of wheat which was in Malsia Centre which was dismissed by the Civil Judge, Nakodar on 30.7.2005. Similarly for Shahkot Centre also, the proceedings have been dropped against the petitioner but the Civil Suit had been filed against him and another employee, namely, Roop Lal and the said suit was decreed on 21.11.2006. The appeal filed by the petitioner along with said employee was partly allowed and thereafter he has filed R.S.A. No.4199 of 2009 which stands admitted. As per direction issued,

security has been furnished before the learned trial Court and interest of the Corporation stands duly secured. An order dated 21.9.2010 was passed whereby respondent no.2 declined to release his pensionary benefits which was challenged in Civil Writ Petition No.7586 of 2012 which was allowed on 2.8.2012 (Annexure P/2). A direction was issued that retiral benefits be paid. However, issue of interest was kept open and the petitioner was given liberty to represent to the authorities which has been rejected vide impugned order dated 15.11.2012. Resultantly interest has been claimed on account of delayed payment since the petitioner retired on 31.5.2007 and the retiral dues were only paid after direction of this Court on 2.8.2012.

The writ petition has been contested by the State on the ground that a sum of ₹ 3,49,231/- stands decreed in favour of respondent no.3-Corporation and the matter is pending before this Court. The appeal against the dismissal of the suit on 30.7.2005, is also pending and the Corporation had vide letter dated 20.9.2010 (Annexure R/1) had recommended not to release the arrears of pensionary benefits since the decree has been passed in favour of the Corporation. It has accordingly been pleaded that finding of the Civil Court was against the petitioner and there was no occasion for the Department to release the pensionary benefits to him earlier.

The reasoning given by the respondent in the impugned order is that the security amount which has been given for ₹ 6 lacs would not be sufficient to cover the amount for which the recovery suit had been filed by the Punsup. On account of the finding of the Civil Court there was no occasion for the department to release the pensionary benefits and it was only due to intervention of this Court that they were being released and

accordingly the petitioner was not entitled for the interest.

The right of a person to the retiral dues has been held to be a valuable right which flows to employee by virtue of Rules which governs his employment. The Apex Court in **Deokinandan Prasad Vs. State of Bihar AIR 1971 SC 1409** held that the right flows by virtue of Rules which have a statutory force and is not a bounty payable on the sweet will of the employer.

The said issue came up for consideration before a Full Bench of this Court in **A.S.Randhawa, Supdg. Engineer (Retd.) Vs. State of Punjab 1998 (1) S.C.T. 343** and the observations of the Apex Court in **State of Punjab Vs. Iqbal Singh AIR 1976 SC 667** and **State of Kerala Vs. M. Padmanabhan AIR 1985 SC 356** were quoted and it was held that right to pension is a right in property and no person can be deprived save by authority of law. Relevant observation reads as under:-

"Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."

5. Thus, a right to pension has been held to be a right in property ,and till the Constitution (Forty Fourth Amendment) Act, 1978 was brought into force, property right was a fundamental right under [Article 19\(1\)\(f\)](#) of the Constitution. After the enforcement of the said amendment property right is no longer a part of fundamental rights and has been provided for as a constitutional right in [Article 300A](#) and in terms thereof no person can be deprived of his property save by authority of law.

xxx

xxx

xxx

7. There is, thus, no doubt and in fact it was conceded

before us by the learned Advocate General appearing for the respondents that right to pension is a right to property and not a bounty to be paid on the sweet will and pleasure of the Government. It may or may not be a fundamental right but, it is definitely a constitutional right being a right to property and also a statutory right government by the Pension Rules. It is common case of the parties that the right to receive pension by the petitioner is governed by the rules contained in the Punjab Civil Service Rules, Vol. II framed under proviso to [Article 309](#) of the Constitution. This being so, a retired government employee has, beyond doubt, a right to approach this court for the issuance of a writ of mandamus or for any other order or direction to enforce his legal right to claim pension or any other retiral benefits the disbursement of which may have been unjustifiably withheld by the State.”

Accordingly, it was held that the State has to make the payment immediately and to ensure the disbursement of the same in proper time only. The interest could be payable between 12% to 18% subject to circumstances of a particular case. Relevant observation reads as under:-

“9. Since a government employee on his retirement becomes immediately entitled to pension and other benefits in terms of the Pension Rules, a duty is simultaneously cast on the State to ensure the disbursement of pension and other benefits to the retiree in proper time. As to what is proper time will depend on the facts and circumstances of each case but normally it would not exceed two months from the date of retirement which time limit has been laid down by the Apex Court in M. Padmanabhan Nair's case (supra). If the State commits any default in the performance of its duty thereby denying to the retiree the benefit of the immediate use of his money, there is no gainsaying the fact that he gets a right to be compensated and, in our opinion, the only way to compensate him is to pay him interest for the period of delay on the amount as was due to him on the date of his retirement. Again, as to what should be the rate of interest, it

should, in our view, be generally 12% unless the circumstances of a particular case warrant the payment of a higher rate which may extend to even 18%.”

It was further held that the writ petition is maintainable for the claim of interest and the State would have to show the explanation for the delay.

The Apex Court in **S.K.Dua Vs. State of Haryana & another** 2008 (3) SCC 44 also reiterated the said view. 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 undisputed 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 misconduct 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.”

In the present case as noticed, the petitioner had retired on 31.5.2007 and the Lower Appellate Court had modified the decree on 7.8.2009 in civil suit which had been filed by the corporation. Respondent no.2 had on the basis of letter dated 20.9.2010 retained the retiral benefits on the ground that Execution Petition had been filed by the Corporation. Relevant para of letter dated 20.9.2010 reads as under:-

“Further, pertaining to shortage at Shahkot Centre, a recovery suit for Rs.16,70,138.06 was filed on 22.4.87 before Nakodar Court against him, which was decided by the Court on 21.11.2006 in favour of Punsup, an appeal filed before Session Judge Jalandhar by Sh. Balbir Singh was decided on 7.8.2009 in favour of Corporation dismissing the appeal filed by the personnel. Punsup has filed execution petition in the case at Nakodar Court. In this situation it can not be recommended to release his arrears of pensionary benefits.”

The decree was passed on 21.11.2006 and the petitioner has been only held liable to pay a sum of ₹ 3,49,231/- by the Lower Appellate Court which is further subject matter of appeal in RSA No.4199 of 2009 before this Court. It is not disputed that he has also furnished a bond of ₹

6 lacs in view of the direction of this Court and therefore, the amount is duly secured regarding the claim of the corporation. This would be clear from the appeal filed by the petitioner before this Court in which execution of the impugned decree was ordered to be stayed and vide order dated 3.12.2009, which reads as under:-

“Learned counsel, inter-alia, contends that defendants-appellants were exonerated in the departmental proceedings. Therefore, the suit for recovery filed against them was not maintainable. He has placed reliance upon Punjab State Civil Supplies Corporation Limited V. Sikander Singh AIR 2006 Supreme Court 1438.

Notice of motion for 8.3.2010.

In the meantime, execution of the impugned decree shall remain stayed.”

Thereafter, vide order dated 17.1.2011 in the said RSA, the appellants were allowed to furnish security before the trial Court qua the amount in question to safeguard the interest of the corporation which read as under:-

“CM No.538-C of 2011

Application is allowed as prayed for.

The appellants are allowed to furnish security before the trial Court qua the amount in question.

RSA No.4199 of 2009.

Let Lower Courts record be summoned for 29.3.2011.”

Accordingly, in the opinion of this Court, the respondents were not justified to hold back the amount only because of the pending litigation interse the Corporation and the petitioners to which they were not party only on account of the recommendation made.

In such circumstances, the entitlement of the petitioner to claim interest is justified after 2 months from the date of his retirement i.e. 1.8.2007.

Accordingly, the present petition is allowed and the order dated 15.11.2012 (Annexure P/3) is quashed. Respondents no.1 and 2 are directed to pay interest at the rate of 10% per annum from 1.8.2007 till the retiral benefits were paid to the petitioner in view of the direction dated 2.8.2012 of this Court in CWP No.7586 of 2012. Let the needful be done within a period of two months from the date of receipt of a certified copy of this order failing which the petitioner will be entitled for interest at the rate of 12% per annum.

March 02, 2016
Pka

(G.S.SANDHAWALIA)
Judge