

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

Date of Decision:-11th May, 2017

COCF No.1776 of 2016(O&M)

Virender Singh Siwach.

.....Petitioner.

Versus

**Smt. Usha Ananthasubramanian, Chairman & Managing Director,
Punjab National Bank, New Delhi.**

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Petitioner-Virender Singh Siwach in Person.

Mr. Saurav Verma, Advocate for the respondent.

JASWANT SINGH, J.

Petitioner has filed instant contempt petition under Sections 12 of the Contempt of Courts Act for initiating contempt proceedings against the respondent for an alleged willful and intentional disobedience of direction dated 23.02.2012 (P-1) passed by this Court in CWP No.8210 of 2011 wherein a direction was given that the pension shall be released within a period of four weeks from the date of redeposit of the amount with interest at the rate of 7.5% from the date when the amount fell due till the date of payment.

In this petition, the petitioner has raised three fold grievance which are as under:-

(i) *In compliance of the order dated 23.02.2012,*

petitioner had deposited the amount of pension fund to the tune of Rs.10,82,851.50/- on 06.03.2012, however, the said amount was returned on 21.03.2012 by the bank on the ground that LPA No.735 of 2012 was filed. However, only on dismissal of the LPA, the amount was got redeposited by the petitioner with the bank. But at the time of the release of pension arrears, the bank has incorrectly charged interest w.e.f. 01.02.2011 to 16.01.2016 although, he was liable to pay the amount at the rate of 7.5 % only for the period w.e.f. 01.02.2011 to 05.03.2012;

(ii) despite the fact that the Bank was directed to deposit the interest on the pension arrears by 02.02.2016 (in the LPA), the said amount has been deposited on 03.08.2016 i.e. after a delay of six months &

(iii) admittedly, petitioner worked in respondent bank from 01.01.1985 to 30.09.2009 i.e. 24 years and nine months, however, the length of service has been reduced illegally to 24 years and 27 days and thus, relief qua release of the said amount has also been sought for.

On other hand, learned Counsel for the respondent has argued that all the payments due towards the petitioner have been made and a **CM No.26205-CII of 2016** was filed by way of an affidavit of the respondent indicating the calculations of payments made to the petitioner. The calculation sheet was also attached at Annexure R-1. It was also argued that the order dated 23.02.2012 was challenged by the respondent by way of an LPA No.735 of 2012 and vide order dated 13.07.2012 passed in the said LPA, the operation of the order dated 23.02.2012 was stayed. However, this LPA was dismissed on 09.10.2015. Consequently, as soon as the LPA was dismissed the respondent complied with the order and made the payments as per calculations Annexure **R-1** w.e.f. 27.11.2009 to 31.12.2015

along with interest at the rate of 7.5% on the delayed payment. It was

further argued that the petitioner had preferred a CM No.4601-CII of 2016 whereby he had sought modification/clarification of order dated 23.02.2012 passed in CWP No.8210 of 2011 wherein he had sought similar benefit as is being sought in the present contempt petition. The application is also on record as Annexure **R-2**. This application was dismissed by the Court vide order dated 28.04.2016 wherein it was observed as under:-

“ There is simply no need for modification of the order which was passed in February, 2012. The objection of the petitioner is that interest is not being paid and several benefits which he has been awarded through the order have not been complied with. The petitioner is at liberty to put the order in execution if he is aggrieved that the order is not being fully given effect to. If there is any defect in the order which the petitioner would try to point out, it should be urged only before a court of competent jurisdiction in appeal and not before the same Court. The application is dismissed with the above observations. ”

Thus, it was submitted that the relief sought by the petitioner has already been declined to him by the Coordinate Bench, while suggesting an alternate remedy. Thus, prayer was made for dismissal of the present contempt petition.

After hearing learned Counsel for the parties and perusing the paper book with their able assistance, this Court is of the considered view that the entire relief as granted by the order dated 23.02.2012 has not been released, and, therefore, the violation is established.

Some of the undisputed facts are that after passing of the order

dated 23.02.2012, an LPA was filed by the bank in which the operation of the order dated 23.02.2012 was stayed. However, this LPA was dismissed on 09.10.2015 and thereafter, the entire arrears were paid to the petitioner along with interest at the rate of 7.5% per annum on 03.08.2016, nonetheless with a delay. The petitioner is correct in raising the grievance that he has been incorrectly charged interest w.e.f. 01.02.2011 to 16.01.2016 as the facts of the present case clearly prove that the petitioner was never at fault and rather it was the bank, who had returned the amount, and the petitioner cannot be penalised by forcing him to pay interest for the entire period i.e. 01.02.2011 to 16.01.2016. The petitioner was liable to pay interest at the rate of 7.5% per annum on the pension fund only for the period w.e.f. 01.02.2011 to 05.03.2012. Thus, the petitioner is entitled to return of the excess interest charged by the employer bank for 1411 days (06.03.2012 to 16.01.2016) because it was the bank who was at fault and not the petitioner.

The petitioner is also correct to ask for interest on the delayed payment i.e. Rs.3,59,965/- made by the bank, which admittedly has been deposited on 03.08.2016, whereas, they were liable to deposit the said amount by 02.02.2016. This act of the bank to deposit the amount after issuance of notice of motion speaks volume about their conduct. However, without going into the factual aspect as to whether bank or respondent herein was aware about the pendency of the present contempt petition, the Court is of the opinion that it would be appropriate to direct the bank to pay the interest on the aforesaid amount at the rate of 9% per annum w.e.f. 02.02.2016 to 03.08.2016, in view of the fact that there was an unexplainable delay on part of the bank to deposit the amount.

As far as the counting of pensionable service is concerned, it is not in dispute that the circle head, who is the sanctioning authority for both pension and gratuity payable to employees, had condoned the period of leave on pay and taken the length of service of 24 years 09 months, equivalent to 25 years of service as per service rules. However, the same sanctioning authority, without any reason has reduced the length of service from 24 years 09 months to 24 years and 27 days by revoking the earlier decision taken. This act has been done without giving notice to the petitioner and without passing any speaking order. Since the petitioner is a retired person and has been fighting from pillar to post for grant of his pensionary benefits, this Court is of the opinion that the ends of justice would be met if his grievance is addressed in the present petition itself rather than relegating the petitioner to any other remedy, especially when it is seized of the matter. Thus, it is directed that the bank shall recalculate the pensionable service of petitioner within a period of two months of receipt of certified copy of this order and pay the petitioner the amount due along with interest at the rate of 9% w.e.f. 27.11.2009 to 28.02.2016 within a further period of one month of calculation.

Although, the conspectus of the facts narrated above prove that the respondent is in contempt, however, in view of the fact that the matter pertains to financial implications, this Court is not inclined to pass an order of holding the respondent to be guilty of contempt and accordingly she is being let off with the aforesaid directions.

Let the entire exercise of release of benefits to the petitioner be done within a period of three months from the date of receipt of certified copy of the order. In case, the directions are not followed or complied with

by the respondent within the aforesaid period, the petitioner is at liberty to revive the present contempt petition, to agitate his grievance again.

Allowed in the aforesaid terms.

(JASWANT SINGH)
JUDGE

May 11th, 2017
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>