206 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 10230 of 2014 (O&M)
DECIDED ON: DECEMBER 12, 2017

KULBIR SINGH THAKUR

.....PETITIONER

VERSUS

STATE OF PUNJAB AND ORS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Vipin Mahajan, Advocate
for the petitioner.

Mr. Manoj Bajaj, Addl. AG, Punjab.

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JASPAL SINGH, J (ORAL)

Through the instant petition, petitioner has sought a writ especially in the nature of certiorari for quashing the order dated January 12, 2011 (P-3) whereby, ₹62,920/- has been deducted from the arrears of pay protection of the petitioner on the ground of interest of employer's share of provident fund with further prayer to refund the said amount as well as to release interest @12 % per annum on the delayed payment of retiral benefits in terms of gratuity and leave encashment.

2. Undisputably, petitioner earlier preferred a writ petition bearing CWP No. 414 of 2008, captioned as Kulbir Singh Thakur vs. State of Punjab

and others seeking mandamus to direct the respondents to protect his pay as was being drawn by him in the Punjab State Handloom and Textile Development Corporation Ltd. (PUNTEX) and also to count the service rendered by him in the said Corporation towards retiral benefits. The said writ petition was allowed vide order dated February 23, 2010 and respondents were directed to grant the necessary reliefs to the petitioner within a period of four months from the date of receipt of certified of the said order. In compliance of the said order dated February 23, 2010 passed in CWP No. 414 of 2008, the case of the petitioner for the revision of gratuity and leave encashment was taken up and accordingly, payment on account of gratuity and leave encashment was made to the petitioner on April 04, 2012 and September 06, 2012, respectively.

3. Through the instant petition, petitioner has claimed the refund of amount of ₹62,920/-, which has been deducted from the arrears of pay protection on account of interest of employer's share on provident fund as well as interest on the delayed payments.

4. Here, it would be pertinent to mention that though a direction was issued by this Court vide order dated February 23, 2010 passed in CWP No. 414 of 2008, to respondents to make the payment within a period of four months from the date of receipt of certified copy of afore-said order but a close scrutiny of the afore-said order transpires that no interest was granted on the delayed payment. Moreover, the said order has attained finality as neither the petitioner challenged the said order nor moved any application to review the order dated February 23, 2010 for the grant of relief with regard to the interest on the delayed payment.

5. As far as claim on interest on the employer's share of CPF is concerned, the said amount of CPF was withdrawn by the petitioner in the month of September 1993, which was required to be deposited within 60 days but it was not deposited till December 31, 2010. Accordingly, the interest was calculated in terms of the judgment rendered by this Court in LPA No. 44 of 2006 titled as State of Punjab vs. Subhash Chada and others, which was the pre-condition for getting the service counted rendered by the petitioner in PUNTEX towards pension. Thus, on calculation the amount of interest worked out to ₹62,920/- on employer share of CPF. Subsequent thereto, in pursuance of office order No. stc-mcs-estt/1052-56, dated January 14, 2011 with regard to deposit of employer share, petitioner requested the respondents that the amount so calculated be deducted from the pensionary benefits as and when the same will be sanctioned. At that time petitioner did not raise any objection either with regard to the claim of interest by the respondents of employer's share or otherwise. Rather, he opted and requested the respondents to deduct the afore-said amount from his pensionary benefits, which was subsequently done and adjusted by the respondents from the arrears. Thus, there is nothing wrong in the impugned order dated January 12, 2011 (P-3) with regard to the deduction of amount from the arrears of pay protection of the petitioner.

6. As far as the delay with regard to the payment of gratuity and leave encashment is concerned, no doubt, those were paid in the month of April and September 2012, respectively but the petitioner stands estopped from claiming any interest for non-payment of amount within four months, as directed by this Court vide order dated February 23, 2010 passed in CWP No. 414 of 2008,

which has attained finality. If the petitioner was at all aggrieved for the non-payment of amount within a period of four months in compliance of afore-said order, he could have approached the Court by way of contempt petition, which has not been done in the instant case. Since, the interest was not granted while disposing of CWP No. 414 of 2008, petitioner stands estopped from claiming interest now on the delayed payment.

7. Thus, taking the case of the petitioner from either of the angles, this Court is of the considered view that instant petition is devoid of merits and is nothing but an abuse of process of law.

8. Dismissed.

DECEMBER 12, 2017 **(JASPAL SINGH)**
sham **JUDGE**

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*