IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 258

Civil Writ Petition No.10803 of 2014 (O & M)
Date of Decision: *October 24, 2017*

Ashok Kumar Arora

..... PETITIONER

VERSUS

Food Corporation of India & others

..... RESPONDENTS

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

PRESENT: - Mr. Anupam Bhardwaj, Advocate, for the petitioner.

Mr. Rajesh Sethi, Advocate, for the respondents.

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Jaspal Singh, J

CM No.21332 of 2015

Application is allowed.

Written statement on behalf of respondent – Corporation is taken on record.

CWP No.10803 of 2014

1. The instant writ petition has been preferred under Section 226/227 for issuance of a writ in the nature of Mandamus, directing the respondents to pay interest @ 18% on the delayed payments of retiral benefits i.e. Earned Leave, Gratuity, Fringe benefits, Arrears against notional pay fixation and other retiral benefits.

2. The petitioner was appointed as TA-III in Food Corporation of India, Jandiala Guru, Amritsar in March 1972 and superannuated on January 31, 2010. His retiral benefits were not released despite the fact that there was no chargesheet or disciplinary proceeding pending against him. Payment of Earned Leave encashment of ₹ 1,99,912/- was credited into his account on October 14, 2010. Part payment of Gratuity amounting to ₹ 3.5 lac was paid on November 10, 2010. An amount of ₹ 50,112/- on account of Fringe benefit was paid to petitioner on March 18, 2013. An amount of ₹ 6,98,148/- on account of Arrears against notional pay fixation was credited on March 18, 2013. The balance amount of Gratuity of ₹ 5,00,023/- being differential gratuity was credited on June 24, 2013.

3. Learned counsel for the petitioner has submitted petitioner is entitled to interest over the delayed payment of retiral dues. Moreover, respondent – Corporation had issued a circular No. WRC/1/1/2007 Vol. III dated September 18, 2009 for revision of wage structure of Executives on IDA pattern of pay scales w.e.f. January 01, 2007, but pay of petitioner was not revised. As regards delayed payment of retiral dues, stand of the respondents as that there was vigilance case pending against the petitioner which was finalized on July 03, 2010. As regards non-implementation of circular dated September 18, 2009, respondents submitted that petitioner did not submit the requisite papers till May 12, 2011.

4. Learned counsel for the respondents submits that there are disputed questions of facts, in as much as, at the time of retirement of the petitioner, a vigilance enquiry was pending against him which warranting withholding of his retiral benefits. The enquiry proceedings culminated on July 03, 2010 and after completing the formalities, payment of retiral dues was made to the petitioner as detailed above and petitioner is not entitled to

any interest. In support of his submissions, learned counsel for the respondents has relied upon **Varinder Agro Chemicals Ltd. & another vs. Union of India (UOI) & others**, 1999(1) ILR (Delhi) 524, wherein Delhi High Court has held that claim of interest on account of delay is a question of fact which has to be adjudicated by appreciating the evidence on record to determine the cause of delay. Such question of fact cannot be examined in exercise of powers under Article 226 of the Constitution of India.

5. Learned counsel for the respondents has further submitted that notional pay of petitioner, as per circular dated September 18, 2009, was fixed on February 04, 2013 and arrear of notional pay fixation amount to ₹ 6,96,148/- was released to petitioner vide cheque No.353726 dated March 18, 2013. Payment of revised gratuity amounting to ₹ 4,84,523/- was released vide cheque No.354899 dated June 24, 2013 after deducting income tax amounting to ₹ 15,500/-. While petitioner's pay on notional basis as well as in revised scale as on January 01, 2007 was fixed, Fringe benefits amounting to ₹ 50,112/- were released vide cheque No.353725 dated March 18, 2013.

6. This Court has given an anxious thought to the aforesaid submissions made by learned counsel for the parties and gone through the documents available on file.

7. The ground for delay/withholding of retiral benefits on the ground of pendency of disciplinary proceedings is not tenable. It was obligatory upon the authorities concerned to initiate enquiry proceedings well in time for grant of retiral benefits and if some enquiry was pending, respondents were under a bounden duty to expedite the same and dispose of it within a reasonable period. Be that as it may, said enquiry came to an end on July 03, 2010 and retiral dues should have been released within a period

of three months from that date. Thus, this Court is of the considered opinion that interest on delayed payment has not been awarded to which the petitioner is legally entitled. A writ in the nature of mandamus is legally maintainable for giving a direction to make the payment where it is justified in view of judgment delivered in ***A.S. Randhawa vs. State of Punjab & others, 1997(3) SCT 468*** as well as ***Vijay L. Mehrotra vs. State of U.P., 2000(4) SCT 267***. Gist of aforesaid judgment in the case of **A.S. Randhawa (supra)** is that a writ for direction to pay retiral benefits including interest is maintainable and that pensionary benefits, if released after a delay, entitles the incumbent to interest at the rate of 12%, which may even go upto 18% per annum. In case **Vijay L. Mehrotra (supra)**, the Hon'ble Apex Court, while considering the appeal only on the question of grant of interest on the delayed payment of retiral dues, has observed that in case of delay of payment, interest has to be paid on the delayed payment of retiral dues, in case there is no reason or justification for not making payment. It observed:

> "3. In case of an employee retiring after having rendered service, it is expected that all the payment of the retiral benefits should be paid on the date of retirement or soon thereafter if for some unforeseen circumstances the payments could not be made on the date of retirement.
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> 4. In this case, there is absolutely no reason or justification for not making the payments for months together. We, therefore, direct the respondent to pay to the appellant within 12 weeks from today simple interest at the rate of 18 per cent with effect from the date of her retirement, i.e. 31-8-1997 till the date of payments."

8. Similarly, in case ***Ex. Capt. R.S. Dhull vs. State of Haryana, 1998(2) SCT 729***, the Hon'ble Supreme Court observed that the retiree is entitled to interest @ 12% per annum on the withheld GP Fund and Gratuity etc. from the date the same became payable to him on his attaining the age of superannuation till the date the payment is made to him.

9. In case A**.S. Randhawa (supra)**, the Full Bench of this Court observed that 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.

10. It is also well settled that proper time for the disbursement of retiral benefits will depend on the facts and circumstances of each case but normally it would not exceed three months from the date of retirement which time limit has been laid down by the Apex Court in ***State of Kerala vs. M. Padmanabhan, AIR 1985 SC 356***; ***D.D. Tewari (D) through LRs vs. Uttar Haryana Bijli Nitran Nigam Ltd., 2014(4) S.C.T. 128***; ***A.S. Randhawa vs. State of Punjab (supra)***; ***J.S. Cheema vs. State of Haryana & others, 2014(3) RCR (Civil) 355***; and ***Manohar Lal vs. State of Punjab & others, 2016(4) SCT 250*** as well as judgment of Madhya Pradesh High Court in case ***Sudha Chhipa & others vs. State of M.P. & others, 2014 LIC 2125***. While following the Full Bench decision in the case of A.**S. Randhawa (supra)**, this Court in ***Amarjit Kaur vs. State of Punjab & others, 2011(1) Service Cases Today 85***, where there was delay of 16 years in payment of retiral benefits, has awarded interest @ 18% per annum on the delayed payment.

11. Adverting to the case in hand, though petitioner retired on January 31, 2010 but disciplinary proceedings culminated on July 03, 2010. Thus, it was the duty of respondents to pay retiral dues to the petitioner within a period of three months from July 03, 2010.

12. Taking into consideration the facts & circumstances of the case in hand, this Court is of the view that grant of interest @ 9% per annum, on the delayed payment after expiry of three months from the date of culmination of enquiry proceedings till the actual payment, is legally and factually justified. Accordingly, this Court awards an interest @ 9% per

annum on the delayed payment w.e.f. October 03, 2010 to actual date of payment, which shall be paid by the respondents after calculating the same within a period of three months from the date of receipt of certified copy of this judgment.

13. Disposed of.

(Jaspal Singh)
Judge

October 24, 2017
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Whether Speaking/ Reasoned: Yes/ No
Whether Reportable: Yes/ No