IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 287

Civil Writ Petition No.14934 of 2017 (O & M)
Date of Decision: *October 09, 2017*

Ravinder Singh

..... PETITIONER

VERSUS

HUDA & others

..... RESPONDENT

. . .

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

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PRESENT: - Mr. K.L. Dhingra, Advocate, for the petitioner.

Mr. Sahil Goel, Advocate, for the respondents.

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Jaspal Singh, J

1. The instant petition has been preferred by petitioner – Ravinder Singh, under Article 226/227 of the Constitution of India, for issuance of a writ in the nature of Mandamus, directing the respondents to release his pension, arrears of pension, commutation amount as well as grant interest @ 12% on the delayed payments thereof as well as on amount of DCRG and Leave Encashment. Further prayer has been made for issuance of direction to the respondents that withheld amount of ₹ 1,85,393/- out of DCRG be released with 12% interest.

2. Petitioner retired on November 30, 2014 as Junior Engineer (Class-III) on attaining the age of superannuation. At the time of his retirement, neither any chargesheet nor any enquiry was pending against him. However, pension, arrears of pension or commutation amount have not been released till date.

3. Heard.

4. As far as interest on delayed payment of DCRG and Leave Encashment is concerned, 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 judgments is that a writ for direction to pay retiral benefits including interest is maintainable in the event pensionary benefits have been released after a delay and further that delay in disbursement of retiral benefits entitles the incumbent to interest. 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."

5. 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.

6. Adverting to the facts of the case, petitioner retired on November 30, 2014 on attaining the age of superannuation but retiral benefits (pension, arrears of pension and commutation) were not released. DCRG and Leave Encashment were only released and disbursed to him on January 19, 2017 (Annexure P-2 & P-3). There is no reason what to talk of any plausible reason or justification for non-payment of retiral benefits or delayed disbursal of aforesaid benefits. It is also a settled principle that grant of interest on the delayed payment is on account of the fact that retiree was unable to enjoy its fruits immediately on his retirement and then a right accrues to him to be compensated and the only way to compensate him is to pay interest for the period of delayed payment. Now, a question arises as to the period in which the retiral benefits should be disbursed to the retiree.

7. 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. However, it depends on the facts and circumstances of each case but normally, it should 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***.

8. Undoubtedly, petitioner stood retired on November 30, 2014 and payment of retiral dues has not been made except DCRG & Leave Encashment, that too, after a considerable delay i.e. on January 19, 2017. At the most, the respondents could have taken a period of three months from the date of retirement during which the payment of retiral benefits should have been disbursed to the petitioner. 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 retirement of petitioner till the payment, is legally and factually justified.

9. As regards withholding/recovery of ₹ 1,85,393/- out of DCRG, it has been done without any show cause notice or without affording any opportunity of hearing to the petitioner, who retired as a Group – C (Class – III) employee. In **Rafiq Masih's case (supra)**, Hon'ble Apex Court held that though it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer would be impermissible in law:

> "(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
>
> (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
>
> (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
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> (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
>
> (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recovery."

10. Considering the facts and circumstances of the instant case, there is nothing on the record to suggest that there was any misrepresentation or fraud on the part of the petitioner when the benefits were earlier released. It was sheer mistake on the part of the respondents and the case of the petitioner stands squarely covered within the parameters laid down by the Hon'ble Apex Court in **Rafiq Masih's case (supra)**. Thus, the recovery of the amount of ₹ 1,85,393/- by the respondents vide order dated July 15, 2017 (Annexure P-4) is absolutely wrong and violation of the settled law.

11. As an upshot of the above said discussion, respondents are directed to release the pension, commutation value and arrears of pension within a period of two months alongwith interest @ 9% per annum on delayed payment after expiry of period of three months of the retirement i.e. w.e.f. March 01, 2015 till actual payment. Similarly, this Court awards interest @ 9% per annum on the delayed payment of DCRG and Leave Encashment w.e.f. March 01, 2015 till January 19, 2017. Further, an amount of ₹ 1,85,393/- which has already been deducted be also refunded/released within a period of two months, failing which, petitioner shall be entitled to interest @ 9% per annum w.e.f. March 01, 2015 till its actual payment. The compliance of this judgment be made within a period of three months from the date of receipt of a copy of this order.

9. Disposed of accordingly.

(Jaspal Singh)
Judge

October 09, 2017
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Whether Speaking/ Reasoned: Yes/ No
Whether Reportable: Yes/ No