

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 7192 of 2015 (O/M)
Date of decision : 10.1.2017

Kamlesh Rani

..... Petitioner (s)

Versus

State of Punjab and others

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Kulbhushan Raheja, Advocate, for the petitioner.

Mr. Anshul Gupta, Assistant A.G. Punjab.

Mr. Aman Sharma, Advocate, for,
Dr. S.S. Dhaliwal, Advocate, for respondents No. 2 and 3.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J. (ORAL)

The petitioner, who was working as a Senior Assistant with respondent-Punjab Water Resources Management and Development Corporation Limited, Chandigarh, superannuated on 31.5.2011. It is stated that the leave encashment, gratuity and provident fund were not paid in time and some arrears have been paid on 23.7.2014. Initially, the prayer was made for release of the arrears as per the revised pay scales alongwith interest. Even as per the file, it comes out that during the pendency of the present writ petition, the entire payment of retiral benefits have been released. Now, the question surviving for consideration is for interest on the delayed payments.

The reply of contesting respondents No. 2 and 3 shows that there was a dispute between two sections of employees regarding counting

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of adhoc service and seniority, qua which cross writs were filed. A writ petition i.e. CWP-1267-1999, titled as Darshana Sharma and others Versus Punjab State Tubewell Corporation and others, was disposed of by a Coordinate Bench of this Court, with a direction to respondents to formulate the seniority list afresh and conduct the exercise within six months from the date of receipt of certified copy of the order, vide order dated 26.9.2013 (Annexure-R-1). It is further directed that if it is found that the petitioners are to be paid the consequential benefits, the same be paid within two months thereafter. The affected employees, i.e. private respondents No. 3 to 14 in CWP-1267-1999, preferred an appeal i.e. LPA-122-2014, titled as Amarjit Kaur and another Versus Punjab State Tubewell Corporation and others, which was dismissed by a Division Bench of this Court on 31.1.2014 (Annexure-R-3). The petitioner is stated to have given an affidavit in February, 2007 (Annexure-R-2) whereby she had requested that she may be allowed the payment of higher scale on account of higher responsibilities as Junior Assistant. She had further agreed that she will have no objection with regard to placement and fixation of her pay scales in terms of judgment passed by the High Court. It was further undertaken that if it is found by the Corporation that placement now being granted to the petitioner is not in consonance with the judgment of the High Court, the Corporation is authorised to make recovery from the salary/retiral benefits alongwith accruing financial benefits and the petitioner will have no objection from the said recovery. It is stated that the aforesaid writ petition i.e. CWP-1267-1999 was finally decided on 26.9.2013 (Annexure-R-1), in which it was held that the adhoc service is not to be counted towards seniority and the seniority list was ordered to be re-casted as such. The appeal (LPA-

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122-2014) preferred by the affected employees against the said writ petition (CWP-1267-1999) was finally dismissed by a Division Bench of this Court on 31.1.2014 (Annexure-R-3). It is further stated that the gratuity amounting to Rs. 6,84,204/- was paid on 14.2.2012 and the revised gratuity of Rs. 36,426/- was paid on 31.12.2013. The leave encashment was withheld as the last pay drawn of the petitioner could only have arrived at after the decision of the writ petition. The leave encashment amounting to Rs. 2,47,666/- and Rs. 21,000/- were paid on 16.7.2014 and 22.8.2014 respectively.

I have heard the learned counsels for the parties and have also carefully gone through the file.

Admittedly, there was a dispute regarding seniority and consequential re-fixation of the salary between two sections of the employees. The affidavit of the petitioner (Annexure-R-2) produced on file shows that she had undertaken and authorised the Corporation to make any recovery from her salary/retiral benefits, if the same is found due. The said affidavit was furnished in February, 2007 and the petitioner retired from service on 31.5.2011. In this case, the gratuity was released on 14.2.2012 and the revised gratuity was released on 31.12.2013. The same were required to be released within three months from the date of retirement. Therefore, for the delayed payment of gratuity and the revised gratuity, the petitioner is entitled to interest at the rate of 9% per annum.

Regarding the leave encashment, the only plea of respondents is that the LPA regarding seniority was finally decided by a Division Bench of this Court on 31.1.2014 and in order to make the recovery, the entire leave encashment was withheld.

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I am of the view that the plea of respondents in withholding the entire leave encashment is not justified. At the most, an approximate amount, which could have been recovered on account of re-fixation of the pay, if the matter is decided against the petitioner, could have been withheld and the balance, if any, could have been recovered from the pension of the petitioner.

Now, the payment of gratuity and the revised gratuity was made after re-fixation and deduction of the said excess amount paid to the petitioner. Even after the decision of the LPA by a Division Bench of this Court in January, 2014, the payments were released in July and August, 2014. It being so, the respondents have used the amount of leave encashment of the petitioner for more than three years and the petitioner is accordingly entitled to interest thereof. Therefore, the respondents shall pay interest at the rate of 9% per annum on the delayed payments of leave encashment and the revised leave encashment, starting three months from the date of retirement till the date of payment.

The present writ petition is allowed.

(KULDIP SINGH)
JUDGE

10.1.2017
sjks

Whether speaking / reasoned : Yes

Whether Reportable : No