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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CM No.20826-CII of 2018 in/and
CR No.1724 of 2016
Date of Decision: 26.09.2018**

Dr. Kanwarjit Singh Kakkar Petitioner

Vs

**State of Punjab and another
 Respondents**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Ms. Jigyasa Tanwar, Advocate
for the petitioner.

Mr. Arun Kaundal, D.A.G., Punjab.

RAJ MOHAN SINGH, J.

CM No.20826-CII of 2018

For the reasons mentioned in the application, the same is allowed. Short affidavit of Dr. Jaspal Kaur, Director, Health and Family Welfare, Punjab Chandigarh is taken on record.

Main case

[1]. Petitioner has assailed the order dated 18.01.2016 passed by the Civil Judge (Jr. Divn.) Chandigarh in execution preferred by the petitioner for seeking enforcement of order dated 30.05.2012 passed by the High Court in COCP No.250 of 2012 arising out of CWP No.5632 of 2010 vide which the

direction were issued to the respondents to pay interest @ 7% per annum with delayed payments w.e.f. 01.08.2011 till the date of actual realization and for recovering the interest amount of Rs.2,25,691/-.

[2]. On 01.08.2018, following order was passed by this Court:-

“Vide order dated 11.08.2011, CWP No.5632 of 2010 filed by the petitioner was disposed of with some directions. Violation of aforesaid order prompted the petitioner to file COCP No.250 of 2012 in which interim order dated 30.05.2012 was passed thereby observing that the petitioner is entitled to interest on the delayed payment @ 7% per annum w.e.f. 01.08.2011 till actual realization. The contempt petition was finally decided vide order dated 29.08.2012 wherein it was recorded that learned State counsel on instructions from the official of the department stated that the amount of interest shall be released to the petitioner positively within two weeks from that date. On the statement so made, the Court did not proceed further and disposed of the contempt petition with a recital that in case the amount of interest is not released to the petitioner, the petitioner may seek revival of the contempt petition. Against the aforesaid order, LPA No.113 of 2013 was filed by the petitioner which was disposed of on 23.01.2013. The operative part of the order is reproduced as under:-

“It is pointed out by learned counsel for the appellant that most of the monetary benefits have since been released to the appellant except the arrears of interest. This, however, does not and cannot be construed as if the appellant is

remediless for the recovery of legitimate dues to which he is entitled to in terms of the order dated 11.8.2011, passed in CWP No.5632 of 2010 or as a consequence thereto. Suffice it would be to observe that the appellant, if so advised, may initiate execution proceedings. Dismissed.”

In the aforesaid circumstances, the petitioner sought execution of his entitlement before the trial Court believing the same to be the Executing Court by filing an application under Order XII (wrongly made in place of XXI CPC). The said application has been rejected primarily on the ground that provision quoted in the application is not even remotely connected with the claim of the petitioner. Secondly, Civil Judge (Junior Division), Chandigarh did not interfere on the ground that there is no decree for which execution is sought for.

In view of aforesaid litigation on record, the ongoing controversy on the basis of assertion and denial cannot be decided finally. Petitioner has given details of claim in tabulated form in para no.4 of the execution petition. The date of payment with reference to the amount received and accrued interest @ 7% were given.

Let a specific affidavit of Director, Health and Family Welfare, Punjab, Chandigarh be filed controverting the details with reference to the calculations made by the department. Needful in the aforesaid context be done positively before the adjourned date.

Adjourned to 16.08.2018.

This order is being passed under Power of superintendence under Article 227 of the Constitution of India.”

[3]. Petitioner staked his claim by way of tabulation showing

payment under different heads which was to be paid with accrued interest thereon. The claim of the petitioner in tabulated form is as under:-

<i>1</i>	<i>Payment under Head</i>	<i>Date of payment</i>	<i>Amount received</i>	<i>Amount of interest @ 7% from 01.08.11</i>
<i>1</i>	<i>Arrears of Pay</i>	<i>26.1.12</i>	<i>13,635</i>	<i>476</i>
<i>2</i>	<i>Difference of Pay leave encashment</i>	<i>29.01.12</i>	<i>34,350</i>	<i>1,202</i>
<i>3</i>	<i>Gratuity</i>	<i>16.06.12</i>	<i>10,00,000</i>	<i>61,250</i>
<i>4</i>	<i>Pay Arrears</i>	<i>27.08.12</i>	<i>1,05,320</i>	<i>7,917</i>
<i>5</i>	<i>Commutation of Pension</i>	<i>29.06.12</i>	<i>15,00,000</i>	<i>96,250</i>
<i>6</i>	<i>Pension</i>	<i>29.06.12</i>	<i>6,85,592</i>	<i>43,992</i>
<i>7</i>	<i>Arrears of Pay</i>	<i>30.08.12</i>	<i>49,035</i>	<i>3,718</i>
	<i>Arrears of Pay</i>	<i>28.08.12</i>	<i>11,397</i>	<i>864</i>
	<i>Arrears of Pay</i>	<i>28.08.12</i>	<i>12,539</i>	<i>951</i>
	<i>Arrears of Pay</i>	<i>05.09.12</i>	<i>42,309</i>	<i>3,208</i>
	<i>Arrears of Pay</i>	<i>13.06.12</i>	<i>95,724</i>	<i>5,863</i>
<i>8</i>	<i>Arrears of pay (during suspension period i.e. 1.4.2003 to 1.10.2003)</i>			
	<i>Total Amount of Interest</i>			<i>2,25,691</i>

[4]. Vide order dated 01.08.2018, the Director, Health and Family Welfare, Punjab was directed to file a specific affidavit controverting the details with reference to the calculations made by the Department. Thereafter affidavit dated 13.09.2018 was filed by the Director, Health and Family Welfare, Punjab Chandigarh.

[5]. Perusal of the affidavit would show that the entitlement as depicted in the tabulated form has not been controverted in a precise manner, however the entitlement of the petitioner was denied in pith and substance. Finding the affidavit to be not in consonance with the requirement as ordered by this Court, I proceeded to hear the arguments of the parties.

[6]. During course of arguments, learned counsel for the petitioner submitted that in view of payments of Rs.72,719/- received by the petitioner prior to filing of the petition and an amount of Rs.42,980/- received by the petitioner, the controversy remains only in respect of interest of Rs.96,250/- accrued on computation of pension.

[7]. Learned counsel for the petitioner by referring to **N.P. Jain vs. State of Haryana and others, 1996(1) S.C.T. 713;** **Om Parkash vs. UHBVNL and others, 2013(3) S.C.T. 649** and **Dr. B.C. Bansal vs. State of Haryana, 2002(6) SLR 502** submitted that the delay in computing pension was not attributed to the petitioner and the commutation of pension cannot be denied at the time of retirement on the ground of pendency of criminal case which was found to be false as the petitioner was acquitted thereafter.

[8]. Learned counsel further submitted that if the retiral benefits are delayed, the retiree is entitled to interest on the

amount for the period of delay. The commutation of pension was delayed for 14 months. The amount received under the commutation of pension was Rs.15 lakhs. The payment was made on 29.06.2012, whereas the petitioner stood retired on 30.04.2011. In respect of aforesaid amount of Rs.15 lakhs, an interest @ 7% per annum from 01.08.2011 has to be calculated as per order dated 30.05.2012 passed by the High Court in COCP No.250 of 2012 and as per order dated 11.08.2011 passed by the High Court in CWP No.5632 of 2010. On computation, an amount of Rs.96,250/- is payable for the delayed commutation of pension.

[9]. On the other hand, learned State counsel submitted that commutation of pension is like an interest free loan. Since the same does not carry any interest, therefore, the department is not liable to pay any interest on the delayed commutation of pension.

[10]. I have considered the submissions made by learned counsel for the parties.

[11]. It may be true that commutation of pension is a interest free loan to be recovered from the retiree periodically, but the question is not with regard to the interest free loan, but the question is in respect of delay in commutation of pension which was not attributed to the petitioner. Petitioner stood retired on

30.04.2011, but commutation of pension was done on 26.06.2012 when payment of Rs.15 lakhs was paid. Delay of 14 months was not attributable to the petitioner as he was falsely involved in a criminal case in which he was found to be innocent.

[12]. For the reasons recorded hereinabove, I deem it appropriate to partly accept this revision petition to the extent of Rs.96,250/- to be paid to the petitioner towards interest on commutation of pension which was delayed by 14 months without there being any fault of the retiree/petitioner. Ordered accordingly.

[13]. The aforesaid amount has been calculated at the interest rate of 7% per annum from 01.08.2011 on the amount of Rs.15 lakhs received by the petitioner on 29.06.2012.

September 26, 2018

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No