

CWP No.14254 of 2016

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

Sr. No.226

**Civil Writ Petition No.14254 of 2016
DECIDED ON: July 02, 2018**

PARTAP SINGH MALIK AND OTHERS

..PETITIONERS

VERSUS

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Ram Niwas Sharma, Advocate,
for the petitioners.

Mr. Charanjit Singh Bakshi, Addl. A.G., Haryana.

JASPAL SINGH, J. (ORAL)

Through the instant civil writ petition, preferred under Articles 226/227 of the Constitution of India, petitioners have sought the issuance of a writ in the nature of Mandamus directing the respondents to make the payment of interest to them on delayed retiral benefits in view of Circulars dated 20.02.2002 (P-7), which were paid after the delay of approximately 2-3 years of the date of their retirement(s).

CWP No.14254 of 2016

2. Concededly, petitioners earlier approached this Court by way of CWP No.18370 of 2009 captioned as ***Shubh Karan Sharma & ors. vs. Chief Secretary to Govt. Haryana & ors.***, claiming the following reliefs:

“(i) To count the past services rendered by the petitioners in Haryana State Minor Irrigation & Tubewells Corporation Ltd. towards pension and pensionary benefits as the petitioners were appointed as Senior Auditors/Section Officers in Finance Department, Haryana and their pay was protected, meaning thereby increments earned by them earlier were counted towards pay.

(ii) Direct the respondents not to discriminate the petitioners from the benefit extended vide order dated 07.01.2002 (P-7) to the employees of Autonomous Body or vice versa. The petitioners under explanation clause have been deprived of the said benefits, which needs rectification or quashed.”

3. The said writ petition was dealt with and disposed of by this Court vide judgment dated 27.05.2010 (P-2) and the following relief was granted:-

“In view of the above, all these petitions are allowed and the respondents are directed to consider the period of service rendered by the petitioners in the Haryana State Minor Irrigation and Tube-well Corporation for all intents and purposes, except the seniority. However, the grant of pensionary benefits shall be subject to the deposit of CPF Contribution, gratuity etc. in accordance with the rules by the petitioners to the respondents or in the alternate the amount equal to CPF contributory and other payable amount shall be deducted by the respondents from the pensionary benefits of the petitioners be determined and paid within a period of four months in accordance with law

CWP No.14254 of 2016

from the date certified copy of the order is made available to the competent authority. No cost.”

This petition is disposed of in terms of the aforesaid judgment.

27.05.2010

*Sd/-
(Permod Kohli)
Judge”*

4. The State of Haryana & ors. being aggrieved against the aforesaid order dated 27.05.2010, preferred LPA No.1261 of 2011 before the Division Bench of this Court, which was dismissed vide judgment dated 18.08.2011 (P-5), a Special Leave Petition (SLP) preferred by the respondents i.e. State of Haryana & ors. also met with the same fate. After the dismissal of the SLP dated 02.05.2014 (P-6), the benefits were released/disbursed to the petitioners. Since, there was some delay in disbursement of retiral benefits, petitioners have approached this Court by way of a fresh instant petition claiming interest on delayed payments.

5. At the very outset of the arguments, it has emerged that at the time of filing of previous CWP No.18370 of 2009 captioned as ***Shubh Karan Sharma & ors. vs. Chief Secretary to Govt. Haryana & ors.*** (P-2), no interest on the delayed payments etc. was claimed, despite the fact that petitioners had already retired during the pendency thereof i.e. prior to the disposal of the said writ petition. Even subsequent thereto, matter was not agitated or raised at any point of time till the instant petition was preferred in the Month of July, 2016. Moreover, instant petition has been preferred just after dismissal of SLP vide order dated 02.05.2014 (P-6), which does not give rise to any cause of action to the petitioner.

6. Here, it would be pertinent to mention that at the time of filing of CWP No.18370 of 2009 captioned as ***Shubh Karan Sharma &***

CWP No.14254 of 2016

ors. vs. Chief Secretary to Govt. Haryana & ors., decided on 27.05.2010

(P-2) petitioners did not opt to claim interest and only short prayer with regard to relief(s) already reflected in para No. 2 of this judgment. Thus, now by way of filing of a fresh writ petition, they are estopped from claiming the interest particularly in view of the provisions contained in Section 34 (2) of the Code of Civil Procedure, which provides that where such a decree is silent with respect to the payment of further interest (on such principal sum) from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie. Otherwise also, petitioners were in a position to claim the interest, if any, at the time of filing of CWP No.18370 of 2009 captioned as **Shubh Karan Sharma & ors. vs. Chief Secretary to Govt. Haryana & ors.** and now they are estopped from filing a fresh petition claiming interest which otherwise stands abandoned in view of the provisions contained in Order 2 Rule 2 CPC.

7. In view of above discussion, instant petition stands dismissed.

July 02, 2018
Ankur

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No