

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

Sr. No.280

Civil Writ Petition No.3855 of 2011 (O&M)
DECIDED ON: February 02, 2018

SANTOSH KUMAR

..PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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

Ms. Deepali Puri, Additional Advocate General, Punjab.

Mr. Ashish Verma, Advocate,
for respondent No.3.

JASPAL SINGH, J.

By virtue of the instant writ petition preferred under Article 226/227 of the Constitution of India, petitioner has sought the issuance of a writ in the nature of Mandamus, directing the respondents No.1 to 3 to release the retiral benefits accrued to him on account of his retirement i.e. Pension and payment towards other funds as well as to receive the remaining amount of Provident Fund and the Gratuity.

2. Concededly, the petitioner stood retired as Executive Engineer, Municipal Corporation, Jalandhar on August 30, 2010 on attaining the age of superannuation. At the time of retirement, a vigilance inquiry No.16/2006 was pending against the petitioner and in that regard, petitioner preferred a Civil Writ Petition No.10993 of 2007 and vide order dated July 24, 2007, while issuing notice of motion, the proceedings in the

vigilance inquiry No.16/2006 were ordered to be stayed till further orders and vide another order dated July 08, 2008, the stay granted vide order dated July 24, 2007 was ordered to continue. The aforesaid civil writ petition was finally disposed of vide order dated February 14, 2017, meaning thereby that the inquiry proceedings were stayed till the final disposal of the aforesaid writ petition i.e. February 14, 2017. It is well settled proposition of law that the employer is legally justified to withheld the amount of gratuity to be paid to the official at the time of retirement, in case, some departmental and judicial proceedings are pending. Otherwise also, the vigilance inquiry was stayed by this Court and the said writ petition was finally disposed of on February 14, 2017, meaning thereby during the operation of the aforesaid stay, the petitioner was not entitled to the amount of gratuity. A perusal of the order dated February 14, 2017 further transpires that only 50% of the gratuity was ordered to be disbursed to the petitioner within certain specified time.

3. Learned counsel for respondent No.3 has pointed out during the course of arguments that in compliance of order dated February 14, 2017, 50% of the gratuity has already been disbursed to the petitioner. Remaining 50% of the gratuity was not disbursed as the vigilance inquiry was still pending at the time of the disposal of the aforesaid writ petition and vigilance inquiry came to end on December 20, 2017, whereby the petitioner stood exonerated from the charges levelled in the said inquiry. Thus, the petitioner has become entitled to the remaining 50% of the gratuity after the conclusion of the vigilance inquiry i.e. on December 20, 2017. Thus respondent No.3-Municipal Corporation, Jalandhar is directed to pay the remaining 50% of the amount of gratuity, if not paid earlier to the

petitioner in compliance of order dated February 14, 2017, within a period of 45 days from today. Otherwise, the petitioner shall be entitled to the interest @ 9% per annum from the date of conclusion of the aforesaid vigilance inquiry i.e. on December 20, 2017 till its actual payment(s).

4. As regards the other benefits, undoubtedly, the same have not been paid on the date of retirement of the petitioner i.e. on August 30, 2010 as has been observed by this Court, earlier in a catena of cases that if the retiral benefits have not been released on the date of retirement of an employee/retiree and further that there is a some impediment or on account of some lengthy procedure at the most the employer can only avail a period of three months after the retirement thereof. After expiry of three months, he is liable to pay interest to compensate the damages suffered by the retiree. Thus, petitioner is held entitled interest @ 9% after the expiry of three months from the date of his retirement on the delayed payment(s) of the other benefits i.e. pension, arrears thereof, leave encashment and provident fund etc. This liability to pay the interest on the delayed payment (s) shall be upon respondent No.3-Municipal Corporation, Jalandhar. It shall be calculated and paid to the petitioner after the expiry of three months from the date of his retirement till the actual payment(s) of the aforesaid benefits, within a period of two months from the date of receipt of certified copy of this order. If there is non-compliance on the part of respondent No.3, petitioner shall be at liberty to approach this Court.

February 02, 2018

Ankur

**(JASPAL SINGH)
JUDGE**

**Whether speaking/reasoned
Whether reportable**

**Yes
Yes/No**