IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-18301-2015
Date of decision: - 06.12.2018

Kishan Singh

....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. N.S. Bhinder, Advocate
for the petitioner.

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

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HARSIMRAN SINGH SETHI, J. (ORAL)

In the present case, the petitioner has approached this Court for the release of the pensionary benefits alongwith interest @ 18% per annum.

During the course of hearing today, it has been admitted that all the payments have already been made to the petitioner after he retired on 31.07.2015, but counsel for the petitioner states that the payment has been made without interest even though there was a delay in releasing the amount after the petitioner retired on 31.07.2015 and therefore, the petitioner is entitled for interest on the delayed payments as well.

The factual matrix of this case is that the petitioner was compulsorily retired by the respondents on 21.07.2012. Petitioner challenged the said order by filing CWP No.8138 of 2012. The said writ petition was allowed by this Court on 15.01.2014 and the order of the compulsorily retirement was set aside. The State of Haryana filed a LPA No.725 of 2014, challenging the order passed by the learned Single Judge and the Division Bench, by a detailed order dismissed the LPA on 14.01.2015. Thereafter, the State filed Special Leave Petition before the Hon'ble Supreme Court of India and the same was also dismissed on 12.07.2016.

By the time, the litigation came to an end before the Hon'ble Supreme Court of India, the petitioner had also attained the age of superannuation on 31.07.2015 and therefore, as per the order passed by this Court, upheld upto the Hon'ble Supreme Court, the petitioner became entitled for salary from 21.07.2012 till 31.07.2015 and thereafter his pensionary benefits.

An Additional affidavit was filed by the respondents on 17.08.2017 explaining the payments which have been made to the petitioner. The relevant paragraph(s) of the affidavit is as under: -

> "3. That it is further submitted that in pursuance of the notice dated 29.02.2012 the petitioner was retired from service on 22.07.2012 after attaining the age of 55 years and his pension case was sent to Accountant General Haryana Chandigarh. Thereafter after the decision of above said SLP the pension case was again sent to Accountant General Haryana and now New PPO No.1116114475114475 with basic pension ₹8555/- and Gratuity payment Authority of ₹5,18,272/- have been issued by the Accountant General Haryana Chandigarh on 02.09.2016. It is worthwhile to mention here that the arrears of pay and allowances

for the period 21.07.2012 to 31.07.2015 have been calculated in the sum of ₹13,05,816/-. From the above said amount, the following deductions have been made: -

Gratuity	₹3,82,479/- with interest ₹13865/-
Pension	₹8,27,230/-
Income tax	₹63965
GIS	₹990/-
Welfare Fund	₹1651/-
Sports Fund	₹990/-

After deduction of above said amount, the remaining amount of ₹14646/- has been drawn vide T.V. No.84 dated 09.09.2016 and deposited in his bank acocunt No.55139377201 State Bank of Patiala, Branch Mathura Road Faridabad. It is further submitted that due to change of date of retirement of the petitioner that is 31.07.2015 instead of 21.07.2012, his leave Encashment difference of ₹127024/- has also been drawn vide T.V. No.151 dated 27.09.2016 and deposited in his account number. The commutation of pension in amounting to ₹3,40,298/- and DCRG in amounting to ₹6,18,272/- of the petitioner have been released by the Accountant General, Haryana on 28.12.2016. Hence nothing is pending for payment to the petitioner as per records available in this office."

A bare perusal of the above reproduced affidavit would show that the respondents calculated the salary to be paid to the petitioner amounting to ₹13,05,816/-. By the time the calculations were done, the petitioner had already been paid the pensionary benefits in terms of his compulsorily retirement and it transpires from the affidavit that after the deduction of the amount already paid to the petitioner as a retiral benefits, another sum of ₹14,646/- became due to be paid to the petitioner on account of salary for the period 21.07.2012 to 31.07.2015. Further, after the petitioner attained the age of superannuation on 31.07.2015, the respondents calculated the leave encashment, commutation of pension and DCRG.

From the reproduction made above, it is clear that the leave encashment was paid on 27.09.2016 i.e. after a period of approximately one year and two months, the commutation of pension and DCRG was paid on 28.12.2016 i.e. after a period of one and half years approximately. No justifiable reason has been given by the respondents to withhold the said amount, for which the petitioner became entitled on his retirement on 31.07.2015.

As per the law settled by this Court, in **J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355,** if the respondents have retained the amount with themselves for which the petitioner was entitled, the petitioner is entitled for the interest as well. The relevant paragraph of the above-said judgment is as under: -

> "The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belgonged to the petitioner was in the custody of the State and was being used by it."

In view of the above, the present petition is allowed and the respondents are directed to pay the interest to the petitioner on the delayed payments starting from 01.08.2015 till the payments were made @ 9% per annum.

Let the calculation be made by the respondents within a period of eight weeks from the date of receipt of certified copy of this order and the payments be made to the petitioner within a period of four weeks thereafter.

(HARSIMRAN SINGH SETHI)
JUDGE

December 06, 2018
naresh.k

Whether reasoned/speaking? Yes
Whether reportable? No