

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

**CWP No.23604 of 2014 (O&M)
DECIDED ON: FEBRUARY 20, 2018**

VIRENDER SINGH MALIK

.....PETITIONER

VERSUS

STATE OF HARYANA & ANR

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. B.S. Sudan, Advocate
for the petitioner.

Mr. Charanjit Singh Bakshi, Addl. AG, Haryana.

Mr. C.L. Sharma, Advocate
for respondents No.3 and 4.

JASPAL SINGH, J (ORAL)

By virtue of instant petition preferred under Articles 226/227 of the Constitution of India, petitioner has sought a writ in the nature of mandamus directing the respondents; to immediately release the leave encashment along-with interest @18% per annum; to take final decision on the long pending proceedings under Rule 8 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987, and to release the gratuity and other pending dues along-with interest @18% per annum and also for issuance of a writ in the nature of certiorari to quash the order dated December 08, 2010 (P-8) in so far as it refers

to pending vigilance enquiries in the order withholding the gratuity and also to quash the order dated July 11, 2011 (P-4) in so far as it declines actual benefit of pay w.e.f. September 19, 1997 to May 19, 1998 on retrospective promotion of the petitioner, with consequential direction to pay the said amount as well arrears of ACP grade & annual increment along-with interest @18% per annum.

2. At the very outset of arguments, it has been emerged that as far as the payment on account of leave encashment is concerned it stands released to the petitioner during pendency of instant petition. Whereas, amount of gratuity has also since been released except the amount which is subject matter of both the departmental inquiries regarding which the orders dated March 12, 2015 (Annexure R-4) and July 30, 2015 (Annexure R-5) have been already been remained. Similarly, ACP benefit and annual increment have also been granted to the petitioner after completion of service book. Thus, the instant petition as far as it relates to leave encashment, gratuity, ACP and annual increment, is concerned, it has rendered infructuous.

3. As regards the promotion of the petitioner, he stands promoted vide order dated July 08, 2011 (P-4) passed by the Financial Commissioner and Principal Secretary to Government Haryana, Development & Panchayats Department. Petitioner was only granted the notional benefit on the post of District Development and Panchayats Officer towards pay fixation w.e.f. September 10, 1997. However, the actual benefit of pay was allowed only from the date of joining i.e. May 19, 1998. Though vide order dated May 18, 2011 (P-6), the benefit accrued on the basis of promotion referred to above stands paid towards the pensionary benefits. But the difference of pay which the

petitioner actually drawn during the afore-said period w.e.f. September 10, 1997 to May 19, 1998 has not been paid, which is also being claimed through the instant petition.

4. At this juncture the question has arisen as to whether there was any disciplinary inquiry or any other matter/complaint was pending on account of which the name of the petitioner was not considered for promotion when his juniors were promoted regarding which a reference has been given in the order dated July 08, 2011 (P-4). Thus, so far as the relief claimed in this regard is concerned it is left open and the petitioner shall be at liberty to challenge it while challenging the orders dated March 12, 2015 (Annexure R-4) and July 30, 2015 (Annexure R-5) which have been passed during the pendency of instant petition while disposing of the inquiry pending against the petitioner. As far as the other reliefs are concerned no doubt the same stands paid but after an inordinate delay regarding which there is no explanation what to talk of any plausible explanation furnished by the respondents. Otherwise also on account of pendency of disciplinary inquiry, the entire amount of gratuity cannot be withheld, especially when there is a specific amount involved in those inquiries. At the most the Appointment and Punishing Authority can withheld the amount to that extent only. Since, amount accrued to the petitioner on account of leave encashment, gratuity, arrears of ACP and annual increments, are concerned, petitioner deserves to be compensated by way of interest and 9% interest on the delayed payments is considered to be legally and factually justified and in the instant petition petitioner deserves to be paid the interest as referred to above.

5.

Accordingly, instant petition is disposed of having been rendered

infructuous as far as the main reliefs are concerned and liberty is also granted to the petitioner to file afresh petition with regard to the orders (P-4) as well as the orders Annexures R-4 and R-5 but at the same time petitioner is held entitled to interest @ 9% per annum on the delayed payments. Respondents are directed to calculate the interest after the expiry of three months period from the date of retirement of petitioner till the actual payments, within a period of two months from the date of receipt of certified copy of this order. In case of any sort of non-compliance, petitioner shall be at liberty to have recourse to the other remedies available to him under law including to approach this Court.

February 20, 2018
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*