IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 3757 of 2015
Date of Decision : 11.12.2018

Tejinder Kumar

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. L.S. Mann, Advocate for the petitioner.

Ms. Anju Arora, Additional Advocate General, Punjab.

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<u>Harsimran Singh Sethi, J.(Oral)</u>

In the present case, the petitioner is claiming the interest on the delayed release of his pensionary benefits.

2. As per the averments made in the present writ petition, the petitioner was working as a Principal in Government Art and Craft, Teacher Training Institute, Nabha. On 31.10.2011, on attaining the age of superannuation, the petitioner retired from service. On retiring from service, he became entitled for release of the pensionary benefits. The respondents did not release the same and on 23.10.2012 i.e. approximately after a period of one year, issued a show cause notice to the petitioner with regard to the disbursement of ₹2.5 Crores under the Scheme called "Upgradation of 1396 Govt. ITIs through Public Private Partnership". There was no allegation of any misappropriation and only a clarification was sought from the petitioner. It was mentioned that in case the

clarification is not received, the departmental action will follow.

3. Ultimately, the pensionary benefits of the petitioner were released starting from February, 2014. Pension was released on 29.02.2014, commutation of pension was released on 15.02.2014 and Gratuity was released on 09.05.2014. The leave encashment was released on 30.10.2014 even though the same was sanctioned by the respondents on 13.03.2014.

4. The present writ petition has been filed seeking interest from Ist of November, 2011 onwards till the payments were released to the petitioner.

5. Notice of motion was issued on 02.03.2015 upon which the respondents have filed their reply controverting the claim of the petitioner. It has been mentioned in the reply that a show cause notice was issued to the petitioner on 23.10.2012 and it is only after the conclusion of the said show cause notice, the case of the petitioner was sent for release of the pensionary benefits in October, 2013.

6. Heard.

7. There is not even a single word in the reply that the petitioner was found negligent or guilty in any respect by the respondents. Further, no punishment whatsoever has been imposed, therefore, it can be safely presumed that the said show cause notice too was dropped by the respondents themselves.

8. It is a settled principle of law that if there is a delay in releasing the amount for which an employee is entitled for and the same has been retained by the Government, the employee will be entitled to interest. A Full Bench of this Court in the case of ***A.S. Randhawa Vs. State of Punjab,*** 1997 (3) SCT 468 held that the employee whose pensionary

benefits were delayed, is entitled for interest. The same view was reiterated by this Court in ***J.S. Cheema Vs. State of Haryana and others,*** 2014(13) RCR(Civil) 355, wherein this Court held that the amount which has been retained by the State for which an employee was entitled for on the retirement, the State is liable to pay the interest. The relevant paragraph of the judgment reads 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 belonged to the petitioner was in the custody of the State and was being used by it."*

9. In the present case, petitioner retired on 31.10.2011. He became entitled for the payment immediately thereupon. Even the show cause notice was issued in October, 2012 i.e. after a period of one year, which even otherwise could not have made a ground to withhold the pensionary benefits as there was no charge of any misappropriation or misconduct as only a clarification was sought which would not have entail the respondents to withhold the pensionary benefits.

10. Keeping in view the above, the present writ petition is allowed. The respondents are directed to calculate the amount of interest for which the petitioner is entitled for @ 6% per annum from the date the amount became due on retirement till the same was disbursed to the petitioner. Let the calculation be done within a period of three months from the date of

receipt of certified copy of this order and the calculated amount shall be released to the petitioner within a period of one month thereafter.

11. The next prayer which has been made by the petitioner in the present writ petition is that the petitioner was entitled for 40% of the commutation value instead of 20% which has been paid to the petitioner. Learned counsel for the petitioner states that it is only after 2013, the commutation value has been reduced from 40% to 20% but when the petitioner retired from service, he was entitled for commutation of the pension @ 40%. In reply to the said averments, the respondents have stated that as the pension was released to the petitioner in November, 2013, the Instructions dated 22.04.2013 by which the commuted value was reduced from 40% to 20% will be applicable. The stand taken by the respondents is totally contrary to the law. In fact, the entitlement is to be seen on the day when a person retire not on the day when the retiral benefits are being released by the respondents that too after an inordinate and unexplained delay. Therefore, the petitioner is also entitled for 40% of the commuted value of his pension, which should also be calculated by the respondents within the period prescribed above.

12. The writ petition is allowed in above terms.

December 11, 2018 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No