IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-29522-2017
Date of decision: - 20.12.2018

Amar Nath and others

....Petitioners

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Ms. Jaspreet Kaur, Advocate
for Mr. Gurbhajneek S. Samra, Advocate
for the petitioners.

Mr. Mehardeep Singh, Additional Advocate General, Punjab
for respondents No.1 to 3.

Mr. Sumit Abrol, Advocate
for respondent No.4.

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HARSIMRAN SINGH SETHI, J. (ORAL)

Separate replies filed on behalf of respondents No.1 to 3 and 4 have been filed today in the Court and the same are taken on record.

In the present case, the petitioners have approached this Court seeking the release of retiral benefits for which they were entitled for after they superannuted on 31.03.2017.

As per the averments made in the writ petition, the petitioners joined as a fireman in the year 1979 and they kept on working till they retired on 31.03.2017 as Sub-Fire Officer. At the time of the retirement, they were working in the Municipal Council, Sangrur.

It has been contended by the counsel for the petitioners that despite the fact that after the retirement of the petitioners in March, 2017, still they were not released with their retiral benefits. Ultimately, they filed a CWP No.15965 of 2017, which was disposed of by this Court with a direction to the respondents to take a decision on the legal notice which the petitioners have served upon the respondents on 06.07.2017. Three months time was given to the respondents by this Court to pass an appropriate speaking order. It has been mentioned in the present writ petition that the respondents did not comply with the order dated 24.07.2017 passed by this Court in CWP No.15965 of 2017 and ultimately, a contempt petition i.e. COCP No.3336 of 2017 was filed. During the pendency of the contempt petition, a speaking order was passed on 17.11.2017 by which it was mentioned that as Municipal Council, Sangrur is facing financial difficulties, therefore, it is not possible to release the retiral benefits to the petitioners. It is this order which has been impugned in the present writ petition with a prayer that the respondents be directed to release the pensionary benefits of the petitioners.

After the notice of motion was issued, the separate replies have been filed on behalf of respondents No.1 to 3 and 4 today in the Court.

In the reply filed on behalf of respondent No.4, it has been admitted that even though the petitioners retired on 31.03.2017, but the payments were made to them in March, September, December, 2017 and January, 2018. The relevant charts, which have been shown by the respondents in the reply, is as under: -

"Petitioner No.1-Amar Nath

Sr. No.	Cheque No.	Date	Amount	Balance
1.	114498	31.03.2017	1,00,000.00	14,46,130.00
2.	135701	11.09.2017	1,00,000.00	13,46,130.00
3.	147372	07.12.2017	5,00,000.00	8,46,130.00
4.	151437	19.01.2018	8,46,130.00	Nil

Petitioner No.2-Labh Singh

Sr. No.	Cheque No.	Date	Amount	Balance
1.	114499	31.03.2017	1,00,000.00	14,25,470.00
2.	135701	11.09.2017	1,00,000.00	13,25,470.00
3.	147370	07.12.2017	5,00,000.00	8,25,470.00
4.	151438	19.01.2018	8,25,470.00	Nil

Petitioner No.3-Sat Pal

Sr. No.	Cheque No.	Date	Amount	Balance
1.	114502	31.03.2017	1,00,000.00	14,60,640.00
2.	135701	11.09.2017	1,00,000.00	13,60,640.00
3.	147371	07.12.2017	5,00,000.00	8,60,640.00
4.	151439	19.01.2018	8,60,640.00	Nil"

A bare perusal of the above-mentioned charts would show that even though the petitioners were entitled for release of their pensionary benefits immediately upon their retirement on 31.03.2017, but the same were released with undue and unexplained delay. The only justification which the respondents have given is the financial crisis.

I have heard the learned counsel for the parties and gone through the record.

The only objection which has been taken by the respondents to deny the interest on the delayed payments is the weak financial status of the Municipal Council. No record has been produced, except a bald statement that the financial status of the respondents-Council was weak so as to not to make the retiral benefits payments to its employees. In the absence of any data, the statement cannot be taken on the face of it.

Even otherwise, a Division Bench of this Court in **Ram Karan** Vs. **Managing Director, Pepsu Road Transport Corporation and another**, **2005(4) S.C.T. 438**, has already held that the weak financial position is no ground to withhold the payments in respect of the retiral benefits. The relevant paragraph of the said is as under: -

> “8. On careful consideration of the rival submissions and the facts of the case, we do not find ourselves in agreement with the arguments advanced by the learned Counsel for the respondent-Corporation. In a welfare State it is the duty of the State to ensure the 'right to live' of every individual. The term 'life' as mentioned in Article 21 of the Constitution of India includes livelihood and so many facts thereof. It means that something more than mere existence and inhabitation against the proposition of life and rather it extends to all the facilities by which life is enjoyed. In case a pensioner is not even paid the genuine dues like the medical reimbursement, he is not expected to enjoy the life nor will he feel secure. The Constitution of India contains a large number of rights which guarantee human rights. It recognises the right of every citizen to an adequate standard of life for himself and his family members, which also includes the improvement of living conditions besides providing adequate food, clothing and housing. A welfare State has to take all appropriate steps to ensure the realisation of these rights. The Apex Court in the case of Chameli Singh v. State of U.P., has held as under:
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> > "In any organised society right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designated to achieve this object. Right to

live guaranteed in any civilised society implies to right to food, water, decent environment, education,medial care and shelter. These are basic human rights known to any civilised society.
xx xx xx xx Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organised civic community one should have permanent shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being."

9. A right to carry on business is reciprocated with a duty and constitutional obligations under the Constitution. Financial stringency may not be a ground for not issuing requisite directions when a question of violation of fundamental rights arises. The Apex Court has also highlighted this aspect in a number of decisions, namely, Municipal Council, Ratlam, (1980)4 S.C.C. 163, <u>B.L Wadhera v. Union of India</u>, <u>All India Imam Organisation and Ors. v. Union of India and Ors.</u>, <u>Kapila Hingorani v. State of Bihar</u>, 2003 (3) R.S.J. 42. As far as back as in the year 1993, the Apex Court in All India Organisation's case (supra) observed as under:-

"6... Much was argued on behalf of the Union and the Wakf Boards that their financial position was not such that they can meet the obligations of paying the Imams as they arc being paid in the State of Punjab. It was also argued that the number of mosques is so large that it would entail heavy expenditure which the Boards of different States would not be able to bear. We do not find any correlation between the two. Financial difficulties of the institution cannot be above the fundamental right of a citizen. If the Boards have been entrusted with the responsibility of supervising and administering the Wakf then it is their duty to harness resources to pay those persons who

> perform the most important duty namely of leading community prayer in a mosque the very purpose for which it is created."

A Division Bench while deciding the above-said case categorically held that the plea of weak financial position is no ground to withhold the pensionary benefits, therefore, the ground which has been taken by the respondents to withhold the pensionary benefits is contrary to the law laid down by the Division Bench.

Keeping in view above, as there is a delay, a Full Bench of this Court in **A.S. Randhawa Vs. State of Punjab and others, 1997(3) SCT 468** has already held that the employees will be entitled for the interest on the delayed payments. The said judgment of Full Bench has been followed by this Court in **J.S. Cheema Vs. State of Haryana, 2014 (13) RCR (Civil) 355,** wherein it has been held that 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 **J.S. Cheema's case (supra)** 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 belonged to the petitioner was in the custody of the State and was being used by it."

Keeping in view the above, the present writ petition is allowed. The respondents are directed to calculate the interest @ 9% per annum on the delayed payments, which have been made to the petitioners. The interest shall be calculated from the day when the petitioners became entitled for the release of the amount till the actual payment.

Let the calculation be done within a period of three months from the date of receipt of a certified copy of this order and the actual payment shall be released to the petitioners one month thereafter.

(HARSIMRAN SINGH SETHI)
JUDGE

December 20, 2018
naresh.k

Whether reasoned/speaking?	Yes
Whether reportable?	No