IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-11239-2016
Date of decision: - 11.03.2019

Karnail Singh

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Ashok Kumar Khunger, Advocate,
for the petitioner.

Ms. Deepali Puri Sandhu, Additional Advocate General, Pb.

Mr. Nitin Kaushal, Advocate
Mr. Tarun Sharma, Advocate and
for respondent No.4.

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HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the grievance which is being raised by the petitioner is that though he retired on 31.12.2015, but his pensionary benefits were not released within the reasonable time and therefore, he is entitled for interest on the said delayed payments.

As per the averments made in the writ petition, petitioner was appointed as a Clerk on 10.05.1977 and thereafter, he was promoted as an Inspector, from which post he was retired on 31.12.2015.

Counsel for the petitioner states that the retiral benefits of the petitioner were released after an undue and unexplained delay and therefore, he is entitled for interest in view of the judgment of Full Bench of this Court in **A.S. Randhawa** **Vs.** **State of Punjab and others, 1997 (3)SCT 468.**

As per the above-said judgment, in case an employee is denied the benefit of pension and other benefits without any valid justification, he will be entitled for interest.

Upon notice of motion, reply has been filed.

In the reply, the respondents have given the details of the payment made, which are as under: -

"Total payable amount of gratuity		**₹10,00,000/-**	
Total payable amount of earned leave		**₹15,33,260/-**	
Date	**Cheque Nos.**	**Voucher No. & Month**	**Amount**
31.12.2015	001709	87/12-15	₹2,00,000/-
05.04.2016	138128	15/4-16	₹2,00,000/-
15.06.2016	002163	75/6-16	₹3,00,000/-
10.11.2016	002477	26/11-16	₹1,50,000/-
01.03.2017	002706	7/3/2017	₹6,83,260/-
			₹15,33,260/-
Interest of P.F.			₹9,671/-
2nd Instalment of pay commission			₹42,820/-
Arrears of D.A			₹43,573/-
Dated	**Cheque No.**	**Amount**	
08.03.2017	002717	₹96,064/-	
Total amount paid to petitioner upto 08.03.2017 is ₹16,29,324/-"			

Further, the delay in making the payments has been stated to be paucity of funds, which according to the respondents is a valid justification. The relevant para of the reply is as under: -

> "7. That the Answering Respondent has never willfully withheld any amount due towards the retiral benefits of employees but has been unable to make said payments due to paucity of funds with the Municipal Council. It is further submitted that the pension has already been fixed of the petitioner vide PPO No.6493 by the State of Punjab. Therefore, it is submitted that necessary relief claimed by the petitioner has already been released in his favour, hence present petition rendered infructuous."

I have heard counsel for the parties and gone through the record with their able assistance.

As per the settled principle of law settled by the Full Bench of this Court in **A.S. Randhawa's case (supra),** where an amount has been retained by the respondents without any valid justification and there is a unjustifiable delay in releasing the same, the employee will be entitled for interest. The relevant paragraph of said judgment is as under:-

> "Since a government employee on his retirement becomes immediately entitled to pension and other benefits in terms of the Pension Rules, a duty is simultaneously cast on the State to ensure the disbursement of pension and other benefits to the retirer in proper time. As to what is proper time will depend on the facts and circumstances of each case but normally it would not exceed two months front the date of retirement which time limit has been laid down by the Apex Court in M. Padmanabhan Nair's case (supra). If the State commits any default in the performance of its duty thereby denying to the retiree the benefit of the immediate use of his money, there is no gainsaying the fact that he gets a right to be

> compensated and, in our opinion, the only way to compensate him is to pay him interest for the period of delay on the amount as was due to him on the date of his retirement."

Not only this, in the case of **J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355,** this Court had held that an employee will be entitled for the interest of an amount which has been retained by the respondents without any valid justification. 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."

A bare perusal of the above would show that where the amount has been retained by the department that too without any valid justification, the employee has been held entitled to the interest.

In the present writ petition, the reason, which has been given by the respondents for delayed payment i.e. the financial constraints, is not a valid ground keeping in view the law laid down by this Court in **Ram Karan** Vs. **Managing Director, Pepsu Road Transport Corporation and another**, **2005(4) S.C.T. 438**, wherein, it has already been 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 judgment 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. 1996(2) SCC 549** 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.
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> > 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, **B.L Wadhera v. Union of India, All India Imam Organisation and Ors. v. Union of India and Ors., Kapila Hingorani v. State of Bihar, 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 and cannot be taken into consideration.

Keeping in view the above-said judgment, the reason which has been forwarded by the respondents for the delay in releasing the amount for which the petitioner is entitled for cannot be considered as a valid ground. In the absence of any valid ground, the petitioner is entitled for interest.

In view of 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 petitioner. The interest shall be calculated from the day when the petitioner became entitled for the release of the amount till the actual payment released to him.

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

(HARSIMRAN SINGH SETHI)
JUDGE

March 11, 2019
naresh.k

Whether reasoned/speaking? Yes
Whether reportable? Yes