IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.12777 of 2015 (O&M)
DATE OF DECISION:06.03.2019

Mohammed Yunus

... Petitioner

Versus

Punjab State Agricultural Marketing Board and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Puneet Gupta, Advocate for the petitioner.

Mr. Jasdeep Singh, Advocate for
Mr. A.S. Bhinder, Advocate
for the respondents.

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HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the grievance which has been raised by the petitioner is that though the petitioner has already retired on 31.08.2014 after attaining the age of superannuation and there was no impediment in the release of the pensionary benefits of the petitioner but due to an audit para recorded by the Auditor General, the pensionary benefits of the petitioner were stopped and only provisional pension is being paid to the petitioner.

Counsel for the petitioner states that during the pendency of the present writ petition, the benefits for which the petitioner is entitled for have been released to the petitioner.

It has been admitted by the petitioner that the commutation of the pension was paid to the petitioner on 10.02.2016. Leave encashment was paid to the petitioner on 24.08.2015 and the gratuity was paid to the petitioner on 11.02.2016. It is further stated by the learned counsel for the petitioner that the petitioner is still getting the provisional pension and the writ petition only survives qua the interest part for which the petitioner is entitled for as per settled principles of law.

In the short written statement filed on behalf of the respondents, it has been stated that the Auditor General had raised the objection with regard to the excess payment of ₹52.08 lacs made to the contractor by the petitioner. It was only due to the said objection, the pensionary benefits of the petitioner were delayed. It is further mentioned in the reply that as soon as the audit para get settled, the gratuity of the petitioner will also be released. It is a matter of fact that the gratuity of the petitioner already stands released by the respondents. The reply filed on behalf of the respondents is as under:

> "1. That the petitioner Mohammad Yunus has retired as Executive Engineer from Punjab Mandi Board on 29.08.2014.
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> 2. That through the instant writ petition the petitioner has sought the relief of release of pension, gratuity and leave encashment which has been withheld by the board on the basis of Audit objection with regard to excess payment of Rs.52.08 lakhs to the contractor for construction of Agriculture Bhawan.
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> 3. That infact while in service the petitioner was

Incharge of construction of building of Agriculture department (Agriculture Bhawan) for some time and during that period excess payment of Rs.7,81,252/- has been released to the contractor by the petitioner. In all excess payment of Rs.52.08 lakh was made to the contractor by the then incharge Executive Engineers, regarding which objections was raised by Auditors and an audit para was also made. In view of that para the retiral benefits of the petitioner were stopped by the board.

4. That after passing of the order dated August 7, 2015, provisional pension to the tune of Rs.100% has been approved and disbursed from August 2015 and all the arrears of the pension has been released to the petitioner. Similarly, the petitioner has been granted benefit of leave encashment of Rs.10,75,400/- vide cheque No.33012572 dated 21.08.2015.
5. That as audit para is standing against petitioner so no due certificate was not issued to the petitioner and no due certificate has been issued on 7/7/2015 vide office order No.C-584 (2015) and in view of that 100% provisional pension has been sanctioned to the petitioner and arrears have already been disbursed.
6. The Executive Engineer (Civil), Punjab Mandi Board has replied to the Audit department of Auditor General Punjab with regard to Audit para as per Annexure P-8 of the writ and as soon as the para is settled the gratuity of the petitioner shall also be released.
7. That petitioner was issued notice (Annexure P-3) on 16/9/2014 immediately after his retirement and because of that his retiral benefits were stopped.
8. That the deponent reserves his right to file detailed

para wise reply in case this Hon'ble Court directs so."

Counsel for the petitioner states that the benefits for which the petitioner was entitled for after the retirement were withheld by the respondents on account of their own fault. A wrong objection was taken by the Auditor General, which stood removed being contrary to facts. On the basis of the said objection, the pensionary benefits of the petitioner were delayed. Hence, the petitioner is entitled for interest on the delayed release of the payments.

Counsel for the respondents states that during the pendency of the objection raised by the Auditor General, the benefits could not be released to the petitioner as the allegation was that the petitioner had made excess payment to the Contractor to the tune of ₹52.08 lacs which was much more than the retiral benefits of the petitioner and, therefore, withholding of the said benefits was perfectly legal and in view of the objection raised by the Auditor General, the petitioner is not entitled for any interest on the payments due to the petitioner.

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

It is a matter of fact that the payments of the retiral benefits of the petitioner have been delayed. The only question to be decided is whether on the basis of objection raised by the Auditor General, the pensionary benefits of the petitioner could have been stopped or being delayed.

In the present case, the objection raised by the Auditor has been found to be incorrect as the respondents have admitted in their reply that gratuity has also been released to the petitioner on 11.02.2016. Once the gratuity of the petitioner has been released, it can be safely presumed that the objection raised by the Auditor General stood clarified. Once the objection has been cleared without their being any input from the petitioner, shows that the objection was raised by the Auditor General without going through the relevant facts. Delay in releasing of the benefits cannot be attributable to the petitioner as it is the respondents-State, which created the objection and cleared the same for which the petitioner cannot be prejudiced by delaying his pensionary benefits and that too on the basis of frivolous objection raised, which was ultimately withdrawn.

Counsel for the petitioner states that as per the decision rendered by the Full Bench of this Court in **A.S. Randhawa Vs. State of Punjab 1997(3) SCT 468,** the petitioner is entitled for interest also as no valid justifiction has been given by the respondents about the delayed release of the retiral benefits to the petitioner. In the absence of any justifiction, the petitioner claims that he is entitled for interest on the delayed payments. The relevant para of the 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 from 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, this Court while deciding **J S Cheema Vs. State of Haryana and others, 2014(13) RCR (Civil) 355** also held that once the amount has been retained by the employer without any valid reason, the employee will become entitled for the grant of interest. The relevant para of the said order 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 laying 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."

Counsel for the petitioner states that the petitioner is still being paid the provisional pension due to the objection raised by the Auditor General despite the fact that the said objection already stands removed. The petitioner has not been paid the permanent pension.

Counsel for the respondents states that an appropriare order in this regard will be passed keeping in view the facts and circumstances of the case for the grant of permanent pension to the petitioner.

In view of the above, the case of the petitioner is covered for the grant of interest in his favour. The petitioner is found entitled for interest @ 9% per annum from the date the said amount became due till the actual disbursement of the same. Let the amount of interest be calculated within a period of two months from the date of receipt of a certified copy of this order and the actual payment of the calculated amount be released to him within a period of one month thereafter.

The writ petiton stands allowed in the above terms.

March 06, 2019
jt **(HARSIMRAN SINGH SETHI)**
JUDGE

Whether speaking/reasoned: Yes / No
Whether reportable : Yes / No