IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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CM-8629-C-2019 &
CM-8630-C-2019 &
RSA-3220-2019

Date of decision: 12.07.2019

STATE OF PUNJAB AND OTHERS

...APPELLANTS

` ***V/S***

MALKIT SINGH

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. T.P.S.Chawla, DAG, Punjab,
for the appellants.

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AUGUSTINE GEORGE MASIH, J. (ORAL)

CM-8629-C-2019

Prayer in this application is for condonation of delay of 23 days in filing the appeal.

For the reasons mentioned in the application, which is duly supported by the affidavit of the Agriculture Development Officer, the present application is allowed subject to just exceptions. Delay of 23 days in filing the appeal stands condoned.

RSA-3220-2019

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Bathinda dated 04.07.2018, whereby the suit of the respondent for declaration to the effect that the respondent-plaintiff is entitled to get interest @ 18% per annum on delayed payment of leave encashment, actual pension received, commutation amount, G.P.F., gratuity, arrears of leave encashment etc., stands decreed to the extent of granting interest @ 12% per annum from the date of retirement till the date of disbursement, appeal against which preferred by the State of Punjab (appellant herein) has also been dismissed by the District Judge, Bathinda vide judgment dated 05.03.2019.

Learned counsel for the appellant has pressed upon the assertion that the delay, if any, was on the part of the respondent as he himself was the Drawing and Disbursing Officer. He contends that the respondent-plaintiff had retired on 28.02.2015 and submitted his pension papers on 06.05.2015. Thereafter, he submitted his undertaking on 01.10.2015 that any amount, which is in excess because of any benefit which he was not entitled to, may be refunded. Pension was released to him on 30.11.2015, G.P.F. was released on 14.12.2015, gratuity was released on 15.02.2016 and arrears of leave encashment were released on 13.02.2016. He contends that for the period the respondent has not submitted his pension papers, the State cannot be held liable for the payment of interest.

Further contention of the counsel for the appellant is that the interest @ 12% per annum, which has been granted to the respondent-plaintiff, is on the higher side and, therefore, interference by this Court is called for. Referring to a judgment passed by this Court in the case of **J.S.Cheema** vs. **State of Haryana and others, 2014 (1) SCT 782,** he contends that this Court has held the petitioner in similar matter, where the pension and other retiral benefits were released late, entitled to interest @ 8% per annum. He, accordingly, prays for setting aside of the impugned judgments or at least modification thereof to the extent of grant of interest.

I have considered the submissions made by the learned counsel for the appellants and with his assistance, have gone through the records of the case.

The primary push on the part of the appellants for coming to foist the responsibility on the respondent is that the respondent was himself a Drawing and Disbursing Officer and, therefore, it was his responsibility to submit the pension papers six months prior to the date of his retirement which he had failed to do and further after his retirement on 28.02.2015, pension papers were submitted by him on 06.05.2015.

On a categoric question put by this Court as to whether in the pleadings, there was anything which would specifically state that the respondent was the Drawing and Disbursing Officer or in the statement of the witnesses/cross-examination of the witnesses or the respondent-plaintiff, counsel for the State has very fairly stated that it was not so specifically stated nor anything has come on record in this regard. However, he asserts that since the respondent-plaintiff was himself holding the senior most post and was the officer, he was responsible for the said purpose, the delay has to be attributed to him. This is not acceptable in the light of the lack of pleadings and the evidence on record.

Learned counsel for the appellants has referred to a communication issued by the Government of Punjab dated 17.05.1990 declaring the Senior Analyst as the Drawing and Disbursing Officer. The said plea is not acceptable as it was neither brought on record nor was it ever the part of the pleadings. The contention, thus, of the learned counsel for the appellants stands rejected.

As regards the contention of the learned counsel for the appellants with reference to the rate of interest which was awarded by the Courts below i.e. 12% per annum and the reference of the judgment passed by this Court in J.S.Cheema's case (supra), suffice it to say that it is the discretion and the peculiar facts and circumstances of the case which would determine the rate of interest which has to be granted to a party. There can be no mandate with regard to the grant of rate of interest as it is dependent upon varying circumstances. The judgment, on which reliance has been placed by the learned counsel for the appellants, therefore, cannot be said to be holding that the interest beyond 8% per annum cannot be granted by the Courts.

Having considered the facts and circumstances of the present case, this Court is satisfied that the interest @12% per annum, which has been awarded by the Courts below to the respondent-plaintiff, is fully justified and does not call for interference by this Court keeping in view the aspect that the retiral benefits have not been disbursed by the appellants-defendants within time as per the Rules and Instructions issued by the Government of Punjab.

The appeal, therefore, being devoid of merits stands dismissed.

CM-8630-C-2019

In view of the dismissal of the main appeal, the present application has been rendered infructuous and the same is disposed of as such.

(AUGUSTINE GEORGE MASIH)
July 12, 2019 **JUDGE**

pj

WHETHER SPEAKING/REASONED: YES/NO

\ *WHETHER REPORTABLE : YES/NO*