**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No. 14958 of 2015
Date of Decision : 03.05.2019**

Banarsi Dass

...Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Limited and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Pankaj Dhingra, Advocate and
Mr. R.K. Chaudhary, Advocate for the petitioner.

Mr. Ashok Chaudhary, Advocate for the respondents.

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Harsimran Singh Sethi, J.(Oral)

In the present writ petition, the grievance of the petitioner is that though the petitioner retired on 31.05.2014 but his pensionary benefits, for which he was entitled for, were not released immediately and delay which has been caused in release of the pensionary benefits, is unjustified, which would entitle the petitioner to claim interest.

As per the facts mentioned in the writ petition, petitioner retired from service on 31.05.2014 and in para 5 it has been mentioned that there were no charge-sheet or enquiry pending against the petitioner at the time of his retirement. It has further been mentioned that the benefit of pension was released to the petitioner only on 03.03.2015, which is clear from the PPO attached with the writ petition as Annexure P-1 and the gratuity amounting to ₹4,71,113/-was released to the petitioner amounting on 25.02.2015.

Further, a sum of ₹4,26,318/- was released to the petitioner on account of commutation of pension on 25.02.2015 (Annexure P-3).

Learned counsel for the petitioner states that a sum of ₹2,29,147/- was withheld by the respondents while making payment of gratuity out of the total ₹7,00,260/- for which the petitioner was entitled for.

The prayer of the petitioner is for a direction to the respondents to release the withheld amount of ₹2,29,147/- as well as the interest on the delayed release of the payment of retiral benefits, which were released to the petitioner starting from February, 2015 onwards till March, 2015.

Upon notice of motion, the respondents have filed the reply. In the reply, claim of the petitioner has been contested. It has been mentioned that on the day when the petitioner retired, there was a vigilance enquiry going on, which was initiated against the petitioner on 13.6.2012 and further a charge-sheet was served upon the petitioner on 22.04.2014 (Annexure R-2), which was also pending on the day when the petitioner retired on 31.05.2014. It has been stated that in respect of the charge-sheet dated 22.4.2014, a punishment was imposed upon the petitioner on 04.08.2014 (Annexure R-3) withholding an increment. Further, learned counsel for the respondents states that there was another charge-sheet, which was issued to the petitioner on 29.03.2016 with regard to the various shortages which came to the notice of the respondents after the retirement of the petitioner and the said charge-sheet is still pending and, therefore, the amount of ₹2,29,147/- was continued to be withheld. Even though, charge-sheet dated 22.04.2014, which was pending on the day when the petitioner retired, stood decided in August, 2014 but charge-sheet dated 29.03.2016 is still pending and appropriate decision will be taken in respect of the the withheld amount of ₹2,29,147/- after the finalization of the same.

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

It is a matter of fact that when the petitioner retired, there was a charge-sheet which was pending against the petitioner issued to him on 22.04.2014. This fact has been concealed from this Court by the petitioner. It is a settled principle of law that gratuity and leave encashment can be withheld, in case a departmental proceeding is pending against an employee. Therefore, no grievance can be made by the petitioner in respect of withholding certain amount of his gratuity due to the pendency of the charge-sheet dated 22.04.2014 at the time of the retirement of the petitioner.

It is worthwhile to mention here that pendency of the charge-sheet is no ground to delay the release of the other benefits, for which the petitioner was entitled for, such as pension, commutation of pension and other benefits. As stated above, pension of the petitioner was released to him only on 3.03.2015 when the PPO of pension was issued, which has been attached with this petition as Annexure P-1. Further, commutation of pension was released on 25.02.2015 and the same is with regard to the gratuity, which was released on 25.02.2015. It is admitted that the respondents could not withheld these amounts even due to the pendency of the charge-sheet as per the settled principle of law settled by the Full Bench of this Court in ***Punjab State Civil Supplies Corporation Limited Vs. Pyare Lal, 2015(1) PLR 617.*** There is no explanation as to why these benefits were delayed by the respondents, which could not have been withheld due to the pendency of the charge-sheet.

A Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab, 1997 (3) SCT 468*** has categorically held that where the pensionary benefits of an employee have been delayed without any valid justification, the employee will be entitled for interest. The relevant paragraph 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 the 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, a Co-ordinate Bench of this Court in the case of ***J.S. Cheema Vs. State of Haryana and others, 2014(13) RCR (Civil) 355,*** has held that where an amount for which an employee was entitled for has been retained by the department and used, the employee will be entitled for 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."

The case of the petitioner is squarely covered by the above said decision as no valid justification has been given by the respondents not to release the commutation of pension and other benefits immediately upon his retirement, which could not have been withheld even due to the pendency of the charge-sheet. Therefore, petitioner is found entitled for interest on the delayed release of pension and commutation of pension, which were released to the petitioner on 03.03.2015 and 25.02.2015 respectively.

As far as the claim of the petitioner for the release of the amount of ₹2,29,147/-, which has been withheld by the respondents while releasing the gratuity on 25.02.2015, the same was rightly withheld when the petitioner retired as there was a charge-sheet pending against him dated 22.04.2014. Though, the said charge-sheet has already come to an end on 04.08.2014 but presently due to the missing parts of the transformer, another charge-sheet has been issued to the petitioner on 29.03.2016, which is still pending consideration with the respondents, though the petitioner had already filed the reply to the said charge-sheet on 31.01.2017. Learned counsel for the petitioner states that though more than two years have elapsed, the petitioner had filed the reply but no proceedings have been undertaken by the respondents, which is causing prejudice to the petitioner as the pensionary benefits have been withheld by the respondents.

Faced with this situation, learned counsel for the respondents states that the enquiry in respect of the charge-sheet dated 29.03.2016 will be completed at the earliest but not later than six months from today, if not already completed, as the counsel has not been able to communicate with the respondents in this regard and does not know the exact status of the enquiry proceedings in respect of the charge-sheet dated 29.03.2016.

Keeping in view the above, respondents are directed to grant interest @ 9% per annum on the amount of pension as well as commutation of pension, which could not have been withheld due to the pendency of the charge-sheet and were released on 03.03.2015 and 25.02.2015 respectively, from the date the said amount became due till the release of the same.

Let calculation of the interest be done by the respondents within a period of two months from the receipt of certified copy of this order and the amount so calculated will be released to the petitioner within a period of one month thereafter.

With regard to the charge-sheet dated 29.03.2016, as undertaken by the respondent-counsel that in case the same has not been decided so far, the same will be taken to the logical end within a period of six months from today.

The writ petition stands disposed of in above terms.

May 03, 2019 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

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