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

**CWP No. 14093 of 2016
Date of Decision : 08.05.2019**

Swinder Kumar

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Veneet Sharma, Advocate for the petitioner.

Ms. Deepali Puri Sandhu, Addl. A.G., Punjab.

***

Harsimran Singh Sethi, J.(Oral)

In the present writ petition, the grievance which is being raised by the petitioner is that the retiral benefits for which he was entitled for after the retirement, are not being released to him without any valid justification.

As per the facts mentioned in the writ petition, petitioner was appointed as a Clerk in the respondent-department on 06.09.1983 and he was promoted as Inspector Grade-II on 08.08.1995. Petitioner was further promoted as Inspector Grade-I on 13.12.2007 and thereafter as Assistant Food and Supply Officer on 04.11.2012. While working on the said post, petitioner was compulsorily retired on 31.08.2015. On the date when the petitioner was compulsorily retired, there was a charge-sheet, which was pending against the petitioner issued on 20.07.2015.

Learned counsel for the petitioner states that though pendency of the charge-sheet would not have authorized the respondents to withhold all the pensionary benefits but still his pensionary benefits such as pension, CPF etc. are not being released by the respondents without any valid justification. The prayer of the petitioner is for release of the pensionary benefits alongwith interest from the date of retirement till the actual payment.

After the notice of motion was issued, respondents have filed the reply. In the reply, respondents have taken a stand that there was a charge-sheet, which was pending against the petitioner on the day when the petitioner was compulsorily retired on 31.08.2015 but the said charge-sheet was dropped on 11.12.2015 and thereafter, the benefits for which the petitioner was entitled for after he was compulsarily retired, were released on 03.11.2016, 02.11.2016 and 08.12.2016 and with regard to the release of the gratuity and the regular pension, case of the petitioner was sent to the Accountant General, Punjab on 09.12.2016. The relevant paragraph of the reply is as under:-

> *"2. That it is submitted the petitioner was compulsorily retired on 31.08.2015, at the time of retirement of the petitioner a charge-sheet issued vide order dated 20.07.2015 was pending against the petitioner. During the pendency of the charge-sheet, provisional pension to the tune of 100% has been paid to the petitioner vide order dated 12.10.2015. The aforesaid chargesheet was dropped vide order dated 11.12.2015. After that the procedure for releasing the retiral benefits to the petitioner had been initiated and after getting No Due Certificate, the payment of GIS, GPF and Leave encashment has already been made to petitioner on 03.11.2016, 02.11.2016 and 08.12.2016 respectively. It is*

submitted that petitioner's case of gratuity and regular pension has been sent to the Accountant General, Punjab for sanction on 09.12.2016, date on which regular pension case was sent to Accountant General, Punjab respectively, which is pending with the Accountant General, Punjab and as and when the required sanction will received, the payment of gratuity & Pension will be released to the petitioner accordingly."

Learned counsel for the petitioner states that as he has not received any communication from the petitioner, petitioner must have got the retiral benefits as stated by the respondents in their written statement but he prays that as release of the retiral benefits was delayed without any valid justification by more than one year, petitioner is entitled for interest for the said period.

Learned counsel for the respondents on the other hand states that benefit of the petitioner after his compulsorily retirement on 31.08.2015 could not be released due to the pendency of the charge-sheet and, therefore, delayed release of the pensionary benefits was supported by valid reason and, therefore, petitioner is not entitled for interest on the delayed payments.

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

Petitioner was compulsorily retired on 31.08.2015 and on the said date, there was a charge-sheet, which was pending against the petitioner, which was issued on 20.07.2015. It has been admitted by the respondents that the said charge-sheet was dropped on 11.12.2015. From the said averments, it can be safely stated that there was no impediment with the respondents to withhold the pensionary benefits after the dropping of the said charge-sheet on 11.12.2015. Further, once the allegation as well as the charge-sheet were not substantiated by the respondents, pendency of the charge-sheet in order to deny the benefit of interest to the petitioner cannot be a ground. Further, no justification has been given as to why the benefits of the petitioner such as Pension, GIS, GPF were only released on 03.11.2016, 02.11.2016 and 08.12.2016. In the absence of any valid justification given for the delayed release of the pensionary benefits, it can be safely presumed that the benefits were being withheld by the respondents arbitrarily. Gratuity and the regular pension were released to the petitioner even after the said date.

A Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab, 1997 (3) SCT 468*** has held that where release of the pensionary benefits of an employee were delayed by the respondents without any valid justification, the employee will be entitled for interest to compensate him. The relevant portion 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 Coordinate Bench of this Court in ***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 respondents and used, the employee will be entitled for interest. The relevant portion of the said judgment 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."*

In the present case, there is no valid justification for delaying the retiral benefits of the petitioner after he retired on 31.08.2015. As the charge-sheet, which was issued to the petitioner on 20.07.2015 was dropped and the allegations in the charge-sheet could not be substantitated, pendency of the said charge-sheet cannot be a ground to deny the benefits of interest, otherwise, same will cause prejudice to the petitioner without there being any fault on his part.

In the above circumstances, the present writ petition is allowed. Petitioner is held entitled for interest on the delayed payments of the pensionary benefits @ 9% per annum from the date it became due till the payments are released to the petitioner. Let calculation of 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 by the respondents will be released to the petitioner within a period of one month thereafter.

Writ petition is allowed in above terms.

May 08, 2019 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

Whether speaking/reasoned? *Yes*
Whether reportable? *Yes*