

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

CWP-10971-2017

Date of decision: - 24.09.2019

Gurjeet Kaur and others

....Petitioners

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Ranjit Sharma, Advocate,
for the petitioners.

Mr. H.S. Sitta, Assistant Advocate General, Punjab.

HARSIMRAN SINGH SETHI, J. (ORAL)

Learned counsel for petitioners submits that husband of petitioner No.1, namely, Tarlochan Singh, was working with the respondent-department and he unfortunately died while in service on 06.10.2016. After the death of husband of petitioner No.1, petitioners were not given all the benefits including the family pension in respect of the service rendered by Sh. Tarlochan Singh. Claim of the petitioners is to direct respondents to grant them all the benefits for which they have become entitled for after the death of Sh. Tarlochan Singh in respect of the service rendered by him.

Upon notice of motion, respondents have filed a short reply,

wherein, it has been stated that all the benefits for which petitioner No.1 became entitled for after the death of her husband have been released to her in January, 2019. The relevant paragraph of the reply is as under: -

- “(1) That the petitioner has filed the present petition with a prayer for issuance of writ in the nature of mandamus directing the respondents to release the Pension and Pensionary benefits including Gratuity, Leave Encashment and General Provident Fund to the petitioners which the respondents had not paid to the petitioners after the death of her husband named Late S. Tarlochan Singh son of Darbara Singh, who died on 06-10-2016 and was working as Junior Assistant in Govt. High School, Sarli Kalan, Tarn Taran alongwith interest @ 12% per annum.
- (2) That it is respectfully submitted that the petitioner has already been granted benefits in the month of January, 2019 which she has claimed vide this petition. She has been granted pension and pensionary benefits including leave encashment, gratuity and General Provident Fund.
- (3) That it is further submitted that the petitioner has submitted letter dated 15-01-2019 to the answering respondent that she does not want to proceed with the present writ petition as the benefits which she claimed vide this petition have now been granted to her. Copy of letter dated 15-01-2019 is Annexure R-1.”

Counsel for the petitioners argues that husband of petitioner No.1 died on 06.10.2016, whereas the benefits for which the petitioners became entitled immediately after the death of husband of petitioner No.1, have been paid in January, 2019 only and therefore, as there is inordinate delay of more than 2 years in the release of the pensionary benefits, the petitioners are also entitled for interest in the payments

released in January, 2019 keeping in view the settled principles of law.

Counsel for the respondents argues that once the benefits have been extended to the petitioners and petitioner No.1 had given in writing that she will not pursue the present remedy any further, she is not entitled for the interest.

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

It is a settled principle of law that the benefits, which are accruing on account of the service rendered by an employee, should be released to the employee or his/her legal heirs within a reasonable time of the amount becoming due.

In the present writ petition, husband of petitioner No.1 unfortunately died in October, 2016, whereas, the benefits have been released only in January, 2019, which is more than two years after the death of her husband. No explanation has been given as to why the respondents have taken more than two years to release the amount and the period of two years cannot be treated as a reasonable period for the release of the benefits for which the petitioners became entitled for after the death of husband of petitioner No.1.

A Full Bench of this Court, while deciding the reasonable time within which the benefits should be released to a retired employee, has held that reasonable time is two months after the retirement. The said reasonable time has to be imported with regard to the release of the benefits in case an employee dies while in service also.

In the present case, the delay is of more than two years and

there is no justification for the same, therefore, the case of the petitioner is covered by the findings recorded by the Full Bench of this Court in **A.S. Randhawa Vs. State of Punjab and others**, 1997(3) SCT 468, wherein, it has been held that the amount which has been retained by the respondents and that too without any justifiable reason, the employee will be entitled to 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 retiree 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.”

Even otherwise, a Co-ordinate Bench of this Court in **J.S. Cheema Vs. State of Haryana**, 2014(13) RCR (Civil) 355, had held that an employee will be entitled for the interest on an amount which has been retained and used 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.”

In the present case, the amount which was due to the petitioners has been retained and used by the department, therefore, petitioners will be entitled for interest on this score also. The only objection which has been raised is that petitioner No.1 has given in writing that she does not want to pursue the remedy of writ petition any further. The said undertaking is not a valid undertaking, which will come in the way of the petitioners, who have a right to claim the interest on the delayed payments. The respondents have got this letter written from petitioner No.1, who was not in a position to sustain the pressure of the department in getting the said letter that petitioner No.1 will withdraw the present writ petition despite the fact that she was entitled for the grant of interest.

This Court had an occasion to deal with the question as to under what circumstances an undertaking given by employee is to be treated as a valid undertaking. While deciding **CWP No.15771-1999** titled as '**Maghar Singh Vs. State of Punjab and another**, decided on **26.09.2016**, this Court held that where an employer in a dominant position and gets an undertaking from an employee, which undertaking cuts the crystallized rights of the employee, cannot be treated as a valid

undertaking. The relevant paragraphs of the said judgment is as under:-

“13. A written statement has been put on record filed by the learned D&SJ, Sangrur contesting the case. It is objected therein that the petitioner can have no relief in terms of the undertaking given by him on May 26, 1998 agreeing that he will not claim the pay/salary for the period he remained dismissed. The petitioner had also given an undertaking that for counting his service, leave of the kind due may be sanctioned. His letter dated May 26, 1998 is placed on record as Annex R-1/L and its true translation alongside.

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16. The question that falls for consideration is as to what the legal value of the undertaking is and whether it forecloses absolutely the rights accruing on acquittal to claim the main reliefs prayed. Reminder is that he had after all spent 13 long years before the trial court and in appeal before he secured acquittal from the blame on the criminal charges framed against him. He had remained during this period either under suspension or as a dismissed government employee.

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18. The petitioner urges in counterpoint that an admission in a misapplication of the legal position and would not bind the maker of the same to divest him of accrued rights. He cites the Supreme Court dicta in Shri Krishan v. The Kurukshetra University, AIR 1976 SC 376, the Calcutta High Court single bench in Shri S.S.Garga v. The Coal Controller, Government of India, Ministry of Petroleum, Chemicals and Non-Ferrous Metals (Department of Mines and Metals) Calcutta and Ors, 1974 (1) SLR 241 that an admission which is self-inflicting cannot bind the signatory. Hence the petitioner could always retrieve himself of the bind he got himself in by his own writing which was not signed by free will and consent, but under pressure of force of circumstances to obtain the relief of reinstatement to service. The concealment, if any, I believe, has thus got no material bearing on his rights gained after acquittal of the criminal charge especially when the complainant was none other than a Judicial Officer and hence the

petitioner becomes entitled to full pay and allowances from the date of suspension till the date of acquittal and reinstatement.

19. The undertaking dated May 26, 1998 given under duress and misappreciation of the law is not binding on the unwitting maker when he was confronted with the dilemma of securing his job on a bargain, whatever the cost. This Court cannot divorce itself from the stark reality of the predicament. After all, there were government instructions prevailing at the relevant time placed at Annex P-5 issued by the Chief Secretary, Punjab which afforded full pay and allowances to employees similarly-placed as the petitioner. Then again, under Rule 7.3 the period has been treated as on duty and the respondents did no favour to the petitioner in reinstating him to service in the natural order of things. In any case, the period cannot be treated as leave of the kind due because leave is nothing but permission to be absent. In law, he cannot be treated as having forfeited his legal rights to score an advantage which law gave to him. The petitioner was forced out of service from 1989 to 1998 and suffered deprivation of right to livelihood by the evil of loss of salary and remainder subsistence allowance. He cites law in Shashi Kumar v. Uttar Haryana Bijli Vitran Nigam & another, reported in 2005 (1) SCT 576 (DB) to assert such right which is a case of acquittal from charges framed under the provisions of the Prevention of Corruption Act, 1988 which can be of help to the petitioner and is hardly distinguishable. In any case, no forfeiture can take place without service of notice and hearing which valuable procedural safeguard was bypassed by the learned District & Sessions Judge, Sangrur by a summary dismissal even though antecedent rights had matured on acquittal by the criminal court in appeal. After all, the petitioner was honorably acquitted of the charge when blame was wrongly fastened on him by none other than the Judge he worked under.

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27. On these premises, it is my sincere belief that when the issue of reinstatement arose for consideration after acquittal, a reasonable and law faring Judicial Officer holding the high post of District & Sessions Judge, Sangrur should not have readily

accepted the undertaking without batting an eyelid as it was against public policy of India to misuse the law of estoppel and was an action taken a rather unfair thing to do to a subordinate official who could never be in a position to retaliate with the strong arm of reason and send it home to his success. If the judge terrifies a subordinate there can be no greater harm inflicted on a defenseless person. There ought not to be a whit of a difference between the judge acting on his judicial and administrative side where justice is involved when justice should not only be done but appear to be done. There is no place in this constitutional scheme for playing Dr. Jekyll and Mr. Hyde.

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32. Having regard to the the contentions as noticed in the preceding paragraphs I have no hesitation in holding that the action of acceptance of the relinquishment letter itself was improper and unfair thing to do only to deprive an employee of his just dues following acquittal and reinstatement. I have no doubt that the pecuniary and non-pecuniary benefits arising from reinstatement are very valuable rights in the changed circumstances following acquittal of blame in the criminal trial. The respondent in the present petition is the District & Sessions Judge, Sunam. He was the guardian of the legal rights of his staff and should have gracefully passed consequential orders without delay other than the period of limitation to prefer revision. After all, the appeal succeeded in home turf and within the jurisdiction where the crime was alleged to be committed. Better suited may have been a domestic enquiry but no one seems to have paid thought to it, while saving face.

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35. After considerable thought I am unable to persuade myself to decide in favour of the respondents even by a long shot. The respondents brought the charge against the petitioner and the conviction recorded by the Judicial Magistrate, Ist Class was set aside in appeal. It is not that guilt of the petitioner was not established, but his innocence was proven and I have no doubt in my mind that the impugned order dated August 03, 1998 is not

sustainable in the eyes of law and has deservedly to be set aside. The preliminary objection of the respondent to the effect that the petitioner has relinquished his rights to past consequential benefits by pressing procedural rule of estoppel is overruled as the law does not countenance a barter system in service law domain and exchange of past rights to money in lieu of reinstatement, in the facts and circumstances of this case.

36. It is held that salary to an employee is in the nature of a property right zealously guarded constitutionally by Article 300A of our Constitution, which right cannot be taken away save by authority of law. An admission made on a mistake of fact or law under pressure without abundant caution thereby causing acute monetary loss to one's own self is not covered by the expression "authority of law" or by the due process of the law. Neither does Rule 7.3 deprive the petitioner of money claimed by a decree issued from this Court, as I propose to do."

In the present case, petitioners had a right to seek compensation by way of interest on the delayed payments and the said right cannot be taken away by the respondents by getting a letter signed from petitioner No.1 at the time of the payment of retiral benefits that she will withdraw the writ petition. Therefore, the said objection is of no avail to the respondents and is consequently rejected.

In view of the above, the writ petition is allowed. The claim of the petitioner for the grant of interest is allowed and the petitioner will be held entitled for the interest @ 9% per annum from 01.11.2016 onwards till the payments were actually released to the petitioners by the respondents.

Let the calculation of the amount of interest be done within a period of two months from the date of receipt of a certified copy of this

order and the actual amount, so calculated, shall be released to the petitioners within one month thereafter.

Present writ petition stands disposed of in the above terms.

September 24, 2019
naresh.k

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes