IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-1546-2016 (O&M)
Date of decision: - 14.08.2019

Davinder Kaur

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- None for the petitioner.

Mr. Vikas Kumar, Clerk, ADC (D),
District Rural Development Agency, Gurdaspur.

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HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the prayer which is being made by the petitioner is for the release of the benefits in respect of the service rendered by her late husband, who unfortunately died on 08.05.2013. As the benefits were not being released, petitioner had filed the present writ petition in the year 2016 seeking the release of the benefits alongwith interest.

As per the additional affidavit filed by the Additional Deputy Commissioner (Development), District Rural Development Agency, Gurdaspur, dated 16.05.2018, the service benefits, for which the petitioner was entitled in respect of the service rendered by her late husband, had already been extended to her and a total sum of ₹9,08,704/-

has been released to the petitioner, though, the same was released after a period of five years. The relevant paragraph of the additional affidavit is as under:-

> "5. That the entitled amount of service benefits like Death-cum-gratuity, Ex-gratia and leave encashment has been re-calculated which comes to ₹9,08,704/- as as per the rules of the Government. Out of the said amount an amount of ₹4,00,000/- and ₹2,00,000/- totaling ₹6,00,000/- has already been paid to the petitioner and the balance amount ₹3,08,704/- has also been paid to the petitioner vide cheque No.522959 dated 31/3/2018 through this office letter No.2769 dated 31/3/2018. The receipt of letter duly signed by the petitioner is annexed at Annexure R-1. Detail of service benefits is as under: -
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> |---|---|---|
> | 1. | Amount of Gratuity | ₹4,71,744.00 |
> | 2. | Leave Encashment | ₹3,36,960.00 |
> | 3. | Ex-gratia | ₹1,00,000.00 |
> | | Total | ₹9,08,704.00 |
>
> In view of the above submission, it is submitted that the entire entitled amount of service benefits has been received by the petitioner."

A bare perusal of the above would show that husband of the petitioner died in May, 2013 whereas the benefits were released to the petitioner much after the said date. From the writ petition, it transpires that a sum of ₹6,00,000/- was paid to the petitioner, but no date has been mentioned as to when the amount has been released. The balance amount of ₹3,08,704/- has been released to the petitioner approximately after a period of five years of the death of her husband.

The reason, which has been stated by the respondents for not releasing the payment in time, is paucity of funds as the same were not released by the Government of India.

A Full Bench of this Court in **A.S. Randhawa Vs. State of Punjab and others, 1997(3)SCT 468**, has held that an employee should be paid the benefits within a period of two months from the date of retirement. In the present case, the husband of the petitioner died in May, 2013 and therefore, within a period of two months, all the benefits should have been released to the petitioner. The relevant paragraph of 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 front 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, in the case of **J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355,** a Co-ordinate Bench of this Court had held that an employee will be entitled for the interest on an amount which has been retained 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."

A bare perusal of the above would show that where the amount has been retained by the department and that too without any valid justification, the employee has been held entitled to the interest.

In the present writ petition, the reason given by the respondents for delayed payment i.e. the paucity of funds, is not a valid ground keeping in view the law laid down by this Court in **Ram Karan** Vs. **Managing Director, Pepsu Road Transport Corporation and another**, **2005(4) S.C.T. 438**, wherein, it has already been held that the weak financial position is no valid ground to withhold the payments in respect of the retiral benefits. The relevant paragraph of the said judgment is as under: -

> "8. On careful consideration of the rival submissions and the facts of the case, we do not find ourselves in agreement with the arguments advanced by the learned Counsel for the respondent-Corporation. In a welfare State it is the duty of the State to ensure the 'right to live' of every individual. The term 'life' as mentioned in Article 21 of the Constitution of India includes livelihood and so many facts thereof. It means that something more than mere existence and inhabitation against the proposition of life and rather it extends to all the facilities by which life is enjoyed. In case a pensioner is not even paid the genuine dues like the medical reimbursement, he is not

expected to enjoy the life nor will he feel secure. The Constitution of India contains a large number of rights which guarantee human rights. It recognises the right of every citizen to an adequate standard of life for himself and his family members, which also includes the improvement of living conditions besides providing adequate food, clothing and housing. A welfare State has to take all appropriate steps to ensure the realisation of these rights. The Apex Court in the case of **Chameli Singh v. State of U.P. 1996(2) SCC 549** has held as under:-

> "In any organised society right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designated to achieve this object. Right to live guaranteed in any civilised society implies to right to food, water, decent environment, education,medial care and shelter. These are basic human rights known to any civilised society.
> xx xx xx xx Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organised civic community one should have permanent shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being."

9. A right to carry on business is reciprocated with a duty and constitutional obligations under the Constitution. Financial stringency may not be a ground for not issuing requisite directions when a question of violation of fundamental rights arises. The Apex Court has also highlighted this aspect in a number of decisions, namely, Municipal Council, Ratlam, (1980)4 S.C.C. 163, **B.L Wadhera v. Union of India**, **All India Imam Organisation and Ors. v. Union of India and Ors.**, **Kapila Hingorani v. State of**

<u>Bihar</u>, 2003 (3) R.S.J. 42. As far as back as in the year 1993, the Apex Court in All India Organisation's case (supra) observed as under:-

> "6... Much was argued on behalf of the Union and the Wakf Boards that their financial position was not such that they can meet the obligations of paying the Imams as they arc being paid in the State of Punjab. It was also argued that the number of mosques is so large that it would entail heavy expenditure which the Boards of different States would not be able to bear. We do not find any correlation between the two. Financial difficulties of the institution cannot be above the fundamental right of a citizen. If the Boards have been entrusted with the responsibility of supervising and administering the Wakf then it is their duty to harness resources to pay those persons who perform the most important duty namely of leading community prayer in a mosque the very purpose for which it is created.
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> We are surprised at the insensitive attitude adopted by the respondent-Corporation in respect of its own employees/pensioners. An employer is not only to look forward to the economic growth but also to look after the welfare of its employees including health, social security and other human needs. It is the obligation of the State or its functionaries to work within the scope of their authority to combat and overcome the miseries of its employees. The Courts in such a situation are obliged to issue necessary directions to mitigate the extreme hardship of the employees involving violation of their human rights by the State or its functionaries like the respondent-Corporation, which are fully controlled by it."

A Division Bench while deciding the above-said case categorically held that the plea of weak financial position is no valid ground to withhold the pensionary benefits, therefore, the ground which has been taken by the respondents to withhold the pensionary benefits is contrary to the law laid down by the Division Bench and cannot be taken into consideration for denying the benefit of interest on the delayed payments.

Keeping in view the above-said judgment, the reason, which has been forwarded by the respondents for the delay in releasing the amount for which the petitioner was entitled for, cannot be considered as a valid ground. In the absence of any valid ground, the petitioner is entitled for interest @ 9% per annum.

In view of the above, the present writ petition is allowed. The respondents are directed to calculate the interest @ 9% per annum on the delayed payments, which have been made to the petitioner. The interest shall be calculated from the day when the petitioner became entitled for the release of the amount till the actual payment were released to her.

Let the calculation be done within a period of two months from the date of receipt of a certified copy of this order and the actual payment shall be released to the petitioner within a period of one month thereafter.

Present writ petition is allowed in above terms.

(HARSIMRAN SINGH SETHI)
August 14, 2019 **JUDGE**
naresh.k

Whether reasoned/speaking? Yes
Whether reportable? Yes