IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-15793 of 2016
Date of decision: 19.09.2019

Bal Chand and others .... Petitioners

versus

Punjab Water Resources Management and Development Corporation Limited and others .... Respondents

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vinod Kumar Kaushal, Advocate
for the petitioners.

Mr. H.S. Sitta, AAG, Punjab.

Mr. Rajinder Singh Bhatia, Advocate
for respondents No.1 to 3 and 5,6.

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HARSIMRAN SINGH SETHI, J. .

In the present writ petition, the grievance of the petitioners is that though, they retired from service on attaining the age of superannuation starting from year 2011 till 2014, but their retiral benefits were released by the respondents after undue delay, which is more than three years and, hence, the petitioners are entitled for the grant of interest on the said delayed payments keeping in view settled principle of law as settled by Full Bench of this Court in **A.S. Randhawa vs. State of Punjab 1997(3) S.C.T. 468.**

Petitioners retired while working as Tubewell Operator/Superintendent Grade-I/Mechanic staring from the year 2011 onwards till 30.09.2014. Their pensionary benefits were not released by the respondent-Corporation immediately and they were made to wait for more than three years for the release of their benefits. A chart showing the designation, date of retirement and payment of amount of gratuity and leave encashment is as under:-

Sr. No.	*Name of employee*	*Designation*	*Date of retirement*	*Amount of Gratuity*	*Date of Payment (Gratuity)*	*Leave encashment*	*Date of payment (leave encashment*
1	Bal Chand s/o Sh. Tarlochan Singh	T.O.	30.04.12	247893 18973	6.6.2012 10.8.15	204610 15660	07.4.14 10.8.15
2	Mohan Lal S/O Sh. Attar Chand	T.O.	31.07.12	432820 18365	25.6.13 20.11.13 20.1.15	277860 11790 7050	27.10.14 19.11.14 10.1.15
3	Didar Chand S/O Sh. Karam Chand	T.O.	31.03.12	484422 36669	6.6.2012 02.1.14	229638 92942	07.4.14 07.4.14
4	Kashmiri lal s/o Sh. Amar Chand	Suptd. Gr.I	30.09.14	951845 48155	15.5.15 9.6.2016	470820 42130	15.5.15 09.6.16
5	Subhash Chander s/o Sh. Shakti Singh	Mechanic	30.04.11	280758 20546	05.8.11 28.2.13	180240 13190	5.8.11 28.2.13

A bare perusal of the chart shows that petitioner No.1 retired on 30.04.2012 whereas, part of his gratuity was released in June 2012 and remaining in 2015. Leave encashment was paid to petitioner No.1 in April, 2014 and August, 2015. Similarly the case of the petitioner No.2, who retired on 31.07.2012 and his gratuity was paid in three installments staring from year 2013 to 2015 and his leave encashment was also paid in three installments i.e from October, 2014 to January 2015. Petitioner No.3. retired on 31.03.2012 and his gratuity was paid in two instllments i.e. in June, 2012 and January, 2014. Petitioner No.4 retired on 30.09.2014 and his gratuity and leave encashment was also released in two installments on 15.5.2015 and 09.06.2016 respectively. Petitioner No.5 retired on 30.04.2011 and his gratuity was released in two installments i.e. on 05.08.2011 and 28.02.2013 and leave encashment on 05.08.2011 and 28.02.2013.

Counsel for the petitioners states that there was no impediment in the release of the pensionary benefits of the petitioners as there were no proceedings pending against them, which would entitle the respondents to withhold their pensionary benefits but still respondents delayed the release of their retiral benefits without any valid justification.

Upon notice of motion, short reply was filed, in which it has been stated that all the benefits, for which the petitioners were entitled were not released to them within reasonable time as the financial position of the Corporation was not sound.

Counsel for the respondents states that the petitioners are not entitled for interest as the respondents had valid ground for not releasing their retiral benefits within reasonable time i.e. the weak financial position of the Corporation.

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

In the present case, the only justification given by the respondents for delay in release of pensionary benefits of the petitioners is the weak financial position of the Corporation, which is a bald statement without any supporting documents, which cannot be accepted without any supporting document.

Even otherwise, Division Bench of this Court in a **Ram Karan Vs. Managing Director, Pepsu Road Transport Corporation and**

another 2005(3) PLR 580 decided on 16.08.2005 has already held that financial difficulty is not a valid ground to withhold the pensionary benefits of an employee as the only source of livelihood for a retired employee is the benefit, which he/she receives after his/her retirement in order to live a dignified life. The ground so given by the respondent in the present case is not a valid ground keeping in view the settled principle of law as mentioned above. The relevant portion 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:-
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>> "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 4 of 7 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....."

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 Bihar, 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."

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."

As the reason, which has been given by the respondents for withholding the pensionary benefits i.e. weak financial position is not a valid justification, the case of the petitioners will be covered for the grant of interest keeping in view the decision of the Full Bench of this Court in **A.S. Randhawa Vs. State of Punjab, 1997 (3) SCT 468,** wherein, it has been held that where there is no valid justification to withhold the pensionary benefits, employee will be entitled for interest if the benefits are released after reasonable time. 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 Coordinate 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 after his/her retirement and has been withheld and used by the respondents, 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 petitioners is squarely covered by the above said judgments in their favour for the grant of interest and the petitioners are held entitled for interest @ 9% per annum from the date, the amount became due till the same is actually released to them

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 by the respondents, shall be released to the petitioner within a period of one month thereafter.

Writ petition is allowed in above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

19.09.2019
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1. Whether speaking/non-speaking? Yes/No
2. Whether reportable? Yes/No