IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.12866 of 2017
DATE OF DECISION:21.02.2019

Vinod Kumar Sikka 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. Mehardeep Singh, Additional Advocate General, Punjab.

Mr. Ankit Midha, Advocate
for the respondents.

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HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the challenge is to the order dated 23.02.2017 (Annexure P-8) by which the claim of the petitioners for the grant of interest on the delayed payments have been declined.

As per the facts stated in the present petition, the petitioners retired from service on 30.04.2011, 31.01.2011 and 31.08.2013 respectively. It has been alleged in the petition that the retiral benefits of the petitioners were not paid immediately after their retirement and were withheld by the respondents without any valid justification due to which, the petitioners are entitled for interest on the delayed release of the payments. As the request of the petitioners for the grant of interest was not being accepted, the petitioners served upon the respondents a legal notice seeking the interest on the delayed released payments. Ultimately, the petitioners filed CWP No.25790 of 2016 (O&M), which was disposed of by this Court on 14.12.2016 directing the respondents to decide the legal notice dated 15.09.2016 within a period of one month.

In pursuance to the said direction given by this Court, the respondents passed the order on 23.02.2017 declining the claim of the petitioners for the grant of interest on the ground that the delay was not intentional and the same was procedural and, therefore, no interest is payable. This order is under challenge in the present writ petition.

In reply, which has been filed on behalf of the respondents, the same stand has been taken that the release of the retiral benefits of the petitioners was delayed due to the necessary procedure undertaken and further there was paucity of funds and as and when funds were received, the benefits were released to the petitioners. The relevant portion of the reply is as under:

> "1. That there is no delay on the part of the Answering Respondents in providing the gratuity and leave encashment to the petitioners. The delay, if any, has occurred due to the correspondence to conduct the audit for the approval of retiral benefits of the petitioners.
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> 2. That the delay, if any, occurred in the release of payment by the Answering respondents was unintentional. Once the funds were made available, the Answering respondents disbursed the same on a priority basis and therefore no fault can be attached to the conduct

of the Answering respondents.

3. That the Answering respondents were always ready and willing to release the gratuity and the leave encashment to the petitioners and had also taken the necessary steps to execute the same. It is pertinent to mention that the petitioner No.1 retired on April 30, 2011 and even before his retirement, the answering respondents had already sent his case for approval on February 16, 2011, thereafter, his case was approved on July 18, 2011 and the funds were requested on the same day itself. The funds for payment of his retiral benefits were received on September 21, 2011 and the same were released on the next date i.e. September 22, 2011."

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

A chart showing the date of retirement and the date of release of the benefits to the petitioners is as under:-

Sr. No.	Name of the employee	Date of retirement	Amount of gratuity	Date of payment (Gratuity)	Leave encashment	Date of payment (Leave encashment)
1	Vinod Kumar Sikka s/o Shadi Lal	30.04.2011	846926	22.09.2011	444850	22.09.2011
2	Parshotam Singh s/o Jagir Singh	31.01.2011	514880	29.12.2011	206037	04.03.2013
3	Raja Singh s/o Teja Singh	31.08.2013	511297	21.01.2015	268560	21.01.2015

A bare perusal of the above chart would show that the payments were released after a period ranging from 05 months to 02 years. Nothing has been pointed out as to why the payments were delayed. The only justification given in the reply by the respondents is that the delay was due to the procedural process and paucity of funds. These two grounds are not valid grounds to retain the pensionary benefits of an employee. It has been held by the Division Bench of this Court that even paucity of funds is not a valid ground to withhold the pensionary benefits. The relevant para of the division Bench judgment of this Court titled as **Ram Karan Vs. Managing Director, Pepsu Road Transport Corporation and another,** 2005(3) PLR 580 is 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 urged 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."*

Counsel for the petitioners further states that the case of the petitioners is squarely covered as per the decision rendered by the Full Bench of this Court in **A.S. Randhawa Vs. State of Punjab 1997(3) SCT 468,** according to which, the petitioners are entitled for interest also as no valid justifiction has been given by the respondents about the delayed release of the retiral benefits to the petitioners. In the absence of any justifiction, the petitioners claim that they are entitled for interest on the delayed payments. The relevant para 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 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, this Court while deciding **J S Cheema Vs. State of Haryana and others, 2014(13) RCR (Civil) 355** also held that once the amount has been retained, the employee will become entitled for the grant of interest. The relevant para of the said order 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 view of the above, the petitioners are found entitled for interest on the delayed release of the payments @ 9% per annum.

Counsel for the respondents states that as per the order passed by this Court in CWP No.25214 of 2016, decided on 29.09.2017 which also relates to the same department, the interest has been allowed after the expiry of three months from the date of retirement till the date of actual payment of the amount.The relevant para of the said order is as under:

> "Taking into consideraton the facts and circumstances of the case in hand, this Court is of the considered view that grant of interest @ 9% per annum on the delayed payment of gratuity and leave encashment to the petitioner, after expiry of three months from the date of retirement till the payment, is legally and factually justified. Accordingly, this Court awards an interest @ 9% per annum on the delayed payment(s) of gratuity and leave encasement to the petitioner, which will be payable after expiry of three months from the date of his retirement to actual date of payment on each particular retiral benefits, shall be paid to the petitioner by the respondent No.1 after calculating the same within a period of two months from the date of receipt of a certified copy of this judgment. In case of non-compliance of this order, petitioners shall be at liberty to approach this Court."

In view of the above, the petitioners will be entitled for interest @ 9% per annum after the expiry of three months from the date of retirement till the actual disbursement of the same as depicted above. Let the interest be calculated within a period of two months from the date of receipt of a certified copy of this order and the actual payments of the calculated amount be released to them within a period of one month thereafter.

The writ petiton stands allowed in the above terms.

February 21, 2019
jt **(HARSIMRAN SINGH SETHI)**
JUDGE

Whether speaking/reasoned: Yes / No
Whether reportable : Yes / No