

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

**CWP No. 14144 of 2017
Date of Decision : 26.03.2019**

Joginder Singh

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. S.S. Kanwal, Advocate for the petitioner.

Mr. C.S. Bakhshi, Additional Advocate General, Haryana.

Mr. Anil Chawla, Advocate for respondent No. 2.

Harsimran Singh Sethi, J.(Oral)

In the present writ petition, the grievance which is being raised by the petitioner is that he has not been granted interest on the payment which has been released to him in pursuance to the order passed by this Court in CWP No. 3982 of 1987, decided on 28.04.2004.

The facts as narrated in the writ petition are that the petitioner was working as an Assistant Executive Engineer with the respondent-Corporation and while working as such, he was compulsarily retired from service w.e.f. 24.07.1987. The said order was challenged by the petitioner by filing CWP No. 3982 of 1987, which was allowed on 28.04.2004 and the order of compulsarily retirement was set-aside by this Court. The relevant portion of the said order is as under:-

“For the reasons stated above, this writ petition is allowed and the impugned order dated 15.04.1987 (Annexure P-1) is quashed. Since during the pendency of this writ petition, the petitioner has already attained the age of superannuation from service, he shall be entitled for all the consequential benefits including arrears of full pay and the retiral benefits including re-fixation thereof. Needful shall be done within a period of three months from the date of receipt of a certified copy of this order. No order as to costs.”

Against the said order, the respondent-Corporation preferred an appeal bearing LPA No. 187 of 2005. Initially there was an interim order granted by the Division Bench but ultimately, the said appeal was dismissed by this Court vide order dated 08.12.2010. The relevant portion of the order is as under:-

*“3. The proposition of law that the entries prior to promotion made in the Annual Confidential Reports of an employee loses its sting is well settled. In the case of **Badrinath v. Government of Tamil Nadu, (2000) 8 SCC 395**, Hon’ble the Supreme Court after considering a large number of judgments has extracted one principle that adverse remarks of an officer for the entire period of his service can be taken into consideration while passing an order of compulsory retirement. But the weight which must be attached to the adverse remarks depends upon certain sound principles of fairness. Accordingly, if the adverse remarks relate to a distant past then those remarks cannot be given weight after a long distance of time. If the adverse remarks relate to a period prior to an earlier promotion they must be treated to have lost their sting and as weak material, subject however to the rider that if they related to lack of integrity then such remarks can be considered to have not lost their strength fully. Therefore, we*

do not find any legal infirmity in the view taken by the learned Single Judge warranting interference by the Letters Patent Bench.

Accordingly, the appeal fails and the same is dismissed.”

After the decision of the said LPA, the benefits in pursuance to the order passed by this Court on 28.04.2004 were released to the petitioner. As per the averments made in para 6 of the writ petition, the petitioner was given a sum of ₹1,36,031/- vide Cheque dated 11.04.2011, a sum of ₹4,36,809/- vide Cheque dated 07.06.2011, an amount of ₹5,56,547/- vide Cheque dated 01.05.2011 and an amount of ₹43,320 vide Cheque dated 30.08.2012.

Learned counsel for the petitioner states that as the amount became due in April, 2004 after the order was passed by this Court and implementation of the same was to be done within a period of three months and as the order was complied with after a period of seven years, the petitioner is entitled for interest on the said payment.

Upon notice of motion, the respondents have appeared and filed the reply. In the reply, the stand taken by the respondents is that the order passed by this Court in CWP No. 3982 of 1987 dated 28.04.2004 was stayed by the Division Bench in LPA No. 187 of 2005, which was dismissed on 08.12.2010 and after dismissal of the LPA, the order was implemented and the required payments were done and, therefore, as the matter remained pending before this Court in LPA preferred by the respondents, grant of the interest for the said period cannot be granted to the petitioner as there was a justifiable reason with the respondents not to make payment during the pendency of the appeal.

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

A bare perusal of the order dated 28.04.2004 would show that the order was to be complied with within a period of three months from the receipt of copy of the order. The said order was challenged by the respondents by filing LPA No. 187 of 2005. Though the order dated 28.04.2004 was stayed on 29.03.2007 but by the said date, the time period granted by this Court for implementation of the order dated 28.04.2004 had already expired. Furthermore, once the LPA filed by the respondents was dismissed, respondents cannot take the benefit of the interim order initially granted to deny the benefit of the interest on the amount to the petitioner in execution of the order dated 28.04.2004 passed in CWP No. 3982 of 1987. It was only due to the action of the respondents that judgment dated 28.04.2004 was implemented after a delay of seven years. Once the petitioner was found entitled for the payments as directed by this Court within a period of three months from passing of the order i.e. 28.04.2004, the petitioner will be entitled for interest on the said amount as the amount was released after a period of seven years of the judgment.

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 once an amount has been retained by the respondent-department and used, for which the employee was entitled for, the employee will be entitled for interest. The relevant paragraph 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 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 for which the petitioner was entitled for in April, 2004 but the same was only released to the petitioner in the year 2011/2012, has been retained by the respondents and, therefore, denial of the interest to the petitioner by the respondents is not in accordance with law hence, the said action cannot be sustained.

In view of the above, the present writ petition is allowed. The petitioner is held entitled for interest on the payment which has been released to the petitioner in pursuance to the order passed by this Court in CWP No. 3982 of 1987 decided on 28.04.2004, starting from 01.08.2004 onwards till the said payment was released to the petitioner @ 9% per annum. Let the calculation of the amount of interest for which the petitioner is entitled for in pursuance to this order be calculated within a period of two months from the receipt of copy of this order. The amount so calculated shall be released to the petitioner within a period of one month thereafter.

The writ petition stands allowed in above terms.

March 26, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

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