

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

CWP-1256 of 2018

Date of decision: 02.09.2019

Deepak Kumar

.... Petitioner

versus

State of Haryana and others

.... Respondents

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rajesh Arora, Advocate
for the petitioner.

Mr. C.S. Bakhshi, Addl. A.G. Haryana.

HARSIMRAN SINGH SETHI, J.

The claim raised by the petitioner in the present writ petition is for the release of pensionary benefits in respect of the service rendered by the petitioner from the year 1981 till the date of his superannuation i.e. 31.5.2016. Though, during the pendency of the present writ petition, all the benefits, for which the petitioner was entitled for after his superannuation have been released to him and the only claim surviving is for interest on the delayed payments of pensionary benefits.

As per the facts mentioned in the present writ petition, the petitioner was appointed as Supervisor Field Worker on 18.06.1981 through Employment Exchange. While working as such, the service of petitioner was terminated on 17.01.1985, which action was challenged by

the petitioner before the Labour Court. The Labour Court set aside the termination order by passing an award dated 22.10.1998 in favour of the petitioner and by the said award petitioner was held entitled for continuation in service with full back wages. The said award was challenged by the respondents by filing CWP No.5731 of 1999, and while deciding the CWP-5731 of 1999, the award passed in favour of the petitioner for reinstatement was set aside by a co-ordinate Bench of this Court. However, petitioner was allowed lump sum compensation to the tune of Rs.35,000/-. Against the order passed by this Court, the petitioner preferred LPA No.547 of 2009. The order passed by the Single Judge in CWP No.5731 of 1999 was set aside and the award of the labour Court was revived. Against the order passed by the Division Bench of this Court in LPA No.547 of 2009, the respondent/State preferred SLP (CC) No.1823 of 2011 which was dismissed.

As the petitioner was held entitled for reinstatement with continuation in service by the Labour Court, the petitioner was reinstated on 22.2.2011 but on *ad hoc* basis with immediate effect. By the time, the petitioner was reinstated, services of certain persons, who were similarly situated as the petitioner, were already regularised and, therefore, to claim the benefit of regularisation, the petitioner filed Civil Suit No.52-VS dated 02.09.2011. The said civil suit was decreed on 08.09.2015 (Annexure P-1) and a direction was given to the respondents to regularise the service of the petitioner w.e.f 01.11.1986 and petitioner was also held entitled for grant of the benefit of 1st, 2nd and 3rd ACPs from due date along with interest @ 6%.

Against the said decree passed by the Civil Court in favour of the

petitioner directing the regularisation of his service, an appeal was preferred by the respondents before the learned Additional Judge, Gurgaon. The first appeal was dismissed on 25.07.2016 (Annexure P-2). During the pendency of the said appeal, the petitioner attained the age of superannuation on 31.5.2016. As the appeal filed by the respondents, challenging the decree by which a direction was given to the State to regularise the service of the petitioner w.e.f. 1.11.1986, was pending, no pensionary benefits of the petitioner for the service rendered by him were extended. As the benefits were not being released to the petitioner, he filed the present writ petition claiming the release of the retiral benefits along with interest.

Upon notice of motion, respondents have filed reply and in the reply they have stated that it was only when decree dated 8.9.2015 was passed, the petitioner became entitled for regularisation of service w.e.f. 1.11.1986 and as the said decree was under challenge and in the meantime, petitioner attained the age of superannuation on 31.5.2016 and the appeal filed by the respondents was rejected by the first Appellate Court thereafter on 25.7.2016 and after the dismissal of the said appeal, the pensionary benefits of the petitioner were calculated and were released. The details of the amount released by the respondents to the petitioner as given in the reply are reproduced as under:

<i>Sr. No.</i>	<i>On account of</i>	<i>Amount</i>	<i>Account No and date of payment</i>	<i>Paid by</i>
1	Commutation	Rs.11,73,280/-	SBI A/c No.65002226831 02.02.2018	Treasury Officer Gurugram
2	Gratuity	Rs.9,63,600/-	SBI A/c No.65002226831 02.02.2018	Treasury Officer Gurugram
3	ACPs arrears	Rs.10,61,918/-	16.08.2017	DMO Gurugram

<i>Sr. No.</i>	<i>On account of</i>	<i>Amount</i>	<i>Account No and date of payment</i>	<i>Paid by</i>
4	Leave encashment	Rs.5,84,000/-	24.08.2017	DMO Gurugram
5	Interest on delayed payment of ACPs	Rs.4,74,205/-	16.05.2018	DGHC Haryana
6	Regular Pension	Rs.19,430/-	02/02/18	Treasury Officer Gurugram
7	Regular Pension	Rs.31,110/-	02/02/18	Treasury Officer Gurugram
8	Regular Pension arrears	Rs.55,1512/-	02/02/18	Treasury Officer Gurugram

Counsel for the petitioner accepts that the payments as per details mentioned in the reply have been released to the petitioner and the only prayer of the petitioner which survives in the present writ petition is with regard to the interest on the delayed payments.

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

It is not disputed by the respondents that the petitioner has attained the age of superannuation on 31.05.2016 and order dated 08.09.2015 was passed in favour of the petitioner by the learned Civil Judge, (Junior Division) Gurgaon directing the respondents to regularise the services of the petitioner w.e.f. 01.11.1986 and also to grant him benefits of 1st, 2nd and 3rd ACPs . The respondents had filed appeal against the said decree and the same was dismissed by the competent Court on 25.07.2016. After 25.7.2016, there was no hurdle in the release of the pensionary benefits of the petitioner in respect of the service rendered by the petitioner with the respondents. There is no averment in the reply that any interim order was passed in favour of the respondents during the appeal, staying the

operation of the decree dated 08.09.2015 In the absence of any interim order in favour of the respondents, the respondents were under an obligation to give effect to the decree dated 08.09.2015, thereby, regularising the service of the petitioner w.e.f. 1.11.1986 and consequently grant him pensionary benefits on attaining the age of superannuation on 31.5.2016. It is the respondents, who did not comply with the decree of the competent Court of law and the benefits were released to the petitioner by the respondents starting from the year 2017 i.e. approximately two years after the retirement of the petitioner. No reason has been given by the respondents showing any impediment in the release of the pensionary benefits of the petitioner. Rather respondents were waiting for the decision of the appeal which they had filed against the decree dated 08.09.2015, wherein direction was given by the competent Court of law to regularise the service of the petitioner w.e.f. 1.11.1986. Once the respondents were awaiting the decision of the appeal and there was no impediment in the release of the pensionary benefits of the petitioner, the delay in releasing the pensionary benefits of the petitioner cannot be held to be justifiable.

A Full Bench of this Court in **A.S. Randhawa vs. State of Punjab 1997(3) S.C.T. 468** has held that an employee will be entitled for release of his pensionary benefits within a reasonable time after his retirement and the time fixed by the Full Bench is two months. Relevant paragraph of the 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.”

The case of the petitioner is fully covered for the grant of interest keeping in view the directions given by the Full Bench of this Court in A.S. Randhawa's case (supra). Not only this, a Co-ordinate Bench of this Court in *J.S. Cheema Vs. State of Haryana 2014 (13) RCR (Civil) 355* held that where an amount is retained and used by the respondents/employer, an employee will be entitled for interest on the same. Relevant paragraph of the 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.”

Keeping in view the settled principle of law as stated above, the petitioner is held entitled for grant of interest on the delayed payment of pensionary benefits @ 9% per annum from the date the amount became due i.e. 31.05.2016 till the payments were released to the petitioner.

Counsel for the respondents states that petitioner has already been granted interest on the delayed payment of ACP and he will only be entitled for the interest on the remaining payments.

Let a computation of the interest, for which the petitioner is entitled under this order be carried out within a period of three months from the date of receipt of copy of this order and the payment so calculated be released to the petitioner within a period of two months thereafter.

The petition stands allowed in the above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

02.09.2019
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| 1. | Whether speaking/non-speaking? | Yes/No |
| 2. | Whether reportable? | Yes/No |