IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

(217-3) **CWP-17995-2016**
Date of Decision: March 14, 2019

Gurmail Singh **.. Petitioner**

Versus

State of Punjab and others **.. Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Amrik Singh, Advocate, for the petitioner.

Mr. Mehardeep Singh, Addl. A.G., Punjab.

Mr. H.K. Brinda, Advocate, for respondent No.3.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the challenge is to the order dated 04.12.2015 (Annexure P-7) vide which the case of the petitioner for the release of the pension and pensionary benefits has been declined on the ground that the petitioner never submitted an option form to opt for the pension scheme within the time frame and therefore, after the publication of the Rules, the option so submitted in the year 2001 cannot be accepted and the petitioner cannot be granted the pension and the pensionary benefits.

As per the facts mentioned in the writ petition, petitioner was working as a Panchayat Secretary with the respondents. State of Punjab framed Punjab Panchayat Smitis and Zila Parishad Employees Pension and Provident Fund Rules, 1999 and according to the said Rules, an employee was to give his option within a period of four months of the publication of the Rules. The petitioner states that he opted for the said Rules within the time fame.

The petitioner retired from service on 31.08.2013 as Panchayat Officer.

As the pension was not being released to the petitioner, the petitioner filed CWP No.13266 of 2014, which was disposed of by this Court on 11.07.2014 directing the respondents to decide the representation dated 09.04.2014 filed by the petitioner vide which the petitioner was seeking the grant of pension.

In pursuance to the direction given by this Court, respondents have passed an order on 04.12.2015 vide which it was stated that all the benefits for which the petitioner was entitled for including gratuity, earned leave, contributory provident fund and the salary, has already been released to the petitioner and the petitioner is not entitled for pension as the petitioner has not submitted his option within the time frame as envisaged under 2006 Rules. The said order is under challenge in the present writ petition.

Upon notice of motion, a short affidavit has been filed on behalf of respondents No. 1 and 2. In the said affidavit, the respondents have admitted that the petitioner had submitted his option in the year 1999 when the draft Rules were under consideration and respondent No.3 had forwarded the said option of the petitioner to the department vide letter No.1695 dated 15.09.1999. After finding the said fact, the respondents reconsidered the matter and granted the petitioner the pensionary benefits from the date he retired. The petitioner has been paid the arrears of pension as well amounting to Rs.14,54,517/- on 04.01.2019. The affidavit filed by the respondents No. 1 and 2 is as under:-

" *That the petitioner filed present writ petition in this Hon'ble High Court requesting to quash the order dated 04.12.2015 (Annexure P/7) vide which the case of the petitioner for releasing the pension has been declined on the ground that the option form submitted by the petitioner is not genuine and option form submitted on dated 10.01.2000. As same would have been submitted within 4 months of the said rule on 28.07.2000 and to direct the respondents to release the pension of the petitioner.*

2. It is submitted that the pension claim of the petitioner was rejected by passing a speaking order dated 04.12.2015 on the ground that the option form submitted by the petitioner with the pension case was not genuine. The petitioner submitted his application on dated 17.12.2017 and stated that the option form submitted by him in 1999 has been sent by respondent No. 3 Executive Officer Panchayat Samiti Nurpur Bedi vide his letter No.1695 dated 15.09.1999 to the office of the deponent. The same application of the petitioner was sent to the respondent No.3 for verification of the said letter. Executive Officer Panchayat Samiti Nurpur Bedi respondent No.3 informed to this office that the option form of the employees of Panchayat Samiti Nurpur Bedi including the petitioner was sent vide letter No. 1695 dated 15.09.1999.

3. It is further submitted that after considering the letter No.1695 dated 15.09.1999 it is found that the petitioner submitted his option form during the draft rules framed by the department. It is also submitted that after considering the option form submitted by the petitioner in 1999 is genuine and the petitioner has been granted pension from 01.09.2013 @ 10,415 + allowances granted by the Punjab Government.

4. It is submitted that the pension arrear has been calculated from 01.09.2013 to 30.11.2018. That arrear of pension Rs.14,54,57 has been credited in the bank account of the petitioner bearing account No.7764000100013757 vide this office letter No.1418 dated 04.01.2019.

It is therefore, respectfully prayed that the present writ petition may kindly be dismissed in the interest of justice."

Learned counsel for the petitioner states that though the petitioner retired on 31.08.2013, payment of the pension alongwith arrrears have only been released to the petitioner now in January, 2019 and therefore, the petitioner is entitled for the interest on the said payment as the claim of the petitioner for the grant of pension was illegally declined and thereafter, the respondents realized their mistake and corrected the same and granted the benefit and in this process, the petitioner could not utilize an amount of over Rs.15 lacs for a period of approximately five and half years.

Learned counsel for the petitioner states that due to the said delay in releasing of the pension, the petitioner is entitled for the interest on the same.

Counsel for the respondents is in no position to defend the non-grant of interest as the respondents themselves in the reply have admitted their mistake of non-granting of pension to the petitioner at the relevant time.

As per the settled principle of law settled by the full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab, 1997(3) S.C.T. 468,*** the employee is entitled for the interest on the delayed release of the pensionary benefits. 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. Padmanbhan 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.*"

Further, a Coordinate Bench of this Court while deciding ***J.S. Cheema Vs. State of Haryana and others, 2014 (1) S.C.T. 782***, has held that where an amount for which an employee was entitled for, is retained by the department and used, the employee will be entitled for the interest on the same. 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."*

The case of the petitioner is squarely covered by the above said settled principle of law and hence the petitioner is entitled for @ 9% per annum on the delayed release of the pension only. The interest shall be calculated from the date when the petitioner retired till the release of the said pension alongwith arrears. Let the respondents calculate the interest for which the petitioner is entitled for, within a period of two months from the receipt of copy of this order and release the said amount, for which the petitioner is entitled for an interest, within a period of one month thereafter.

The writ petition is allowed in above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

March 14, 2019
harsha

Whether speaking/reasoned: Yes
Whether reportable: Yes