IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

(221) **CWP-18824-2016**
Date of Decision: August 29, 2019

M.D. Sharma **.. Petitioner**

Versus

State of Haryana and another **.. Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Suresh Kumar Kaushik, Advocate, for the petitioner.

Mr. Charanjit Singh Bakhshi, Addl. A.G., Haryana.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the claim of the petitioner is that though the petitioner retired on 30.09.2009 but the pensionary benefits of the petitioner were withheld keeping in view an enquiry proceedings, which were pending against the petitioner at the time of his retirement.

Learned counsel for the petitioner argues that though the charge-sheet issued to the petitioner was dropped by the respondents and withheld pensionary benefits were released but the interest on the delayed payment was denied to the petitioner. The claim of the petitioner in the present writ petition is for the grant of interest on the delayed release of the pensionary benefits.

The facts as mentioned in the writ petition are that the petitioner was appointed as Medical Officer on 05.05.1976 and he retired from the said post on 30.09.2009. A charge-sheet was served upon the petitioner on 16.04.2008 and the petitioner filed the reply immediately to the said charge-sheet but no enquiry officer was appointed prior to the date of retirement of the petitioner, which was on 30.09.2009. After the retirement of the petitioner, a regular enquiry was initiated and the enquiry was conducted by the Civil Surgeon and Civil Surgeon. Vide enquiry report dated 05.11.2012, enquiry officer exonerated the petitioner of the allegations which were alleged in the charge-sheet. Keeping in view the exoneration of the petitioner from the allegations in the enquiry report, the competent authority passed an order on 17.03.2015 dropping the said charge-sheet. The relevant portion of the said order is as under:-

> *Memo No. 17/15/2008-2HB I Dated Chandigarh 17 March, 2015.*
>
> *That the Government vide his memo No.17/15/2008-2HB I, dated 17.04.2008 has charge-sheeted Dr. M.D. Sharma under Rule 7 of Haryana Punishment & Appeal Rules, for the following charge, same are reproduced as under:-*
>
> *"That one complaint, made by Jagdish S/o Sh. Ram Avtar, R/o Pataudi, District Gurgaon has been sent by Civil Surgeon, Gurgaon to Sh. M.D. Sharma, District Family Welfare Officer, Gurgaon for the investigation, but the same was not enquired seriously and complaint was taken lightly by you and same was recommended to file without disclosing any fact & evidence on the file and nor you have impounded the port table, ultrasound machine, which was running in the clinic without any licence. In this way you have not obeyed order of your seniors."*
>
> *The officer has submitted that the abovesaid charges are baseless and he be exonerated from the abovesaid charges. That the reply of the officer was not found satisfactory and accordingly Dr. Satbir Chaudhary, Director, Health Services, Haryana has made enquiry officer vide letter dated 22.01.2010. The enquiry officer in his report dated 05.11.2012 has concluded with the observation that under the PNDT Act, the Civil Surgeon is the competent officer and they delegated their power by making the team or to any other programme officer and take action, and both the Civil Surgeon namely Dr. Saharan and Dr. Dalal have been exonerated in the enquiry and further they have also been promoted, and now I found it*

proper to file the enquiry against Dr. M.D. Sharma who was the District Family Welfare Officer at that time. Dr. M.D. Sharma has been retired on 30.09.2009. The competent officer after going through the facts and the documents and the records of the case and keeping in mind the retirement of the officer namely Dr. M.D. Sharma, District Family Welfare Officer (Retired) has ordered to file the abovesaid disciplinary enquiry pending against him under Rule 7.

Ordered accordingly.

Sd/- (Ram Niwas)
Addl. Chief Secretary, Haryana Govt.
Health Department."

After the exoneration, petitioner requested the respondents for the release of the benefits and the said benefits were released to the petitioner in September, 2015. After the release of the benefits, petitioner served upon the respondents a legal notice on 17.02.2016 for the grant of interest on the delayed payments for the period from 01.10.2009 till 31.08.2015. As no action was being taken by the respondents, petitioner has approached this Court claiming the interest on the delayed release of the pensionary benefits.

Upon notice of motion, the respondents have filed the reply and in the reply, the respondents have stated that as the charge-sheet dated 16.04.2008 was pending against the petitioner on the date when the petitioner retired on 30.09.2009, the pensionary benefits could not be released and after the charge-sheet was dropped, the benefits were released and therefore, no grievance can be raised by the petitioner. Further, reliance is being placed by the respondents on the instructions dated 20.02.2002 to contend that where the charges have been dropped on account of lack of evidence, or that the employee has already retired, no interest will be payable. The relevant paragraph of the reply is as under:-

"2. That in this regard, it is respectfully submitted that the Government of Haryana, Finance Department vide instructions No.1/2(152)-01-2FII dated 20.02.2002 has issued instructions for payment of interest on delayed retiral benefits. The para 5 of the instructions speaks thus:-

"5. However, these instructions would not be applicable in cases where the payment of retiral benefits is withhold on account of disciplinary proceedings pending against the said employee at the time of his retirement. A further issue would also arise regarding payment of interest on the retiral benefits in case of such employees who are facing disciplinary proceedings at the time of their retirement/superannuation from Government service. These cases should be decided in the following manner:

(i) In the case of an employee against whom disciplinary proceedings are pending at the time of retirement and the employee is clearly exonerated and steered clear of all the charges during the process of disciplinary proceedings and proved innocent, the retiral benefits due to him should be paid alongwith interest from the date of retirement till the date of payment.

(ii) In case of an employee against whom disciplinary proceedings are pneding at the time of retirement, and the said employee is held guilty, partially or fully, of the charges levelled against him, no interest would be payable on the retiral benefits in his case till a period of three months from the date of final decision on the disciplinary proceedings. If the delay in these cases is beyond a period of 3 months of the date of decision on disciplinary proceedings and the employee concerned has completed the formalities on his part, interest on such dues may also be allowed from the date of decision of disciplinary proceedings till the date of payment.

(iii) In case of an employee against whom disciplinary proceedings are dropped on account of lack of evidence (i.e. he is not proved innocent) or disciplinary proceedings are

dropped only on the grounds that the employee has retired, no interest would be payable on the retiral benefits in his case till a period of three months from the date of final decision on the disciplinary proceedings. If the delay in these cases is beyond a period of 3 months of the date of decision on disciplinary proceedings and the employee concerned has completed the formalities on his part, interest on such dues from the date of decision of disciplinary proceedings till the date of payment may also be allowed."

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

A bare perusal of the order by which the charge-sheet was dropped, which has been reproduced in the preceding paragraph, the said charges were dropped due to the fact the enquiry officer exonerated the petitioner in the enquiry. Once, no evidence was found against the petitioner to connect him with the allegations and the petitioner was found innocent by the enquiry officer and petitioner was exonerated of all the allegations and the report of the enquiry officer was accepted by the competent authority, petitioner cannot be made to suffer only for the reason that the allegations, which allegations were not proved against the petitioner, due to which the release his pensionary benefits were delayed for more than six years, petitioner should suffer further prejudice on account of their fake allegations. The case of the petitioner will be covered under clause (i) of clause 5 of the instructions dated 20.02.2002, which has been reproduced above, as the petitioner has been exonerated of the charge and the charges have not been dropped due to the fact that the petitioner has retired from service. Therefore, the objection which is being taken by the respondents in their reply to deny the interest, is not only contrary to the instructions dated 20.02.2002 but also on wrong interpretation of the instructions dated 20.02.2002. In the case of the petitioner, clause 1 of the instructions dated 20.02.2002 is applicable and under clause 1 of the said instructions, the respondents themselves has stated that the interest will be payable.

A Coordinate Bench of this Court in ***J.S. Cheema Vs. State of Haryana and others, 2014 (1) S.C.T. 782***, has held that in case an amount for which the employee is entitled for, has been retained and used by the department, 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.*"

In the present case, the benefits of the petitioner were retained and that too on the basis of the allegations which were found to be incorrect and therefore, the case of the petitioner will be fully covered for the grant of interest on the delayed release of the payments.

Keeping in view the above, claim of the petitioner for the grant of interest on delayed payment is not only covered by the instructions dated 20.02.2002 but also settled principle of law, hence the writ petition is allowed. Petitioner is held entitled for the grant of interest @ 9% per annum on the delayed release of the pensionary benefits. Let the calculation of the interest be done by the respondents in terms of this order within a period of two months from the receipt of certified copy of this order and the interest so calculated will be released to the petitioner within a period of one month thereafter.

(HARSIMRAN SINGH SETHI)
JUDGE

August 29, 2019
harsha

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