IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.13699 of 2018
DATE OF DECISION:01.03.2019

Anil Kumar Jain

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Akshay Bansal, Advocate for the petitioner.

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

Mr. Deepak Balyan, Advocate for respondents No.2 and 3.

****

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the grievance of the petitioner is that the petitioner was entitled for the release of the Employees Provident Fund on his retirement on 30.11.2013 but the said amount was only paid to him on 07.09.2017 and, therefore, the petitioner is entitled for interest on the release of the said payments. Hence, the petitioner is claiming interest on the said delayed payments as per the settled principles of law.

As per the averments made in the writ petition, the petitioner joined as Sub Divisional Engineer with the HUDA on 29.06.2007. For serving the department from 29.06.2007 till 30.11.2013, the petitioner was entitled for the payment of Employees Provident Fund. After retirement, the petitioner started demanding the said benefit, which was not released to the petitioner. Ultimately, the same was released to the petitioner on 07.09.2017 i.e. approximately after three years and nine months of retirement. An amount of ₹5,92,733/- was released to the petitioner. Counsel for the petitioner states that as there is an unexplained and unjustified delay in releasing the said benefits to the petitioner which were to be paid immediately upon his retirement, the petitioner is entitled for interest on the said delayed payments.

Upon notice of motion, reply has been filed by the respondents. In the reply, it has been stated that the petitioner was required to sign certain documents, which the petitioner failed to do. In para 5, it has been admitted by the respondents that the EPF account of the petitioner was not opened by the Hartron, which authority was to open the account of the employees, who were working with the respondents. This mistake was realized after the petitioner retired and account of EPF was only opened in May, 2017 and after opening the account, the payment of EPF amounting to ₹5,92,733/- was released on 07.09.2017. It has been stated that there is no delay in releasing the payments after obtaining the amount from the EPF authorities.

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

It is not a matter of dispute that once the petitioner started working with the respondents, it was the duty of the respondents to open the EPF account immediately as required under the Act. The negligence is on the part of the respondents for not opening the required account and depositing the amount in the said account. The relevant averments made in the written statement are as under:-

> "5. That further, it is respectfully submitted that EPF Account of the employees of HSVP is maintained by the HARTRON. The account of petitioner was not created with the HARTRON as per instructions and said account was created by the Executive Engineer, Division No.II, HSVP, Panchkula in May, 2017.
>
> 6. That after completion of formalities the amount of EPF Rs.5,92,733/- was released on 7.9.2017. There is no delay on the part of respondents in making payment and the same occurred due to the reason explained in the preceding paras. The legal notice received from the petitioner on 17.04.2018 was duly replied vide letter dated 16.07.2018. A copy of the reply of the legal notice dated 16.07.2018 is annexed as Annexure R-9."

Once the negligence is on the part of the respondents themselves and it is admitted that the EPF account of the petitioner was opened only after his retirement, no blame of the delay in releasing of the amount by the respondents can be put upon the petitioner. The argument which has been raised that there were documents, which were required to be signed by the petitioner, which the petitioner failed to sign is of no avail for the reason that even if the petitioner, would have signed those documents immediately, no amount could have been released to him as there was no account which was opened by the respondents where the EPF fund was deposited by the respondents from where the payment could have been made. Therefore, the said ground is non-existence and is raised only to deny the claim or withhold the amount as well as interest for which the petitioner was entitled for. This Court has already held in the case of **J S Cheema Vs. State of Haryana and others, 2014(13) RCR (Civil) 355** 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, delay in releasing the amount is totally attributable upon the respondents as they failed to open the EPF account of the petitioner within time and rather opened the same after three years of the retirement and, hence, the petitioner is entitled for interest on the delayed payment @ 9% per annum from the date the said amount became due till the actual disbursement of the same. The petitioner will be entitled for interest starting from 01.12.2013 till 07.09.2017. 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 payment of the calculated amount be released to him within a period of one month thereafter.

The writ petiton stands allowed in the above terms.

March 01 2019
jt **(HARSIMRAN SINGH SETHI)**
JUDGE

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