IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-19742-2016
Date of decision: - 28.03.2019

Gurdial Singh

...Petitioner

Versus

HUDA (now HSVP) and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. N.K. Nagar, Advocate, for the petitioner.

Mr. Ankur Jain, Advocate
for Mr. Charanjit Singh Bakhshi, Addl. A.G., Haryana
for the respondents.

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HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the grievance which is being raised by the petitioner is that the work charge service which he rendered from 04.10.1978 till 31.12.1986 as well as the period for which he remained out of service from the year 1983 to 1997 has not been taken into consideration as a qualifying service for the grant of the pensionary benefits.

As per the facts mentioned in the writ petition, petitioner was initially appointed as a Tractor Driver on work charge basis, vide order/letter dated 04.10.1978 (Annexure P-1). While working as such, the respondents terminated the services of the petitioner, vide order dated 10.05.1983 and the said order of the termination was challenged by the petitioner by filing a CWP No.4337-1986. The impugned order of termination of services was set aside by this Court and the petitioner was reinstated in service with continuity of service. The said order was passed on 13.01.1997. In pursuance of the said order, the petitioner was taken back in service and ultimately, the services of the petitioner were regularized by the respondents, vide order dated 12.08.1998 w.e.f. 01.01. 1997. While working as a driver, the petitioner superannuated on 30.04.2014.

While computing the pensionary benefits, the respondents did not take into consideration the work charge service, which the petitioner had rendered from 1978 till 31.12.1986 and also the service, for which he remained out after his services were terminated on 1983 till 1997.

Counsel for the petitioner contends that act of not counting the abovesaid service as a qualifying service is contrary to the facts and law. Counsel further contends that as per law laid down by this Court in **Kesar Chand Vs. State of Punjab and others', AIR 1988 Punjab 265,** work charge service prior to the regularization is to be taken as a qualifying service for the grant of pensionary benefits. Further, with regard to the period when the petitioner remained out of service after his services were terminated by the respondents in the year 1983, once the petitioner was reinstated in service with continuity of service, the said service has to be taken into account for the grant of pensionary benefits.

Upon notice of motion, a short reply has been filed by the respondents. Alongwith the said reply, the respondents have attached the order dated 28.02.2019 and 18.03.2019 by which, while granting the benefit of aforesaid period of service to the petitioner, the pensionary benefits have been recalculated. The relevant paragraph of the short reply is as under:-

> "1. That the petitioner has been granted the relief sought in this petition and the period of work charge service of the petitioner from 10.10.1978 to 31.03.1983 and termination period from 01.04.1983 to 24.04.1997 has been counted for the payment of the retiral benefit vide order no.52927 dated 18.03.2019. A copy of the same is attached as Annexure R-1.
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> 2. Further, the retiral benefit has been sanctioned to the petitioner as per notification issued from the Govt. of Haryana from time to time. A copy of the order passed in this regard is attached as Annexure R-2."

Counsel for the petitioner states that though the order has been passed but the same has not been executed by the respondents themselves. Counsel for the petitioner argue that petitioner was entitled for this benefit at the time when he retired in the year 2014 and as the benefits have been extended to the petitioner after a period of approximately five years and that too after he had approached this Court and therefore, he is entitled for the interest on the difference of pensionary benefits as calculated by the respondents, vide orders (Annexures R-1 and R-2), which have been attached alongwith the reply.

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

Once, the respondents have admitted that petitioner was entitled for counting of his work charge service, which he had rendered from 1978 till 1986 as well as counting of the period from when he remained out of service, due to the termination of his services i.e. 1983 to 1997, the same has to relate back to the date when the petitioner retired. There is no reason, as to why, the work charge service was not to be counted when the petitioner retired while computing the pensionary benefits of the petitioner. Furthermore, once the petitioner was reinstated in service with continuity of service, it was incumbent upon the respondents to take into consideration the said period also as a qualifying service while computing the pensionary benefits. The said action has been executed by the respondents now after a period of five years of retirement by passing of orders (Annexures R-1 and R-2) in February/March, 2019. No justifiable reason has been given by the respondents, as to why, this action was not undertaken at the time when the petitioner retired in April, 2014. In the absence of any valid justification, it can be well presumed that delay in release of pensionary benefits to the petitioner is due to inaction on the part of the respondents. Once, there is an inaction on the part of the respondents, the said inaction cannot cause prejudice to the claim of the petitioner for the grant of interest. The petitioner was not given his dues at the time of his retirement and the amount, for which he was entitled for, was retained by the respondents themselves.

As per the settled principle of law settled by the Full Bench of this Court in **A.S. Randhawa** Vs. **State of Punjab and others**, **1997 (3) SCT 468,** where an amount has been retained by the respondents without any valid justification and there is a unjustifiable delay in releasing the same, the employee will be entitled for interest. The relevant paragraph of 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 front 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."

Not only this, in the case of **J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355,** a Co-ordinate Bench of this Court had held that an employee will be entitled for the interest on an amount which has been retained by the respondents without any valid justification. The relevant paragraph of **J.S. Cheema's case (supra)** 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."

A bare perusal of the above would show that where the amount has been retained by the department that too without any valid justification, the employee has been held entitled to the interest.

The case of the petitioner is squarely covered by the above-said judgments and therefore, the petitioner is held entitled for the interest @ 9% per annum from the date when the amount became due till the disbursement of the same.

Let the orders (Annexures R-1 and R-2) be implemented within a period of two months from the date of receipt of certified copy of this order alongwith interest as given by this order. Further, the computation of interest shall be done alongwith the amount for which the petitioner has already been found to be entitled for in view of the orders (Annexures R-1 and R-2). The interest shall be paid to the petitioner, as computed by the respondents, within a period of one month thereafter.

Present writ petition stands allowed in the above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

March 26, 2019
naresh.k

Whether reasoned/speaking? Yes
Whether reportable? Yes