

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-23090-2015 (O&M)

Date of decision: - 31.01.2019

Gurmukh Pawar

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. R.K. Arora, Advocate, for the petitioner.

Mr. Mehardeep Singh, Additional Advocate General, Punjab.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the prayer made by the petitioner is for the release of leave encashment, balance amount of DCRG, General Insurance Scheme and commutation of pension etc. along with interest @ 18% per annum.

Counsel for the petitioner states that during the pendency of the writ petition, the pensionary benefits have already been released to the petitioner, but without interest.

Counsel for the petitioner further states that petitioner retired on 30.06.2012 and his leave encashment, amounting to ₹4,41,000/-, was released on 04.06.2015 i.e. approximately after a period of three years. Further, the gratuity amounting to ₹7,27,733/- was released on 22.11.2013, after a period of approximately 1½ years. Further, the benefits under Group Insurance Scheme, amounting to ₹37,570/- was released to the petitioner on 08.12.2015 i.e. after approximately 3½

years.

Counsel for the petitioner states that as there is a delay in releasing the above benefits to the petitioner, he is entitled for interest on these delayed payments as well.

The respondents have admitted with regard to the dates on which the above-mentioned benefits were released to the petitioner, however, it is stated that the same was due to the negligence of Bill Clerk for which the Bill Clerk was issued show-cause notice. Further, it is mentioned that there was an FIR registered against the petitioner, therefore, all the benefits could not have been released to the petitioner immediately.

I have heard the counsel for the parties and gone through the record.

The respondents in their reply have not given any valid justification for withholding the pensionary benefits of the petitioner. The only justification given is that the same was due to the negligence of the Bill Clerk, to whom the show-cause notice was served.

For the negligence of the Bill Clerk, the petitioner cannot be prejudiced by delaying the payments. The delay is not for one or two months, but the same ranging between 1½ years to 3½ years after the date of retirement of the petitioner. The justification of issuing show cause notice to the Bill Clerk will not suffice the action of withholding the amount and escaping the liability to pay interest.

As per the settled principle of law settled by a Co-ordinate Bench of this Court in **J.S. Cheema Vs. State of Haryana, 2014(13)**

RCR (Civil) 355, if the respondents have retained the amount with themselves for which the petitioner was entitled, he/she is entitled for the interest as well. The relevant portion 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 second argument taken by the respondents for delayed release is the pendency of an FIR.

Counsel for the petitioner states that FIR is still pending but the respondents have released the amount during the pendency of the FIR.

If during the pendency of the FIR, the amount was to be withheld by the respondents, then how come the respondents released the said amount now i.e. when the said FIR is still pending. Therefore, the ground that an FIR is pending against the petitioner is not a valid ground to withhold the pensionary benefits especially when he retired, not even the charges were framed against him in the said FIR and it can only be termed as allegation against him.

In view of the above, the present petition for the grant of interest on the above-mentioned payments of leave encashment, gratuity and GIS released to the petitioner on 04.06.2015, 22.11.2013 and 08.12.2015, respectively, shall carry interest @ 9% per annum from the

date it became due till the same were released.

Now, counsel for the petitioner states that the petitioner is also praying for the grant of ACP and regular pension.

It cannot be denied that an FIR registered against the petitioner before his retirement is still pending and during the pendency of the same, the said benefits cannot be released. It is only after the decision of the said criminal case, the entitlement of the petitioner for the grant of ACP will be cleared. Therefore, at this stage, no direction can be given with regard to release of ACP to the petitioner.

In view of the above, no further order is required to be passed in this petition, except the payment of the interest.

Consequently, the present writ petition is allowed. The respondents are directed to calculate the interest @ 9% per annum on the delayed payments, which have been made to the petitioner. The interest shall be calculated from the day when the petitioner became entitled for the release of the amount till the actual payment.

Let the calculation be done within a period of three months from the date of receipt of a certified copy of this order and the actual payment shall be released to the petitioner one month thereafter.

In view of the above, the present writ petition stands disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

January 31, 2019
naresh.k

Whether reasoned/speaking?
Whether reportable?

Yes
Yes