IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-23521 of 2015
Date of decision: 17.09.2019

Harbhajan Ram .... 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. H.S. Sitta, AAG, Punjab.

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HARSIMRAN SINGH SETHI, J. .

In the present writ petition, the grievance which is being raised by the petitioner is that though the petitioner retired from service on 31.12.2014 but only some of his retiral benefits were released by the respondents that too after a delay ranging from three months to one year and remaining retiral benefits are not released till date therefore, a direction be issued to the respondents to release all the pensionary benefits of the petitioner, for which he became entitled after attaining the age of superannuation on 31.12.2014.

The facts as stated in the present writ petition are that the petitioner joined as S.S. Master in the department of Education, Government of Punjab on 09.12.1981 and was promoted as Head Master on 12.10.1989 and, thereafter, promoted as Principal on 21.12.1996. While working as a Principal, the petitioner was given current duty charge of District Education Officer (Primary), Ludhiana on 11.09.2009 and, thereafter, District Education Officer (SE), Ropar on 15.07.2011. The petitioner was again reverted back on his substantive rank of Principal on 16.04.2012 after withdrawing current duty

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charge and ultimately he retired on attaining the age of superannuation on 31.12.2014. Counsel for the petitioner very fairly states that before the retirement of the petitioner, a charge sheet was served upon the petitioner on 03.03.2014, which remained pending against him till the time of his retirement. After the retirement following payments were released to the petitioner:-

Sr. No	*Head*	*Amount*	*Date of payment*
1	G.P.F.	31,77,899/-	12/03/15
2	Interest on G.P.F.	46,080/-	18/12//15
3	G.I.S.	52,776,/-	12/03/15
4	Leave encashment	6,98,400/-	25/06/15

Counsel for the petitioner states that the full pension of the petitioner was not released keeping in view the pendency of the charge sheet dated 03.03.2014 and the gratuity of the petitioner was also withheld. Claim of the petitioner in this writ petition is for issuing writ of mandamus directing the respondents to release his pensionary benefits.

In pursuance to the notice of motion, respondents have filed reply in which they have admitted the details of the payments made to the petitioner reproduced hereinabove. Further, respondents have stated that as the charge sheet dated 03.03.2014 is still pending against the petitioner, gratuity of the petitioner has been withheld and he was being paid provisional pension till the conclusion of the said enquiry. By the time of filing of the reply, additional affidavit, the said enquiry was stated to be pending. Respondents stated that till the finalisation of the enquiry proceedings, all the benefits cannot be released to the petitioner. Counsel for the petitioner states that charge sheet dated 3.3.2014 was taken to its logical end and the petitioner was imposed punishment of cut in pension to the tune of 5% for a period of 03 years vide order dated 27.02.2018. Counsel for the petitioner further states that against the

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said order, the petitioner filed appeal before the Appellate Authority and the Appellate Authority vide order dated 27.08.2018, has accepted the said appeal and punishment imposed upon the petitioner has been set aside. Therefore, no punishment has been imposed upon the petitioner in pursuance to the charge sheet dated 03.03.2014. Counsel for the petitioner states that after the said proceedings came to an end, arrears of pension were paid to the petitioner on 10.02.2019 and the gratuity, which was withheld, was released to the petitioner on 03.05.2019. Further, computation of pension was also released on the same day i.e. 03.05.2019. The claim of the petitioner which subsists is, only qua the interest on the delayed release of payment.

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

It is a matter of fact that once a charge sheet was pending against the petitioner on the date of his retirement, the respondents were well within their right to withhold certain benefits such as gratuity and leave encashment, but the respondents were liable to release other benefits, for which the petitioner is entitled within a reasonable time. In the present writ petition, during the pendency of the proceedings, which were initiated against the petitioner vide charge sheet dated 3.3.2014, GPF, interest on GPF, GIS and leave encashment were released. Though, GIS and GPF were released within reasonable time but interest on GPF was released on 18.12.2015 and leave encashment was released on 25.06.2015 i.e. not within a reasonable time. Once the charge sheet has been taken to the logical end and keeping in view of the order passed by the Appellate Authority on 27.08.2018, as no punishment has been imposed upon the petitioner, and the pendency of the said charge sheet cannot cause prejudice to the petitioner, especially, when the allegations lodged in the charge

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sheet are found to be incorrect. Therefore, the petitioner needs to be compensated for the delay in releasing the pensionary benefits, which were withheld by the respondents due to the pendency of the charge sheet dated 03.03.2014.

A Full Bench of this Court in ***A.S. Randhawa vs. State of Punjab 1997(3) S.C.T. 468*** has held that an employee will be entitled for release of his pensionary benefits within a reasonable time after his retirement and the reasonable time as per the Full Bench is two months. In the present writ petition, the petitioner is squarely covered by this judgement. The pendency of the charge sheet cannot be treated as valid ground for delaying the pensionary benefits as the allegations in the charge sheet ultimately could not be proved and punishment so imposed by the punishing authority was set aside by the Appellate Authority. Therefore, delay in releasing the benefits to the petitioner, such as, arrears of pension, gratuity after delay of approximately four and a half years cannot be treated as reasonable time and the same has caused prejudice to the petitioner and cause of the prejudice is issuance of a charge sheet by the respondents on the allegations which could not be substantiated by them. Petitioner needs to be compensated by awarding interest on the delayed payments. Relevant paragraph of the judgment in A.S. Randhawa (supra) 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

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> 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, a Co-ordinate Bench of this Court in ***J.S. Cheema Vs. State of Haryana 2014 (13) RCR (Civil) 355*** held that where an amount is retained and used by the respondents/employer, an employee will be entitled for interest on the same. Relevant paragraph of the 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."

Keeping in view the above, the present writ petition is allowed to the extent that the petitioner will be entitled for interest on the delayed release of benefits, such as, leave encashment, arrears of pension, gratuity and computation of pension @ 9% per annum from the date the amount became due till the same were released to the petitioner. Let computation of the interest, for which the petitioner is entitled as per this order be carried out within a period of two months from the date of receipt of copy of this order and the payment so calculated be released to the petitioner within a period of one month thereafter.

The petition stands allowed in the above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

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1. Whether speaking/non-speaking? Yes/No
2. Whether reportable? Yes/No

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