IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 23030 of 2016
Date of Decision : 27.05.2019

Mohan Lal Sood

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Onkar Rai, Advocate and
Mr. Vijay Kumar Chaudhary, Advocate for the petitioner.

Mr. Mehardeep Singh, Additional Advocate General, Punjab.
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<u>Harsimran Singh Sethi, J.(Oral)</u>

In the present writ petition, the claim of the petitioner is for the grant of interest on the retiral benefits, which were withheld by the respondents without any justifiable reason.

As per the facts mentioned in the writ petition, petitioner joined as Sub Divisional Officer with the respondent-department in the year 1986 and thereafter, he was promoted as Executive Engineer w.e.f. 27.05.2005. Petitioner kept on working as such when he was promoted as Superintending Engineer on 24.02.2010. Though the petitioner was to superannuate on 30.06.2012, he applied for premature retirement and was allowed premature retirement w.e.f. 19.10.2011.

After the retirement of the petitioner, he was served with a charge-sheet on 08.11.2011. The said charge-sheet was enquired into and ultimately, the allegations in the said charge-sheet could not be proved and the competent authority vide order dated 29.12.2015 (Annexure P-4) dropped the said charge-sheet. After dropping of the charge-sheet, the retiral benefits of the petitioner were released. The gratuity amounting to ₹10 lacs was released on 06.09.2016 and the leave encashment was released to the petitioner on 15.05.2013.

Learned counsel for the petitioner argues that once charge-sheet served upon the petitioner after his retirement was dropped, petitioner is entitled for interest on the delayed payments keeping in view the settled principle of law.

Upon notice of motion, respondents have filed the reply. In the reply, respondents have mentioned that petitioner was allowed voluntary retirement subject to the outcome of the charge-sheet. In the reply, it has been mentioned that petitioner was allowed premature retirement w.e.f. 08.11.2011 and charge-sheet was served upon him on 31.10.2011, which was prior to the retirement of the petitioner. It has been admitted by the respondents that after conducting in the enquiry, the charge-sheet was dropped on 29.12.2015 after which, the benefits for which the petitioner was entitled, were released. The relevant para of the reply is as under:-

> *"2. That the brief facts of the case are that the petitioner, who was working as Superintending Engineer in the Department of Public Works (B and R Branch) and was due to retire on superannuation w.e.f. 30.06.2012, gave a notice dated 30.09.2011 for seeking voluntary retirement under rule 3(2) of the Punjab Civil Services (Premature Retirement) Rules, 1975 which was accepted by respondent No. 1 vide order dated 8.11.2011 (Annexure P-1) with the stipulation that his voluntary retirement shall be subject to the outcome of charge sheet dated 31.10.2011 pending against him under rule 8 of the*

Punjab Civil Services (Punishment and Appeal) Rules, 1970. Accordingly, the petitioner was allowed provisional pension equal to 100% pension calculated on the basis of qualifying service rendered by him but payment of leave encashment and DCRG was withheld due to departmental proceedings pending against him. An Enquiry was conducted to look into the charges levelled against the petitioner in the aforesaid charge sheet dated 31.10.2011 and on the basis of the Enquiry Report the charge-sheet was dropped by the punishing authority vide order dated 29.12.2015 (Annexure P-4). During the pendency of disciplinary proceedings, leave encashment due to the petitioner was paid keeping in view the orders of this Hon'ble Court in CWP No. 7156 of 2013. However, DCRG admissible to the petitioner was paid on conclusion of the departmental proceedings, when the charges levelled against him were dropped by the punishing authority."

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 before the petitioner retired on 08.11.2011, a charge-sheet had served upon him on 31.10.2011. Respondents were well within their jurisdiction to withhold the pensionary benefits keeping in view the pendency of the said charge-sheet but the said charge-sheet was also dropped by the respondents on 29.12.2015, after which the benefits were released to the petitioner. Once the respondents were not able to prove the allegations alleged against the petitioner at the time when he was about to retire, the same cannot cause prejudice to the petitioner. The amount of gratuity and leave encashment for which the petitioner was entitled in November, 2011, were paid to him in May, 2013 (leave encashment) and on 06.09.2016 (gratuity). Benefits which the petitioner would have used for living dignified life, were withheld by the respondents on the account of allegations, which the respondents failed to substantiate and, therefore, pendency of the charge-sheet, which ultimately, stood dropped cannot cause prejudice to the petitioner in claim of the interest on the said delayed payments.

A Coordinate Bench of this Court in ***J.S. Cheema Vs. State of Haryana and others, 2014(13) RCR (Civil) 355*** has held that where an employee is entitled for an amount, which has been withheld by the respondents and used, employe will be entitled for interest on the same. The relevant paragraph of the judgment reads 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 case of the petitioner is squarely covered by the said judgment as the amount of leave encashment as well as gratuity for which the petitioner was entitled for in November, 2011 was withheld by the respondents and were released in 2013/2016 and withholding of these benefits in the facts and circumstances cannot be termed as justified and, therefore, petitioner is held entitled for the interest on the same.

In view of the above, present writ petition is allowed. Petitioner shall be entitled for interest on the amount of gratuity and leave encashment, which were released to him on 15.05.2013 and 16.09.2016 respectively, @ 9% per annum from the date it became due till the release of the same. Let calculation of interest be done by the respondents within a period of two months from the date of receipt of certified copy of this order and the interest so calculated, shall be released to the petitioner within a period of one month thereafter.

May 27, 2019 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No