

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CM-3136-CWP-2019 in/and
CWP-23098-2016
Date of decision: - 08.03.2019**

Raj Singh

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

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

Ms. Deepali Puri Sandhu, Additional Advocate General, Pb.

HARSIMRAN SINGH SETHI, J. (ORAL)

CM-3136-CWP-2019

Present application has been filed on behalf of applicant-petitioner to place on record copy of judgment dated 13.02.2019 as Annexure P-13.

Copy of the application has already been supplied to opposite counsel.

In view of the averments made in the application, the same is allowed. Copy of judgment dated 13.02.2019, is taken on record Annexure P-13, subject to all just exceptions.

CM stands allowed.

CWP-23098-2016

In the present writ petition, the grievance which is being raised by the petitioner is that sanction of the regular pension was denied to him by the respondents vide order dated 16.02.2016 (Annexure P-6) on account of the fact that a private complaint, filed by one Sh. Kanwaljit Singh, under Sections 409, 418, 420, 466, 467, 468, 469, 471, 474 and 120-B read with Section 511 of the IPC was pending against him, due to which, all the benefits including the regular pension could not be granted to him.

As per the averments made in the writ petition, petitioner joined the Department of Education as a Punjabi Teacher on 28.05.1980. Thereafter, he was selected as Lecturer by way of direct recruitment on 11.09.1991. On 17.02.2010, he was promoted as Principal, from which post he retired on 31.01.2016. Before the retirement of the petitioner, one Sh. Kanwaljit Singh filed a private criminal complaint against the petitioner.

After the retirement, due to the pendency of the said criminal complaint, regular pension of the petitioner was withheld. Initially, 90% anticipatory pension was released to the petitioner in April, 2016 and 90% of the DCRG was released on 02.09.2016. The other benefits such as leave encashment and the Group Insurance Scheme was released in full in May, 2016 to the petitioner.

Vide impugned order dated 16.02.2016 (Annexure P-6), passed by the Indian Audit & Accounts Department, Office of the Accountant General, Punjab, refused to grant regular pension to the

petitioner due to the pendency of the said criminal complaint against him.

Petitioner filed the present writ petition challenging the said order passed by the Accountant General, Punjab dated 16.02.2016 (P-6) and prays that he be granted the regular pension as well as he should be given full DCRG as the same cannot be withheld due to the pendency of the criminal complaint.

Upon notice of motion, reply was filed by the respondents wherein their action of releasing provisional pension and DCRG to the tune of 90% was defended on the ground that the criminal complaint was pending against the petitioner. It was mentioned that remaining amount has already been paid within the time framed and therefore, prays that the writ petition is liable to be dismissed.

Counsel for the petitioner states that though the objection was taken by the respondents not to release 100% pension and DCRG, but during the pendency of the writ petition, on 18.02.2017, full pension and DCRG was released to the petitioner though on provisional basis.

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

From the facts, which have narrated above, it is clear that petitioner's pensionary benefits already stand released though he is only getting provisional pension as of now.

Counsel for the petitioner submits that vide order dated 13.02.2019 (Annexure P-13), the criminal complaint has already been dismissed and the allegations alleged in the said complaint against the petitioner have been found to be frivolous.

In view of the said development, now there is no impediment in sanctioning the regular pension to the petitioner.

Counsel for the petitioner states that due to the pendency of the said criminal complaint, the benefits, for which the petitioner was entitled for, were not released within reasonable time and now, as the criminal complaint has been dismissed, petitioner becomes entitled for interest on the delayed released of the payment.

Counsel for the petitioner states that 90% of the pension was released to the petitioner on 07.04.2016; leave encashment amounting to ₹3,14,230/- was released on 23.05.2016; 90% of the DCRG, amounting to ₹9,00,000/-, was released on 11.09.2016 and the GIS, amounting to ₹50,343/- was released on 04.05.2016. Further, 100% pension was released to the petitioner in February, 2017 and therefore, as the benefits were released after a period of three months, petitioner becomes entitled for interest on the said delayed payments in view of the settled principle of law settled A Full Bench of this Court in **A.S. Randhawa Vs. State of Punjab and others, 1997(3) SCT 468.**

Counsel for the respondents on the other hand defends the action that the payments, for which the petitioner were entitled for, were released within a period of six months and therefore, no interest is payable. The amount of 10% of pension and DCRG, which were withheld due to the pendency of the criminal complaint, was also released to the petitioner in February, 2017 though the complaint was still pending.

I am of the view that if 100% amount could be released to the petitioner during the pendency of the complaint by the respondents

themselves, then the same should have been released within a period of three months. The defence taken by the respondents that the amount was withheld due to the pendency of the complaint is not a valid ground for the reason that the full amount of retiral benefits was released by the respondents even before the complaint was dismissed by the Competent Court of Law on 13.02.2019. Under these circumstances, there was no valid justification with the respondents to withhold the amount for which the petitioner was entitled for on the day when he retired. As the amount was retained by the respondents for which the petitioner was entitled for, petitioner becomes entitled for interest keeping in view the judgment in the case of **J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355**, wherein 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 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.”

A bare perusal of the above reproduced judgment would show that where the amount has been retained by the department, the

employee has been held entitled to the interest.

In view of the above, the petitioner is held entitled for the grant of interest @ 9% per annum on the payments which were released to him after an undue and unexplained delay. The interest will start after three months of date of retirement of the petitioner and the same shall be paid to the petitioner till the payments were released to him.

Let the calculation of interest be done within a period of three months from the date of receipt of certified copy of this order and the actual amount shall be paid to the petitioner within a period of one month thereafter. Further, as there is no impediment in giving the regular pension to the petitioner, the appropriate orders in this regard be also passed by the respondents while considering the case for the grant of interest.

Present writ petition stands disposed of in the above terms.

March 08, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes