

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

CWP-23767-2016

Date of decision: - 25.11.2019

Darshan Kumar

....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: - Mr. N.S. Kamboj, Advocate,
for the petitioner.

Mr. Charanjit Singh Bakhshi, Addl. A.G., Haryana.

Mr. Harsh Aggarwal, Advocate,
for respondent No.3.

HARSIMRAN SINGH SETHI, J. (ORAL)

The grievance which is being raised in the present writ petition is that retiral benefits of the petitioner were released after an unexplained and undue delay and that too without any valid justification, therefore, he is entitled for interest on the delayed release of his pensionary benefits.

As per the averments made in the writ petition, petitioner was recruited with respondent No.3 as an Account Assistant on 24.10.1980 and thereafter, he was promoted as Accountant Grade 'A' on 16.05.2008.

After the promotion, petitioner absented himself from duty and remained absent till 23.03.2010. In the meanwhile, on 29.01.2010, petitioner submitted an application for voluntary retirement, which request was accepted on 21.03.2010 and petitioner was allowed to retire voluntarily from the said date. The said retirement was subject to the proceedings, which were pending against the petitioner as a charge-sheet was served upon him by the respondents on 05.12.2008. The said charge-sheet was taken to its logical end by the respondents and an order for dropping the said charge-sheet was passed on 17.08.2011 (Annexure P-2) and the period from 14.07.2008 till 20.03.2010 was ordered to be treated as a leave of the kind due. After the passing of the said order, the pensionary benefits of the petitioner were not released and he started filing representations for the release of the pensionary benefits, for which he became entitled after the grant of voluntary retirement. Ultimately, pensionary benefits of the petitioner were released by the respondents on 31.08.2016 and payments of ₹3,50,000/- and ₹2,60,000/- were extended to the petitioner towards gratuity and leave encashment respectively. The prayer of the petitioner is that as these amounts of pensionary benefits were released after an undue and unexplained delay after he was granted the voluntary retirement in March, 2010, he is entitled for the benefit of interest as compensation.

Upon notice of motion, the respondents have filed the reply.

In the reply, the following statement has been made in paragraph 2 of the short reply: -

“2. That the present writ petition is liable to be dismissed

as the petitioner has concealed the material facts from this Hon'ble Court. The true facts of the case are that the petitioner has joined as Account Assistant on 24.10.1980. He was promoted as Accountant 'A' vide order dated 16.5.2008. However, he absented himself from duty on 14.7.2008 and remained absent till 23.03.2010. The District Manager, Kaithal informed the Head Office regarding his absence vide letter dated 5.08.2008. The petitioner was also telephonically asked to join the duties but he failed to join. Resultantly, he was charge-sheeted on 5.12.2008 for negligence in performing duty/absence from duty but he chose not to file any reply to the said charge-sheet. The Enquiry Officer was appointed vide order dated 15.1.2009. In the meantime, the petitioner applied for voluntary retirement w.e.f. 30.4.2009 but the petitioner was asked to submit the application in compliance with Rule 16(b) or 16(d) of the Staff Selection Rules vide letter dated 21.5.2009. Accordingly, the petitioner applied for voluntary retirement in the prescribed performa on 29.1.2010. He was permitted to retire w.e.f. 21.3.2010 vide order dated 23.3.2010 subject to outcome of the pending disciplinary proceedings against him regarding his absence. The Enquiry Officer submitted the enquiry report dated 31.3.2010 finding the petitioner guilty of the charges. Comments of the petitioner on the enquiry findings were called vide letter dated 21.4.2010 to which he submitted his reply dated 27.9.2010. The petitioner was given personal hearing on 8.8.2011 vide letter dated 18.7.2011. Taking a lenient view, the Managing Director filed the charge-sheet and ordered to treat the absence period from 14.7.2008 to 23.3.2010 as the leave of the kind due. Thereafter, the file was taken up by the department on various levels for working out the service record of the petitioner. During this period, the file was misplaced and the same could be traced out only after the representation of the petitioner in July, 2015. On careful examination of the file and order dated 17.8.2001 (P-2), it was found that there was some ambiguity in the order. Therefore, the petitioner was again given personal hearing on 17.6.2016 and a fresh order dated 28.6.2016 (P-13) was passed. Immediately thereafter, the petitioner was paid the gratuity of Rs.3,50,000/- and

amount of leave encashment of Rs.2,60,000/-. After accepting the said amount without any protest, the petitioner served the legal notice dated 30.9.2016 (P-16) claiming interest. Thereafter, the present writ petition was filed.”

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

It is not disputed that when the petitioner was granted the benefit of voluntary retirement on 21.03.2010, a charge-sheet dated 05.12.2008 was pending against him and even the benefit of voluntary retirement was subject to the outcome of the said charge-sheet and therefore, the respondents were well within their rights to withhold the benefit of leave encashment and gratuity after petitioner retired from service. Once, the said charge-sheet came to end by passing an order dated 08.08.2011 and the same was dropped, no further impediment has been brought to the notice of this Court, which would have entitled the respondents to withhold the pensionary benefits of the petitioner even thereafter. In the absence of any impediment, the respondents were under obligation to release the pensionary benefits of the petitioner forthwith i.e. within a reasonable time of dropping the disciplinary proceedings. The only reason given by the respondents is that the file of the petitioner went missing and it was only on recreation of the file, the pensionary benefits of the petitioner were calculated in the year 2016 and were released thereafter. The said act of missing of file cannot be attributed to the petitioner and hence, no prejudice can be caused to his right to receive pension within a reasonable time after his retirement especially when

there was no impediment in the release of the pensionary benefits.

The question of law in respect of grant of interest on the delayed payment of retiral benefits has already been settled by the Full Bench of this Court in **A.S. Randhawa Vs. State of Punjab and others**, 1997(3) SCT 468, wherein, it has been held that the amount for which an employee becomes entitled on account of retiral benefits is to be released within a reasonable time and reasonable time fixed by the Full Bench of in **A.S. Randhawa's case (supra)** is two months from the date of retirement and in case, retiral benefits have been retained by the respondents without any justifiable reason, the employee will be entitled for interest. The relevant paragraph of the 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 retiree 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 from 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.”

Even a Co-ordinate Bench of this Court in **J.S. Cheema Vs. State of Haryana**, 2014(13) RCR (Civil) 355, has held that an employee will be entitled for the interest on an amount, which has been retained and

used 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.”

In the present case, the amount, which was due to the petitioner after his retirement, has been retained and used by the department, therefore, petitioner will be entitled for interest on this score also. Therefore, the case of the petitioner is squarely covered by the above-said judgments for the grant of interest as no impediment has been brought to the notice of this Court after the passing of the order dated 18.08.2011 that the charge-sheet pending against the petitioner at the time of his retirement was dropped.

In view of the above, the writ petition is allowed. The claim of the petitioner for the grant of interest is allowed and the petitioner is held entitled for the interest @ 9% per annum from 01.10.2011 onwards till the payment was actually released to the petitioner by the respondents.

Let the calculation of the amount of interest be done by the respondents within a period of two months from the date of receipt of a certified copy of this order and the actual amount, so calculated, shall be

released to the petitioner within one month thereafter.

Present writ petition stands disposed of in the above terms.

November 25, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes