

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

(214)

CWP-24943-2015

Date of Decision: October 30, 2019

Ram Kumar Kaushik

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Dr. Surya Parkash, Advocate, with
Mr. Virat Rana, Advocate, for the petitioner.

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

Mr. Padamkant Dwivedi, Advocate,
for respondents No. 2 and 3.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the prayer of the petitioner is for quashing the show cause notice dated 05.08.2015 (Annexure P-9) as well as the ultimate order dated 12.08.2015 (Annexure P-10) passed on the said show cause notice by which, the step up of pay granted to the petitioner equivalent to that of Sh. Brij Lal, was withdrawn. The further prayer of the petitioner is to release the pensionary benefits of the petitioner, which were withheld by the respondents after he superannuated on 30.11.2014, alongwith interest.

At the outset, learned counsel for the petitioner states that he does not wish to press the claim in respect of the order dated 05.08.2015 (Annexure P-9) and the consequent order dated 12.08.2015 (Annexure P-10) and restricts claim of the petitioner with regard to the release of the pensionary benefits alongwith interest.

As per the facts mentioned in the writ petition, petitioner was appointed as a Clerk on 15.01.1983. One Sh. Brij Lal and Sh. Harikesh were

appointed on the said post after the petitioner on 20.01.1983 and 20.10.1984 respectively. Sh. Brij Lal and Sh. Harikesh belonged to the reserved category and though, they were junior to the petitioner, but on the basis of reservation, they were promoted as Mandi Supervisor on 12.02.1996 and 04.04.1998 respectively. Petitioner was promoted as a Mandi Supervisor on 04.01.2006/08.01.2006. Upon promotion, petitioner prayed for step up of his pay equivalent to his junior reserved category employee, which benefit was extended to the petitioner and the pay of the petitioner was stepped up equivalent to that of Sh. Brij Lal, who was immediate junior to the petitioner.

Petitioner attained the age of superannuation and retired on 30.11.2014. After the retirement, petitioner claimed release of his pensionary benefits, which were not released by the respondents and a show cause notice (Annexure P-7) was issued to the petitioner on 19.05.2015 as to why the benefit of step up of pay, granted to the petitioner, by which the pay of the petitioner was stepped up equivalent to Sh. Brij Lal, be not withdrawn for the reason that prior to the date of promotion of the petitioner as Mandi Supervisor on 04.01.2006/08.01.2006, Sh. Brij Lal had already been further promoted as Assistant Secretary in the year 2004. In pursuance to the said show cause notice, order dated 05.08.2015 (Annexure P-9) was passed withdrawing the benefit of step up of pay from the petitioner equivalent to that of Sh. Brij Lal. Thereafter, the pay of the petitioner was refixed on 12.08.2015.

After the refixation of the pay, petitioner filed a review before the respondents-Board claiming the benefit of step up of pay equivalent to Sh. Harikesh who belonged to reserved category and was also junior to the

petitioner but had been promoted in preference to the petitioner as a Mandi Supervisor on 04.04.1998. The said prayer of the petitioner was accepted by the respondents and his pay was accordingly fixed by granting him step up equivalent to that of the pay of Sh. Harikesh by passing the order dated 21.04.2016.

After re-fixing the pay, the pensionary benefits of the petitioner was released by the respondents on 30.04.2016. Though, as stated earlier, in the writ petition, there is a challenge to the order dated 05.08.2015 (Annexure P-9) and consequent re-fixation of salary dated 12.08.2015 (Annexure P-10) but at the time of hearing, learned counsel for the petitioner does not press the same and only restricts his claim for the grant of interest on the delayed release of the pensionary benefits.

Upon notice of motion, the respondents have filed the reply and in the reply, it is stated that withdrawal of the benefit of step up of pay equivalent to Sh. Brij Lal was perfectly valid and further stated that request of the petitioner for step up of pay equivalent to Sh. Harikesh has also been accepted vide order dated 21.04.2016 (Annexure R-2) and further all the pensionary benefits after re-fixation of his salary by step up of pay equivalent to Sh. Harikesh has already been released to the petitioner on 30.04.2016. No justification has been given in the reply as to why, the pensionary benefits of the petitioner were delayed for a period of approximately one and half years.

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

It is not disputed by learned counsel for the parties that on the date when the petitioner attained the age of superannuation on 30.11.2014,

there were no proceedings pending against the petitioner and petitioner was entitled for the release of his pensionary benefits within reasonable time which has been fixed as two months by the Full Bench of this Court while deciding **A.S. Randhawa Vs. State of Punjab, 1997(3) S.C.T. 468.**

A show cause notice for re-fixation of the salary after the retirement was served to the petitioner in May, 2015 and his salary was re-fixed in August, 2015. The respondents could not have withheld the release of the pensionary benefits for a period of six months after which period, show cause notice was issued in May, 2015. No valid justification has come forward for withholding the retiral benefits. It has been admitted by the respondents that the retiral benefits were only released on 30.04.2016.

Learned counsel for the petitioner does not dispute the statement of learned counsel for the respondents that all the benefits for which the petitioner is entitled, have already been released during the pendency of the writ petition but claims interest on these delayed payments.

The Full Bench of this Court in **A.S. Randhawa Vs. State of Punjab, 1997(3) S.C.T. 468,** has held that an employee is entitled for the release of the pensionary benefits within the reasonable time and the reasonable time fixed is two months and in case, there is a delay beyond the reasonable time in the release of the pensionary benefits, employee has been held entitled for interest as a matter of compensation. 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. Padmanbhan 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.”

Not only this, a Coordinate Bench of this Court while deciding **J.S. Cheema Vs. State of Haryana and others, 2014 (1) S.C.T. 782**, has held that in case an amount for which the employee is entitled for, has been retained and used by the department, the employee will be entitled for the interest on the same. 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.”

In the present case, the delay is much beyond the reasonable time fixed by this Court in **A.S. Randhawa's case (supra)**. Further no valid justification has been given for withholding the retiral benefits even if, the pay of the petitioner was re-fixed after withdrawing certain benefits.

The case of the petitioner is squarely covered for the grant of interest on the delayed release of the pensionary benefits keeping in view the settled principles of law noted above. Petitioner is held entitled for interest @ 9% per annum from 01.02.2015 onwards till the actual amount was released to the petitioner in April, 2016. Let the interest under this order be calculated by the respondents within a period of two months from the receipt of certified copy of this order and the amount of interest so calculated will be released to the petitioner within a period of one month thereafter.

The present writ petition is allowed in above terms.

October 30, 2019
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No