IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

(224) **CWP-24729-2016**
Date of Decision: April 02, 2019

Subhash Chand Bansal **.. Petitioner**

Versus

State of Punjab and others **.. Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Amrik Singh, Advocate, with
Mr. Gagandeep Singh Walia, Advocate, for the petitioner.

Mr. Mehardeep Singh, Addl. A.G., Punjab.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the grievance which is being raised by the petitioner is that though the petitioner retired from service on 31.07.2013, but his retiral benefits were only released by the respondents after a delay for which, hence petitioner is entitled for the grant of interest.

The facts as mentioned in the writ petition are that the petitioner joined the Department of Irrigation, Government of Punjab as Junior Engineer on 24.09.1976. He was promoted as a Sub Divisional Engineer on 01.02.2008 from which post petitioner superannuated on 31.07.2013. While the petitioner was in service, a charge-sheet was served upon him in May, 2013 i.e. approximately two months before his retirement. After the retirement, the benefits accruing to the petitioner upon his retirement were withheld due to the pendency of the said charge-sheet. Petitioner challenged the withholding of the said benefits by filing CWP No.25731 of 2014, which was disposed of by this Court on 03.09.2015 by passing the following order:-

"In this petition, petitioner has sought for direction to the respondents as follows:-

"(i) Issue a writ in the nature of mandamus directing the respondents to release the pensionary benefits of the petitioner which includes commutation, gratuity, balance leave encashment and final pension which has not been paid to the petitioner so far inspite of his retirement on 31.07.2013 along with interest 18% p.a. From the date of his retirement till its actual payment.

(ii) It is further prayed that the respondent may kindly be directed to pay the interest @ 18% p.a. For the delayed period on the leave encashment of Rs.6,98,440/- out of which Rs.6,32,270/- has been paid on 14.03.2014 and Rs.29,410/- has been paid in July, 2014 and the balance amount of Rs.36,760/- has been paid in December, 2014 only."

The petitioner is stated to have joined service as a Junior Engineer in the Irrigation Department on 24.09.1976. He has earned promotion to the cadre of Sub Divisional Engineer on 01.02.2008. On 31.07.2013, he has attained age of superannuation and retired from the post of Sub-Divisional Engineer. His retiral benefits have not been settled therefore, he has presented this petition.

Per contra, learned counsel for the respondent submitted that the disciplinary proceedings is under progress. The same would be completed within a short period. Thereafter, petitioner's claim would be considered.

Heard learned counsel for the parties.

In view of the pendency of the departmental enquiry the petitioner is not entitled for the retiral benefits till conclusion of the departmental enquiry. Even though, the enquiry was initiated on 06.05.2013 till date, it has not been concluded and the petitioner's retiral *benefits have not been settled.*

In view of these facts and circumstances, I direct the respondents to conclude enquiry within a period of 8 weeks'. If the enquiry proceedings are not concluded within the said period the petitioner is entitled for all the retiral benefits and the respondents shall release the same. Accordingly, writ petition is disposed of."

Even though the pensionary benefits were not granted to the petitioner by this Court but a direction was issued to the respondents to decide the enquiry proceedings, which were pending against the petitioner in respect of the charge-sheet dated 06.05.2013 within 8 weeks.

In pursuance to the direction given by this Court, respondents passed an order on 24.08.2016 by which the enquiry proceedings were dropped. The relevant paragraph of the order is as under:-

" *8. In view of the enquiry report submitted by the enquiry officer, comments of the Chief Engineer vigilance, the argument/documents raised/submitted by the retired official during the personal hearing, the record available on the file and other facts were considered minutely from each angle thereafter the charge-sheet issued to Sh. Subhash Chand Bansal, Sub Divisional Officer (Now Retd) is hereby dropped.*

9. These orders are issued after the sanction of the competent authority."

After the said order was passed, the benefits which were accruing to the petitioner after his superannuation were released. Even though the benefits were released to the petitioner but the petitioner was not paid any interest on the said delayed payments, for which, the petitioner has filed the present writ petition.

Upon notice of motion, the respondents have filed the reply in which it has been stated that all the benefits for which the petitioner was entitled for, have already been released and as his benefits were only withheld due to the pendency of the charge-sheet and after the charge-sheet was ultimately decided, the benefits accruing to the petitioner after his retirement on 31.07.2013 were released without any delay and therefore, the petitioner is not entitled for any interest on the said benefits. The relevant portion of the reply is as under:-

> " *1. That, it is respectfully submitted that the petitioner Sh. Subash Chand Bansal, worked as Sub Divisional Officer, in the office of Executive Engineer, Ludhiana Drainage Division, Ludhiana and retired from service on attaining the age of superannuation on 31.07.2013. It is submitted that a charge sheet was issued to the petitioner against under Section 8 of Punishment & Appeal Rule, 1970 said Officer while he was in service and was assigned the duty for the work of rescanning of Dhanoula Drain at RD89400 to 112000. A true copy of the charge-sheet is appended as (Annexure R-1). The petitioner filed a CWP No.25731/2014, in this Hon'ble High Court. This Hon'ble High Court issued directions on 03.09.2015 (Annexure R-2) and directed the respondents to conclude the enquiry within a period of eight weeks. After considering the Enquiry report submitted by the Enquiry Officer, charge-sheet has been filed by the respondent No.1 vide his order dated 24.08.2016 (Annexure R/3). Hence all the payment of pensionary benefits has already been paid to the petitioner.*
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> *2. That Accountant General, Punjab, Chandigarh vide his letter No.PEN 07/CH-PE /10/13/60042765/ 1013035562/ PE/13/10/80038830 dated 29.07.2013 (Annexure R-4) intimated that the benefit of 24 years ACP allowed to Sh. Subash Chand Bansal was not in order. It was not admissible to*

him in terms of Punjab Government letter No.7/56/99-5PP1/8014-15 dated 27.06.2000 (Annexure R-5). In compliance of the above objections raised by the Accountant General, Punjab, Chandigarh the pay of Sh. Subhash Chand Bansal was re-fixed vide this office order No.4359/ pension case dated 15.10.2013 (Annexure R-6). The petitioner filed CWP No.25100/2014 in this Hon'ble High Court, which was disposed off vide orders dated 06.04.2015 directing to release all the pensionary benefits which were withheld, within a period of three months (Annexure R-7). The order dated 06.04.2015 was challenged by filing LPA No.1085/2015 in this Hon'ble Court, where in a stay order was passed on dated 24.07.2015 against the impugned order dated 06.04.2015. The petitioner also filed a COCP No.2103/2015 in this Hon'ble High Court to implement the order dated 06.04.2015. The said COCP has been disposed off by the Hon'ble High Court on 13.02.2017. However all the pensionary benefits have been paid to the petitioner without effecting any recovery of over payment.

3. That in so far as the retiral benefits of the petitioner are concerned, the same have been paid to him as per detail given in the table below

Sr. No.	Particular of Payment	Amount paid	Date of payment
1.	Leave Encashment	Rs.6,32,270/-	14.03.2014
2.	G.P. Fund	Rs.2,45,286/-	02.12.2013
3.	G.P. Fund	Rs.1,20,086/-	28.02.2014
4.	Gratuity	Rs.6,21,082/-	02.01.2016
5.	Gratuity	Rs.3,78,918/-	02.12.2016
6.	Difference of D.A on Leave Encashment	29,410/-	02.08.2014
7.	Difference of D.A on Leave Encashment	36,760/-	01.12.2014

4. That it is further submitted that as per Rule 2.2. (c) of Punjab Civil Service Vol.II where any departmental or judicial proceedings is instituted under clause (b) of Rule 2.2. or where as departmental proceeding is continued *under clause (I) of the proviso thereto against an officer who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date of which, upon conclusion of such proceedings, final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service up to the date of retirement or if he was under suspension on the date of retirement up to date immediately preceding to his date on which he was placed under suspension;* ***but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of which proceedings and of final order thereon.*** *The gratuity, if allowed to be drawn by the competent authority on the conclusion of the proceedings will be deemed to have fallen due on the date of issue of final order by the competent authority".*

5. In view of above provision, it is submitted that as departmental proceeding was pending and charge-sheet was issued to Sh. Subhash Chand Bansal the petitioner under Rule 8 of Punjab Civil Service (Punishment and Appeal) Rule 1970.

However provisional pension equal to maximum pension has already been paid to the petitioner immediately after his retirement and final pension was be sanctioned by the respondent No.4 vide order dated 03.09.2015 (Annexure R-8). Thus the present writ petition is not maintainable and liable to be dismissed."

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

It is matter of record that when the petitioner retired from service, some of his pensionary benefits were withheld by the respondents due to the pendency of the said charge-sheet.

It is a matter of fact that benefits accruing to the petitioner were withheld, though they were paid after a substantial time. The respondents have admitted in their reply about the actual date of the payment of the various benefits and actual payment which is clear from the averments of the reply, reproduced hereinabove.

Learned counsel for the respondents has only raised a plea that the departmental proceedings were pending against the petitioner and therefore, the department was well within their right to withhold the pensionary benefits. It is also admitted by the respondents themselves that the allegations alleged against the petitioner in the charge-sheet dated 06.05.2013 were not substantiated and that is why the charge-sheet was filed. Once the charge-sheet was dropped, it can very well be presumed that the allegations were false and as the State could not substantiate the same, they cannot derive the benefit of the pendency of the charge-sheet in order to deny the interest to the petitioner. Further, the action of making false allegations against the petitioner cannot cause prejudice to the petitioner so as to receive the amount after considerable delay, for which he was entitled for immediately at the time of his retirement. Once a prejudice has been caused to the petitioner due to the wrong act of the respondents in issuing a charge-sheet on the allegations which the department fails to substantiate, the petitioner cannot be denied the interest on the delayed payments. The delay in releasing the pensionary benefits in this case has to be treated as delay without any valid justification in the eyes of law.

Furthermore, this Court in ***J.S. Cheema Vs. State of Haryana and others, 2014 (1) S.C.T. 782***, has held that where an amount for which an employee was entitled for has been retained by the department and used, the employee will be entitled for interest. The relevant portion 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 pensionary benefits were withheld/released after a delay for which explanation given by the respondents in the written statement is not justified hence, petitioner will be entitled for the interest keeping in view the judgment of Full Bench of this Court in ***<u>A.S. Randhawa Vs. State of Punjab, 1997(3) S.C.T. 468</u>***. The relevant portion 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 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 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."

The case of the petitioner is squarely covered by the above said judgments for the grant of interest on the delayed payments.

The petition is allowed. The petitioner is held entitled for the interest @ 9% per annum from the date the payment became due till the same were released to the petitioner. The respondents are directed to calculate the amount of interest for which the petitioner was entitled for within a period of two months from the receipt of copy of this order. The amount so calculated by the respondents shall be released to the petitioner within a period of one month thereafter.

(HARSIMRAN SINGH SETHI)
JUDGE

April 02, 2019
harsha

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