IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP-25296-2016 (O&M)

Jeewan Asha ....Petitioner

Versus

State of Punjab and others .....Respondents

2. CWP-25314-2016 (O&M)

Kulwant Kaur ....Petitioner

Versus

State of Punjab and others .....Respondents

3. CWP-25310-2016 (O&M)

Kuljit Kaur ....Petitioner

Versus

State of Punjab and others .....Respondents

4. CWP-5038-2018

Urmil Rani ....Petitioner

Versus

State of Punjab and others .....Respondents

Date of decision: - 10.04.2019

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Padam Kant Dwivedi, Advocate,
for the petitioners.

Ms. Deepali Puri Sandhu, Additional Advocate General, Pb.
for the respondents-State.

Ms. Neha Jain, Advocate
for Mr. K.K. Dadwal, Advocate
for respondents No.2 and 3-Board.

Mr. Brijeshwar Singh Kanwar, Advocate
for UOI.

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<u>HARSIMRAN SINGH SETHI, J. (ORAL)</u>

By this common order, above-mentioned four Civil Writ Petitions are being disposed of in the light of common question of law and facts involved. For the sake of convenience, the facts are being extracted from CWP No.25296-2016 titled 'Jeewan Asha Vs. State of Punjab and others.'

In the present writ petition, the prayer of the petitioner is that a direction should be given to the respondents to release her retiral benefits including gratuity, leave encashment etc. alongwith interest by calculating the same in the revised pay-scale as recommended by the 5th Pay Commission.

Another prayer made in the present writ petition is that 1/3rd arrears of salary on account of revision of the 4th Pay Commission which is still due be released by the respondents.

As per the facts mentioned in the writ petition, petitioner was appointed with respondent No.2-Board, vide appointment letter dated 14.12.1976 as Bal Sevika. She had joined the services in the project known as Border Area Project. She continued in the said project till 2009 when on 21.08.2009, the petitioner and other similarly situated employees, who were working in the said project, were taken on deputation by the State of Punjab in the Integrated Child Development Scheme, where she worked till she attained the age of superannuation i.e. 31.10.2014. The grievance which is being raised in the present writ petition is that after the petitioner attained the age of superannuation, she was not being paid her pensionary benefits and also the 1/3rd arrears of revised pay-scale as granted by the 5th Pay Commission w.e.f. 01.01.2006 onwards. As the said relief was not being granted, the petitioner filed the present writ petition.

In order to support her claim in the writ petition, petitioner relies upon an order passed by this Court in CWP No.9497 of 2014 and other connected cases, which were filed by the similarly situated employees claiming the same benefits as being claimed by the petitioners herein. A Co-ordinate Bench of this Court decided the said writ petition on 28.07.2016 and held that the employees who were absorbed on 21.08.2009 in the Integrated Child Development Scheme, will be entitled for the same pay-scale as being given to the other employees, who were working in the said scheme on the corresponding post. The relevant portion of the said judgment is as under: -

> "The factual position is not disputed. The only point surviving for consideration is that as to whether respondent No.2-Board can make a distinction between the employees already working with it and the employees, who were taken on deputation, which amounts to discrepancy in the matter of pay scale.

I find the reply in negative. Once the employees are absorbed by respondent No.2-Board, they are entitled to all the pay scales and other benefits in the Department, in which they have been absorbed and should be placed on the same footing at which the other employees are placed.

Respondent No.2-Board cannot make the distinction amongst the employees, who are working with the Board and who are later on absorbed in the Board. Even though, the employees were permanently absorbed on unrevised pay scales, but it does not mean that if later on the report of 5th Pay Commission come for revising the pay scales w.e.f. 01.01.2016, the employees so absorbed will be debarred from the benefits of the said report.

It being so, it is held that the employees, who were permanently absorbed, vide letter dated 21.08.2011 (Annexure R-2/1) shall be entitled to the revised pay scales and other perks on the same footing as the already working employees of respondent No.2-Board w.e.f. 01.01.2006 till their retirement. The respondents are, accordingly, directed to fix the salary of the said absorbed employees w.e.f. 01.01.2006 and release all the necessary retiral benefits in the revised pay scales.

Needless to say that the abovenoted petitioners, namely Naresh Kumari, Raj Kumari W/o Ashok Kumar Kukkar and Reshma Rani W/o Late Shri Harnam Singh, who retired before their absorption in respondent No.2-Board, will not be entitled to such benefits. The writ petitions qua Naresh Kumari, Raj Kumari W/o Ashok Kumar Kukkar and Reshma Rani are dismissed and qua remaining petitioners, the writ petitions are allowed to the abovenoted extent.

The petitioners shall also be entitled to interest @ 9% per annum on the arrears. The needful be done within a period of 3 months from the date of receipt of copy of this order."

Against the said order, LPA No.2497 of 2016 was filed, which came to be decided by the Division Bench on 10.01.2017. The

Division Bench held that the employees will be entitled for the arrears of revised pay as granted by the 5th Pay Commission but without any interest.

It was however directed that in case, the arrears are paid within a period of three months as directed by the Division Bench, the amount of arrears will not carry interest and in case of failure to make payment in the said period, the respondents were to pay the interest from the date of passing of judgment of the learned Single Judge. The relevant portion of the said order of the Division Bench is as under: -

> "[3] It is an admitted fact that the revised pay-scale which the appellant-Board had granted to its own employees was denied to the absorbed employees, namely, the private-respondents regardless of the fact that the nomenclature of their posts, qualification, nature of duties and/or working hours were/are identical. It is in this factual backdrop that the learned Single Judge vide order under appeal has held the private respondents entitled to the same pay-scale as granted to their other counterparts who are the original employees of the Board. Learned Single Judge has also held the private-respondents entitled to interest @ 9% per annum on the arrears of pay.
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> [4] As the facts would speak for themselves. The appellant-Board has made an attempt to discriminate amongst similarly placed employees only on the basis of their birth-mark, i.e., the source of their recruitment. In our considered view, the private-respondents have been discriminated against without any reasonable classification, only because their positions by way of absorption. The action of the appellant-Board in this regard is directly in the teeth of Articles 14 & 16 of the Constitution. There is thus no merit in this appeal so far as the grant of revised pay-scale to the private respondents is concerned.
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> [5] There, however, some merit in the appellant's contention that, in the facts and circumstances of the case, learned Single Judge

ought not to have awarded interest @9% per annum on the arrears of pay. It may be true that some of the private-respondents approached this Court initially in the year 2011 but having regard to the nature of contentious issue arising out of the terms and conditions on which they were taken on deputation, we are satisfied that the private-respondents are entitled to be paid the arrears but without any interest provided further that such arrears are paid to them within a period of three months from the date of receiving a certified copy of this order.

[5] Ordered accordingly.

[6] It is directed that in case there would be any delay in the payment of arrears of pay, then the private-respondents shall be entitled to interest @7% per annum from the date of passing of order by the learned Single Judge till the date of actual payment.

[7] If the amount payable to the private-respondents is disbursable by the State Government in terms of its any understanding with the appellant-Board, the appellant shall be at liberty to raise such claim in accordance with the Policy/Rules."

Counsel for the petitioner states that the petitioner in the present writ petition are similarly situated as the petitioners in CWP No.9497 of 2014 and therefore, the petitioner in this petition as well as in the connected writ petitions, are also entitled for the same relief, as extended to similarly situated employees by this Court in terms of order passed in CWP No.9497 of 2014 and modified by the learned Division Bench in LPA No.2497 of 2016 on 10.01.2017.

Counsel for the respondents are unable to dispute that the question of law as raised in the writ petition already stands answered by this Court in CWP No.9497 of 2014, as modified by the Division Bench in LPA No.2497 of 2016.

Counsel for respondents No.2 and 3 states that the benefits for which the petitioners were entitled for in terms of the order passed by this Court in CWP No.9497 of 2014 as modified in LPA No.2497 of 2016, have already been released to the petitioner. It has been stated that the leave encashment and gratuity was paid to the petitioner on 30.11.2017. Further, even the arrears which have been calculated by granting the petitioner the benefit of revision of pay-scale as envisaged under the 5th Pay Commission, have already been released to the petitioner on 22.01.2019 and therefore, no further compliance is to be made by respondents No.2 and 3 as all the benefits for which the petitioner is entitled for as given to the similarly situated persons have already been released.

Counsel for the petitioner states that the petitioner has only been released the benefit till the date of her absorption i.e. 21.08.2009. Thereafter, the benefits, which the respondent was liable to release, has not been released to the petitioner so far.

Counsel for the petitioner further states that as per the order passed in CWP No.9497 of 2014, the revised pay-scale was to be given w.e.f. 01.01.2006 till the retirement, so the respondents were liable to pay the said revised pay-scale up to the date of retirement, which has not been given either by the Board or by the State as the case may be.

Counsel for the petitioner further states that for the implementation of the said order, the petitioners in CWP No.9497 of 2014 have already filed the contempt proceedings for the implementation of the same.

Counsel for respondents No.2 and 3 states that once the petitioners were absorbed by the State of Punjab on 21.08.2009, the liability to pay the revised pay-scale after the said date is of the State and not of the Board.

Counsel for the respondents-State on the other hand states that the said argument of the Board has already been considered by the Division Bench while deciding LPA No.2497 of 2016 on 10.01.2017 and the LPA Bench held that in case the amount is payable by the State Government after 2009, till the retirement of an employee, the Board will be at liberty to raise such issues with the State Government according to the policy/rules, but once no such claim has been raised by the Board in this regard, the State cannot be fastened the liability to pay the same to the employees.

Counsel for the Board states that they don't have the fund and can only release the amount after the same is received from the Government. At this stage, this fact as to whether the Government is liable to pay or the Board is liable to pay, which is their internal matter, cannot cause harm to the interest of the petitioners, who have already rendered service with respondents No.2 and 3 and have retired.

I am of the view that once the liability has been fastened by the Division Bench to pay the amount upto the retirement of an employee upon the Board and had given liberty to the Board to make such claim from the State Government, the amount at the first instance is to be paid by the Board with liberty to claim the same from the State Government according to the policy and the rules. Therefore, in case any such plea of reimbursement is raised by the respondent No.2 from the Government, for payment of the revised salary from 2009 onwards, the Government of Punjab shall pass appropriate orders in this regard, as directed by the Division Bench while deciding LPA No.2497 of 2016.

Counsel for respondents No.2 and 3 states that after the passing of the order by the Division Bench in LPA No.2497 of 2016 on 10.01.2017, the State has sanctioned the amount more than once not only on account of the release of pensionary benefits, but also on account of arrears of revised pay as granted by the 4th Pay Commission and the 5th Pay Commission.

This Court has been assured by the State Counsel that in case any such claim is made by the Board from the State Government for the payment of the dues in respect of the retiral benefits as well as for the arrears of salary, the State Government will pass the appropriate orders on the claim raised by the Board expeditiously within a period of one month from the date of the said claim.

Counsel for the petitioner states that in respect of the claim of the petitioners for 1/3rd arrears of the revised pay-scale as granted by the 4th Pay Commission, the same is also yet to be released by the Board.

Counsel for the petitioner in this regard relies upon an order passed by this Court in CWP No.2155 of 2016 and other connected cases, dated 24.10.2017, wherein, the similarly situated employees, who also raised the same plea i.e. for releasing the 1/3rd arrears on account of the

4th Pay Commission recommendation wherein the State had accepted the claim and released the amount to them. Order passed by this Court in CWP No.2155 of 2016 and other connected cases is as under: -

> "Vide this common order, I intend to dispose of three writ petitions bearing CWP Nos. 2155, 5851 and 9607 of 2016, as common question of law and fact is involved.
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> 2. Learned State counsel has filed a status report by way of an affidavit of Ajit Kaur Multani, Deputy Director, Department of Social Security and Women and Child Development, Punjab on behalf of Respondent No.1 in CWP No. 2155 of 2017, which is taken on record. The relevant paragraph of the report reads as under:
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> > "4. That the orders of this Hon'ble Court have been materially complied with. It is most respectfully submitted that on account of retiral dues of the employees including the petitioner, the funds amounting to `92,30,403/- has been sanctioned vide memo No.3/121/2005-2SS/1089033/1, dated 23.10.2017, which will be released expeditiously.
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> > 5. That with regard to 1/3rd arrears of 4th pay commission recommendations, the funds amounting to 8,17,382/- has been sanctioned vide memo No. 3/121/2005-2SS (Part file)/1089047/1, dated 23.10.2017, which will be released expeditiously."
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> 3. During the pendency of all the afore-said writ petitions following order was passed on May 23, 2017:
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> > "It comes out that the petitioners, who were working under the Punjab State Social Welfare Board, retried from service in the year 2015. Their claim is that they have not been paid the retiral benefits till date. Only 2/3rd of the arrears on account of implementation of 4th Pay Commission was paid and that the pay scales have not been revised, as per the 5th Pay Commission. So far as the liability to pay the retiral benefits is concerned, the same is not denied by respondents No. 2 and 3. The petitioners were absorbed, vide letter dated

> 21.8.2009 (Annexure-R-2/2), in ICDS,Department of Women and Child Development, Punjab.
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> In these circumstances, an interim direction is issued to respondents No. 1 to 3 to release all the benefits to the petitioners forthwith with interest at the rate of 9% per annum on the delayed payments, starting three months from the date of retirement of the petitioners till the date of actual payment.
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> Secondly, regarding the arrears on account of pay revision on the implementation of the 4th Pay Commission, similar direction is issued to pay the arrears alongwith interest at the rate of 9% per annum within three months, failing which, the Secretary, Department of Social Security and Women and Child Development, Punjab, and the Chairperson, Punjab State Social Welfare Board, (respondents No. 1 and 2 respectively herein), shall appear in person before the Court on the next date of hearing to explain as to why the payment is not being made. Regarding the recommendation of 5th Pay Commission, respondents No. 2 and 3 are directed to pass a speaking order whether the pay scales, on account of 5th Pay Commission, are to be released to the petitioners. The speaking order, in view of judgment passed by this Court in CWP No. 9497 of 2014, titled as Narinder Kaur Versus State of Punjab and others alongwith bunch of cases, decided on 28.7.2016 and the Letters Patent Appeal No. 2497 of 2016, titled as The Chairperson, Punjab State Social Welfare Advisory Board Versus Shobha Rani and others alongwith bunch of cases, decided on 10.1.2017, be passed within two months from the date of receipt of certified copy of this order and copy thereof be placed on file on or before the next date of hearing.
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> List on 11.9.2017."

4. In compliance of afore-said order, it has been pointed out by learned counsel for the petitioner(s) that the order dated May 23, 2017 has been complied with in its letter and spirit. The respondent-State of Punjab has already sanctioned the amount to be disbursed to the petitioners and has intimated in this regard to the respondents No.2 and 3 who are to further disburse the same to the

petitioners.

5. In view of the afore-said facts, all the three writ petitioners have rendered infructuous and are dismissed, as such.

6. While parting with this order, respondents are directed to take up the matter with the concerned authorities, if so required and positively make the payment/disbursed, so sanctioned by the respondent-State of Punjab in the respective accounts of the petitioners within a period of one month from today.

7. Respondents No.2 and 3 are further directed to supply the copy of various amounts, which are deposited in the accounts of petitioners within the afore-said prescribed period.

8. However, if the petitioners still feel aggrieved by any order of the afore-said authorities, they shall be at liberty to approach this Court."

A bare perusal of the above order would show that the State Government had already accepted the same claim of similarly situated employees while sanctioning an amount of retiral dues of the employees and also with regard to the arrears of 4^{th} Pay Commission and 5^{th} Pay Commission. The word used in the affidavit filed before this Court in above-mentioned writ petition is not limited to the petitioners therein, but to the employees and therefore, the State has already accepted the claim for the release of $1/3^{rd}$ arrears on account of revision of the 4^{th} Pay Commission and also the arrears on account of 5^{th} Pay Commission, for which the petitioner and other similarly situated employees were entitled for.

Counsel for the respondents are unable to rebut that the petitioners herein are similarly situated as the petitioners in CWP

No.2155 of 2016 and other connected cases, decided by a Co-ordinate Bench on 24.10.2017, therefore, the petitioners herein are also entitled for the release of 1/3rd arrears on account of 4th Pay Commission revision, which are yet to be paid to the petitioners. The respondents are directed to release the said benefit to the petitioners as done in the case of the other similarly situated employees, who had approached this Court.

Keeping in view the above, in respect of the grant of retiral benefits to the petitioners upon their retirement as well for the grant of arrears of revision of the 5th Pay Commission, till their retirement, a direction is issued to the respondent Board to release their benefits within a period of two months from the date of receipt of certified copy of this order unless already released. Respondent Board will be at liberty to claim the same from the government in accordance with law. As the government has already released the amount in the case of the similarly situated employees, request of the Board will be examined and decided in the same manner.

Further, the respondents shall also release the remaining 1/3rd arrears which were not paid to the petitioners on account of revision of the pay-scale as recommended by 4th Pay Commission, which has already been released to the similarly situated employees by the respondents. The same shall also be done in the aforesaid period of two months unless already released to them.

In respect of the pensionary benefits for which the petitioners were entitled for upon their retirement, the arguments of counsel for the petitioners is that as per the settled principle of law settled by the Full Bench of this Court, as release of their pensionary benefits have been delayed, the petitioners are entitled for the interest on the delayed release of the gratuity and leave encashment.

Counsel for respondents No.2 and 3 states that petitioners are not entitled for the interest as they have filed the writ petitions starting from the year 2016 and therefore, once the petitioners raised the grievance only in the year 2016 and benefit of leave encashment was released to them immediately thereafter, no interest is payable.

The employees are entitled for release of their retiral benefits immediately upon their retirement or within a reasonable time thereafter. Petitioners retired in 2014 and the benefits of leave encashment was withheld till November, 2017 and that too without any valid justification, hence, it cannot be said that the petitioners will not be entitled for the interest. The payment of retiral benefits is the duty of the employer and that too without there being any asking for the same as the same is the right of an employee to get it immediately upon his/her retirement so as to have a dignified life after retirement. It was obligatory upon the respondents to release all the benefits when the petitioner retired in the year 2014. Further, the interest can only be declined if there was a valid justification to withhold the retiral benefits. In the absence of any valid justification, the grant of interest is a right as per the settled principle of law settled by the Full Bench of this Court in **A.S. Randhawa Vs. State of Punjab and others, 1997(3) SCT 468.**

In the present writ petitions, no valid justification has been given as to why the interest has not been paid upon the gratuity and leave encashment. Even under the Payment of Gratuity Act, an employee is entitled for interest if the payment of the same is delayed without any valid justification.

Therefore, the petitioners are held entitled for the interest on the delayed payment of gratuity and leave encashment from the date they retired till the same was released to them @ 9% per annum. The respondents shall calculate the said interest amount within a period of three months from the date of receipt of this order and pay the same to the petitioners, within a period of next one month.

Present writ petition stand disposed of in the above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

April 10, 2019
naresh.k

Whether reasoned/speaking? Yes
Whether reportable? Yes