IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

**CWP No. 25435 of 2016**
**Date of Decision : 08.05.2019**

**Santokh Singh**

**...Petitioner**

**Versus**

**State of Punjab and another**

**...Respondents**

***CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI***

Present: Mr. Bikramjit Singh Patwalia, Advocate for the petitioner.

Ms. Deepali Puri Sandhu, Addl. A.G., Punjab.

Mr. Pardeep Bajaj, Advocate for respondent No. 2.

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***Harsimran Singh Sethi, J.(Oral)***

In the present writ petition, the grievance of the petitioner is that though the petitioner retired on 31.10.2014 from respondent No. 2-Board, he was not being paid pensionary benefits, for which he was entitled for on his retirement.

It is admitted by the counsel for the petitioner that during the pendency of the writ petition, the benefits for which the petitioner was entitled for have been released in the year 2018 and the claim which the petitioner is making at the time of argument is that petitioner is entitled for interest on the delayed payments keeping in view the settled principle of law settled by a Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab, 1997(3) SCT 468.***

The facts which have been mentioned in the writ petition are that petitioner joined the service of respondent No. 2 as a Clerk on 07.02.1980. Thereafter in the year 2010, petitioner was promoted as Senior Assistant from which post, petitioner ultimately superannuated on 31.10.2014.

At the time of retirement, petitioner was having the charge of store of books as well as of the account branch. The petitioner was also having the charge of the publication branch on the day when the petitioner superannuated on 31.10.2014. It has been averred in para 7 of the writ petition that approximately eight months prior to the retirement, petitioner wrote a letter 18.02.2014 (Annexure P-4) that there are large number of books which are under his possession being incharge of the store of books as well as incharge of publication branch, therefore, the said charge be taken from the petitioner so that the retiral benefits of the petitioner are released without any hitch. On the said letter itself, Establishment Officer wrote that there was much time before the petitioner has to superannuate on 31.10.2014 and the matter was kept pending with regard to the handing over the charge of the books which were under the charge of the petitioner.

Petitioner retired on 31.10.2014 on attaining the age of superannuation. He claimed extension in service, which benefit was declined to him and ultimately, petitioner filed a writ petition before this Court bearing CWP No. 22042 of 2014, which writ petition is pending even as of now.

Learned counsel for the petitioner submits that as the charge from the petitioner was not taken before his retirement, no pensionary benefits of the petitioner were released. After retirement of the petitioner, respondents directed one Smt. Suman Verma, who was working as a Junior Scale Stenographer to take the charge from the petitioner. This was done by the respondents after retirement of the petitioner but said Smt. Suman Verma refused to take the charge on the ground that she does not belong to the Cadre of the Senior Assistant and she does not know how to take the charge and, therefore, appropriate instructions be issued in this regard so that the said charge could be taken. This letter was written by Smt. Suman Verma on 05.01.2015 (Annexure P-11). In reply to the letter dated 05.01.2015, Establishment Officer directed Smt. Suman Verma to take the charge immediately from the petitioner, failing which disciplinary proceedings will be initiated against her. Despite the same, it is the contention of the petitioner that charge from the petitioner was not taken and ultimately, petitioner started writing letters to the respondents to take the charge and release his pensionary benefits. Petitioner has attached letter dated 31.05.2016 (Annexure P-13) in which he has stated that he has met the Director number of times and requested that the charge be taken from him but the said charge has still not been taken.

Ultimately, the Director vide letter dated 27.07.2017 (Annexure P-14) constituted a Committee of eight personnel to take the charge from the petitioner. The said letter dated 27.07.2017 is as under:-

> *"Following employees/officials are deputed to take the charge of office from Sh. Santokh Singh, Former Senior Assistant:*
>
> 1. *Smt. Jaswinder Kaur, Sr. Assistant – Charge of Accounts, Sale and Care Taker.*

*2. Smt. Anita Rani, Clerk – Charge of Store of Books*

*These two officials/employees will take over the above said charge under the supervision of below mentioned officials:*

*1. Sh. Harnek Singh, Assistant Director (Language Department, Punjab).*

*2. Sh. Satnam Singh, Assistant Director (Language Department, Punjab).*

*3. Sh. Gurjit Singh, Store Incharge (Language Department, Punjab).*

*4. Smt. Jaswinder Kaur, Caretaker (Text Book Board).*

*The following employees are deputed to help at the time of handing/taking over of above said charge:*

*1. Sh. Balbir Singh, Driver.*

*2. Sh. Vikramjit Singh, Sewadar.*

*These orders are applicable with immediate effect.*

*Director,*
*Punjab State University Text Book Board,*
*Chandigarh"*

In pursuance to this letter, the respondents took more than a year to take charge and taking of the charge from the petitioner went on till September, 2018. Ultimately, the Committee informed the Director on 12.09.2018 that the charge has been taken from the petitioner as directed by the Director vide letter dated 27.07.2017 (Annexure P-14). It was only thereafter, retiral benefits of the petitioner were released by the respondents.

Learned counsel for the petitioner argues that the delay in taking the charge from the petitioner is upon the respondents and, therefore, petitioner cannot be prejudiced as pensionary benefits of the petitioner have been delayed for a period of four years and, therefore, petitioner is entitled for interest on the said delayed payments.

On the other hand, in the reply, respondents have stated that the delay in handing over the charge by the petitioner is solely the responsibility of the petitioner. As per the averments made in the reply, petitioner was asked to hand over the charge to Smt. Jaswinder Kaur on 28.10.2014 and 29.10.2014 i.e. before the retirement but petitioner sought two days' time to hand over the charge as he was away in his village. Thereafter, number of letters were issued to the petitioner to hand over the charge but he kept on delaying the same , hence, petitioner is not entitled for the interest on the delayed payments as payments were released immediately after the charge was handed over by the petitioner.

Learned counsel for the petitioner submits that petitioner informed the respondents on 31.10.2014 that as directed by the respondents, there are books which are in store, which would value more than ₹one Crore and, therefore, these books should be taken over. Record of the account branch was handed over by the petitioner to Smt. Jaswinder Kaur on the day of retirement. Thereafter, on 30.10.2014 petitioner was asked to hand over the charge to Smt. Suman Verma, the Junior Scale Stenographer. The said letter was never delivered to the petitioner which is clear from Annexure R-2/5 as the house of the petitioner was locked. Thereafter, on 29.01.2015 when the petitioner came to know about the letter dated 05.01.2015, petitioner informed that he was away till 27.01.2015 and he is ready to hand over the charge as directed but Smt. Suman Verma expressed her inability to take the charge. Learned counsel for the petitioner prays that the petitioner is entitled for interest as the pensionary benefits were released to the petitioner after four years' delay.

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

The respondents have not denied that on 18.02.2014 i.e. eight months prior to the date when the petitioner was to retire, petitioner wrote a letter to the respondents for taking charge of the book store and the publication department for the smooth transaction. Respondents have admitted that the said letter was replied by writing that there is much time in the retirement of the petitioner and, therefore, no action is required for immediately. Thereafter, petitioner was asked to hand over the charge of the account branch to Jaswinder Kaur, which was handed over by the petitioner on the day his retirement i.e. 31.10.2014. The only controversy remains as to whether the charge of the book store and the publication department, which was ultimately handed over to the respondents in September, 2018 was due to the act on the part of the petitioner or the respondents, which will decide the entitlement of the petitioner about the grant of interest on the delayed payments.

As per the pleadings noted above, respondents had deputed Smt. Suman Verma for taking charge from the petitioner with regard to the publication department as well as the Book Store. As per the letters which have been written by Smt. Suman Verma, appended by the petitioner as Annexure P-11 dated 05.01.2015, she has claimed that she is not entitled to take over the charge from the petitioner as she does not belong to the said Cadre and further, she does not know how to take the charge. Further, it is admitted that though the Establishment Officer directed Smt. Suman Verma to take charge, failing which disciplinary proceedings were to be initiated against her, still the charge was not taken by her. Therefore, unless and until there is an Officer to whom the petitioner was required to hand over the charge and the said Officer was willing to take over the charge, the liability of non-handing over the charge by the petitioner cannot be attributed upon him. It is a matter of fact that matter was lingered on by the respondents for a period of more than two years when the Director vide order dated 27.07.2017 constituted a Committee of eight persons to take over the charge and thereafter, it took more than one year for eight persons to take over the charge from a retired personnel keeping in view the volume of books which were under the charge of the petitioner, though the same were lying in the premises of the Board itself in Patiala.

From these facts, it is clear that a single person could not have taken charge from the petitioner and further makes it clear that the petitioner was right when he wrote a letter in February, 2014 i.e. eight months prior to his retirement that the charge of the books be taken over from him, which request was not accepted by the respondents themselves stating that there is much time left before the petitioner has to superannuate on 31.10.2014. This shows that petitioner was ready to hand over the charge but it was the department, who either did not initiate the action of taking over the charge from the petitioner prior to his retirement or the authorized personnel to take over the charge from the petitioner did not carry out the order of taking the charge from the petitioner on the ground of incapability. Under these circumstances, non-handing of the charge by the petitioner cannot be attributed to him.

It is a matter of fact that two letters were written by the respondent-department informing the petitioner to come and hand over the charge. By the said date, petitioner had already retired and on both the occasions, petitioner sought a day's time or a week's time to come and hand over and it is not denied by the respondents that the petitioner had visited the office of the respondents in Patiala number of times, thereafter to hand over the charge. Once the respondents themselves have issued a letter to Smt. Suman Verma to take over the charge from the petitioner, who was reluctant to do the same though department threatened her with initiation of the department proceeding, hence it can be very well inferred that the Officer, who was authorized to take the charge from the petitioner was not willing to do so for the reasons best known to her though the reasons cited by her was incapability of taking a charge of a huge stock alone.

Keeping in view the above, the claim of the petitioner for the grant of interest is made out as the petitioner has not been able to utilize the amount he became entitled for after his retirement on 31.10.2014 for a period of four years.

A Coordinate Bench of this Court in ***J.S. Cheema Vs. State of Haryana and others, 2014(13) RCR (Civil) 355*** has held that if an amount for which an employee was entitled for, has been retained by the department and used, the employee will become entitle for the interest on the said payment. The relevant paragraph of the judgment reads 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."*

The case of the petitioner is squarely covered by the above said judgment. Therefore, the petitioner is held entitled for interest @ 9% per annum from the date the amount became due till the actual release of the payment. Let calculation of interest as per this order be done by the respondents within a period of two months from the receipt of copy of this order and the amount so calculated shall be released to the petitioner within a period of one month thereafter.

Writ petition stands allowed in above terms.

**May 08, 2019** **(HARSIMRAN SINGH SETHI)**
*kanchan* **JUDGE**

*Whether speaking/reasoned?* *Yes*
*Whether reportable?* *Yes*