

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.25480 of 2016

DATE OF DECISION:14.01.2019

Sohan Lal

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Virinder Kumar Shukla, Advocate for the petitioner.

Mr. Mehardeep Singh, Additional Advocate General,
Punjab.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the prayer of the petitioner is to direct the respondents to pay interest on the delayed pensionary benefits such as arrears of pension and gratuity. In the writ petition, it has been averred that the petitioner joined as Forest Guard on 03.10.1969 and ultimately he retired as Deputy Manager on 30.06.2005.

The contention of the petitioner is that all the pensionary benefits were released to him within a reasonable time except gratuity, which was released to him on 29.04.2016 and, therefore, the petitioner is entitled for interest on the said delayed payments.

Counsel for the respondents states that the petitioner has a

chequered history and there was an FIR registered against the

petitioner and that the petitioner was issued show cause notice for the recovery of the amount of ₹34,876/- and vide order dated 12.10.2011, the proceedings were finalized and penalty of recovery of above said amount was imposed upon the petitioner.

Counsel for the respondents states that though the proceedings came to an end in October, 2011 but the amount of gratuity was only paid to him on 29.04.2016 because of the shortage of funds. The relevant para 5 of the reply as submitted by the respondents states as under:

“That the petitioner has not assailed the order dated 12.10.2011 before the Appellate Authority and in any court of law and so order dated 12.10.2011 has become final. In view of the disciplinary proceedings under contemplation at the time of retirement of the petitioner and disciplinary proceedings instituted after the retirement of the petitioner and judicial proceedings instituted against petitioner regular pension and gratuity were withheld. After the conclusion of the disciplinary proceedings and judicial proceedings the regular pension and gratuity were sanctioned vide Pension Payment Order and Gratuity Payment Order dated 17.08.2015 by the Accountant General Punjab Chandigarh as per the Rule 2.2 (c) (1) of the Punjab Civil Services Rules (Vol.II) and amount of regular(sic) pension was paid to the petitioner after adjusting the amount of the provisional pension and amount of ₹207658/- towards the gratuity was paid to the petitioner after effecting the said recovery of ₹34,876/- from the sanctioned amount of ₹2,42,534/- of gratuity. In view of the said disciplinary proceedings and judicial proceedings gratuity and regular pension had fallen due on the conclusion of the above said proceedings. So the

petitioner is not entitled to the interest on the amount of difference of the provisional pension and regular pension and amount of the gratuity. The amount of the gratuity was paid to the petitioner on 29.04.2016 as there was shortage of funds with the Government of Punjab.”

The respondents have admitted in their reply that there was delay in releasing the gratuity to the petitioner. Upto the date of imposing the recovery order upon the petitioner in October, 2011, there could be valid justification of withholding the amount during the pendency of the proceedings but after effecting the recovery of amount of ₹34876/-, the remaining amount of gratuity should have been paid to the petitioner immediately without any further delay.

The ground which has been taken by the respondents is that there was paucity of funds and, therefore, the gratuity was paid in April, 2016, is not a valid ground. The Division Bench of this Court in case of **Ram Karan Vs. Managing Director, Pepsu Road Transport Corporation and another, 2005(3) PLR 580** has already held that paucity of funds cannot be a valid ground to withhold pensionary benefits and while Referring to **All India Imam Organisation and others Vs. Union of India and others, 1993(3) SCC 584**, it was held as under:

“6..... Much was argued on behalf of the Union and the Wakf Boards that their financial position was not such that they can meet the obligations of paying the Imams as they are being paid in the State of Punjab. It was also argued that the number of mosques is so large that it would entail heavy expenditure which the Boards of different States would not be able to bear. We do not find any correlation between the two. Financial difficulties of the institution

cannot be above the fundamental right of a citizen. If the Boards have been entrusted with the responsibility of supervising and administering the Wakf then it is their duty to harness resources to pay those persons who perform the most important duty namely of leading community prayer in a mosque the very purpose for which it is created."

As withholding of the retiral benefits on the ground of paucity of funds is not a valid ground, the petitioner becomes entitled for the interest on the delayed payments of gratuity starting from the date when the proceedings culminated against the petitioner on 12.10.2011. The petitioner will be entitled for interest @ 9% per annum from 12.10.2011 till 29.04.2016 i.e. when the actual payment was made. Let the amount of interest be calculated by the respondents within a period of two months from the date of receipt of a certified copy of this Court and actual payment of interest for which the petitioner became entitled shall also be released to him within a period of one month thereafter.

The writ petition is allowed in the above terms.

January 14, 2019
jt

(HARSIMRAN SINGH SETHI)
JUDGE

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