

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

**CWP No. 21209 of 2018
Date of decision : 12.09.2019**

Ram Kumar

....Petitioner

Versus

Ch. Charan Singh Haryana Agriculture University, Hissar and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Jitender Sharma, Advocate for the petitioner.

Mr. S.S. Walia, Advocate for the respondents.

Harsimran Singh Sethi, J. (Oral)

The prayer of the petitioner in the present writ petition is that the respondents be directed to release the benefit of gratuity and leave encashment alongwith interest with effect from the date petitioner retired till the actual payment is released.

As per the averments made in the writ petition, petitioner joined the respondent-University on 22.04.1982 as Daily Paid Labour and his services were regularized on 01.04.1993. Thereafter, petitioner was promoted as a Water Pump Operator Grade-II from which post, ultimately, he retired on attaining the age of superannuation on 31.03.2014. The grievance raised by the petitioner in the present writ petition is that his leave

withheld by the respondents without any valid justification.

Learned counsel for the petitioner argues that there are no proceedings, which were pending against the petitioner either at the time of retirement or thereafter, which would have entitled the respondents to withhold the pensionary benefits of the petitioner but still, leave encashment and the gratuity, for which the petitioner is entitled, are not being released.

Upon notice of motion, respondents have filed the reply in Court today. In the reply, the respondents have admitted that at the time when the petitioner retired, there were no proceedings pending against the petitioner but the justification, which has been given by the respondents to withhold the pensionary benefits is that the petitioner had filed a civil suit claiming higher wages for the post on which he was discharging the duties. Said suit was decreed in favour of the petitioner in the year 2001 directing the respondents to pay the petitioner the wages at a higher rate. Against the said decree, respondents had filed an appeal before the First Appellate Court, which was also dismissed prior to the retirement of the petitioner. Thereafter, respondents filed a Regular Second Appeal before this Court. In the Regular Second Appeal, as per the contentions raised by the learned counsel appearing on behalf of the respondents, a direction was issued to release the benefit of the higher pay subject to the decision of the Regular Second Appeal.

Learned counsel for the respondents states that the benefit of leave encashment and gratuity were withheld as a matter of security in case the respondents are successful in their Regular Second Appeal. It is admitted by the learned counsel appearing on behalf of the respondents that

Regular Second Appeal also stands dismissed and even the Special Leave Petition filed by the respondents has also been dismissed. Learned counsel for the respondents further states that after the proceeding came to an end without any further delay, the benefit of leave encashment and gratuity have already been extended to the petitioner.

Learned counsel for the petitioner argues that the petitioner is entitled for interest on the delayed release of payments as the petitioner has been waiting for the release of these benefits such as leave encashment and gratuity for the last about five years.

Learned counsel for the respondents contest the claim of the petitioner for the grant of interest on the ground that the respondents had valid ground to withhold the benefit of leave encashment and gratuity as the same were retained as a matter of security keeping in view the undertaking which the petitioner had given that his leave encashment and gratuity may be retained during the pendency of the proceedings.

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

It is not disputed that there were no proceedings pending against the petitioner, which would have entitled the respondents to withhold the gratuity and the leave encashment after the retirement. No rule has been cited by the respondents that in case of the revision of the pay scale, which has been allowed by a competent court of law, the benefits can be retained by the respondents without there being any order from the competent court of law allowing the respondents to retain the same. It is admitted by the learned counsel for the respondents that there was no

interim order passed in their favour at any given point of time during the litigation, wherein the petitioner was granted the benefit of higher wages for the post on which he was discharging the duties. Under these circumstances, respondents were bound to comply with the orders passed by the competent Court of law. They cannot wait for the litigation to come to an end so as to release the legitimate claim of benefits to the petitioner. In case, they were apprehensive that the benefits once extended to the petitioner under the orders may not be recovered, in case the said pending litigation is decided in their favour, they could have approached the competent Court of law with appropriate prayer in that regard. Rather, as admitted by the learned counsel for the respondents, direction was issued to the respondents by this Court to comply with the judgment in the letter and spirit subject to the order passed in Regular Second Appeal. Therefore, even this Court during the pendency of the Regular Second Appeal, directed the respondents to comply with the orders and grant the benefit, still the respondents did not release the amount of leave encashment and gratuity and kept the same as a security, which is not at all permissible. This act of the respondents amount to intentionally denying the benefit of the order passed by the Competent Court of Law in favour of the petitioner.

As far as the objection raised by the learned counsel for the respondents for the grant of interest that the petitioner had given an undertaking that his leave encashment and gratuity be retained till the proceedings reach finality, it is clear that the respondents have taken the benefit of being in a strong position. They have forced the petitioner, who is a retired employee and has no other means to live to file an undertaking to

the effect that his leave encashment and gratuity be retained but the other benefits be released. Such kind of undertaking is not a valid undertaking and cannot be taken into consideration for any purpose, especially, when the petitioner was entitled for the release of the benefits such as gratuity and leave encashment immediately upon his retirement on 31.03.2014.

A Co-ordinate Bench of this Court while deciding CWP No. 15771 of 1999 titled as ***Maghar Singh Vs. The State of Punjab & another***, on 26.09.2016 has dealt with the question as to under what circumstances, an undertaking given by an employee is to be treated as a valid undertaking. The relevant paragraphs of the said judgment are as under:-

“13. A written statement has been put on record filed by the learned D&SJ, Sangrur contesting the case. It is objected therein that the petitioner can have no relief in terms of the undertaking given by him on May 26, 1998 agreeing that he will not claim the pay/salary for the period he remained dismissed. The petitioner had also given an undertaking that for counting his service, leave of the kind due may be sanctioned. His letter dated May 26, 1998 is placed on record as Annex R-1/L and its true translation alongside.

14. xxxx xxxx xxxx xxxx

15. xxxx xxxx xxxx xxxx

16. The question that falls for consideration is as to what the legal value of the undertaking is and whether it forecloses absolutely the rights accruing on acquittal to claim the main reliefs prayed. Reminder is that he had after all spent 13 long years before the trial court and in appeal before he secured acquittal from the blame on the criminal charges framed against him. He had remained during this period either under suspension or as a dismissed government employee.

17. xxxx xxxx xxxx xxxx

18. *The petitioner urges in counterpoint that an admission in a misapplication of the legal position and would not bind the maker of the same to divest him him of accrued rights. He cites the Supreme Court dicta in Shri Krishan v. The Kurukshetra University, AIR 1976 SC 376, the Calcutta High Court single bench in Shri S.S.Garga v. The Coal Controller, Government of India, Ministry of Petroleum, Chemicals and Non-Ferrous Metals (Department of Mines and Metals) Calcutta and Ors, 1974 (1) SLR 241 that an admission which is self-inflicting cannot bind the signatory. Hence the petitioner could always retrieve himself of the bind he got himself in by his own writing which was not signed by free will and consent, but under pressure of force of circumstances to obtain the relief of reinstatement to service. The concealment, if any, I believe, has thus got no material bearing on his rights gained after acquittal of the criminal charge especially when the complainant was none other than a Judicial Officer and hence the petitioner becomes entitled to full pay and allowances from the date of suspension till the date of acquittal and reinstatement.*

19. *The undertaking dated May 26, 1998 given under duress and mis-appreciation of the law is not binding on the unwitting maker when he was confronted with the dilemma of securing his job on a bargain, whatever the cost. This Court cannot divorce itself from the stark reality of the predicament. After all, there were government instructions prevailing at the relevant time placed at Annex P-5 issued by the Chief Secretary, Punjab which afforded full pay and allowances to employees similarly-placed as the petitioner. Then again, under Rule 7.3 the period has been treated as on duty and the respondents did no favour to the petitioner in reinstating him to service in the natural order of things. In any case, the period*

cannot be treated as leave of the kind due because leave is nothing but permission to be absent. In law, he cannot be treated as having forfeited his legal rights to score an advantage which law gave to him. The petitioner was forced out of service from 1989 to 1998 and suffered deprivation of right to livelihood by the evil of loss of salary and remainder subsistence allowance. He cites law in Shashi Kumar v. Uttar Haryana Bijli Vitran Nigam & another, reported in 2005 (1) SCT 576 (DB) to assert such right which is a case of acquittal from charges framed under the provisions of the Prevention of Corruption Act, 1988 which can be of help to the petitioner and is hardly distinguishable. In any case, no forfeiture can take place without service of notice and hearing which valuable procedural safeguard was bypassed by the learned District & Sessions Judge, Sangrur by a summary dismissal even though antecedent rights had matured on acquittal by the criminal court in appeal. After all, the petitioner was honorably acquitted of the charge when blame was wrongly fastened on him by none other than the Judge he worked under.

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- 21. xxxx xxxx xxxx xxxx
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- 24. xxxx xxxx xxxx xxxx
- 25. xxxx xxxx xxxx xxxx
- 26. xxxx xxxx xxxx xxxx

27. On these premises, it is my sincere belief that when the issue of reinstatement arose for consideration after acquittal, a reasonable and law faring Judicial Officer holding the high post of District & Sessions Judge, Sangrur should not have readily accepted the undertaking without batting an eyelid as it was against public policy of India to misuse the law of estoppel and was an action taken a rather unfair thing to do to a

subordinate official who could never be in a position to retaliate with the strong arm of reason and send it home to his success. If the judge terrifies a subordinate there can be no greater harm inflicted on a defenseless person. There ought not to be a whit of a difference between the judge acting on his judicial and administrative side where justice is involved when justice should not only be done but appear to be done. There is no place in this constitutional scheme for playing Dr. Jekyll and Mr. Hyde.

- 28. xxxx xxxx xxxx xxxx
- 29. xxxx xxxx xxxx xxxx
- 30. xxxx xxxx xxxx xxxx
- 31. xxxx xxxx xxxx xxxx

32. Having regard to the the contentions as noticed in the preceding paragraphs I have no hesitation in holding that the action of acceptance of the relinquishment letter itself was improper and unfair thing to do only to deprive an employee of his just dues following acquittal and reinstatement. I have no doubt that the pecuniary and non-pecuniary benefits arising from reinstatement are very valuable rights in the changed circumstances following acquittal of blame in the criminal trial. The respondent in the present petition is the District & Sessions Judge, Sunam. He was the guardian of the legal rights of his staff and should have gracefully passed consequential orders without delay other than the period of limitation to prefer revision. After all, the appeal succeeded in home turf and within the jurisdiction where the crime was alleged to be committed. Better suited may have been a domestic enquiry but no one seems to have paid thought to it, while saving face.

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- 34. xxxx xxxx xxxx xxxx

35. After considerable thought I am unable to persuade myself to decide in favour of the respondents even by a long

shot. The respondents brought the charge against the petitioner and the conviction recorded by the Judicial Magistrate, Ist Class was set aside in appeal. It is not that guilt of the petitioner was not established, but his innocence was proven and I have no doubt in my mind that the impugned order dated August 03, 1998 is not sustainable in the eyes of law and has deservedly to be set aside. The preliminary objection of the respondent to the effect that the petitioner has relinquished his rights to past consequential benefits by pressing procedural rule of estoppel is overruled as the law does not countenance a barter system in service law domain and exchange of past rights to money in lieu of reinstatement, in the facts and circumstances of this case.

36. It is held that salary to an employee is in the nature of a property right zealously guarded constitutionally by Article 300A of our Constitution, which right cannot be taken away save by authority of law. An admission made on a mistake of fact or law under pressure without abundant caution thereby causing acute monetary loss to one's own self is not covered by the expression "authority of law" or by the due process of the law. Neither does Rule 7.3 deprive the petitioner of money claimed by a decree issued from this Court, as I propose to do."

A Full Bench of this Court in **A.S. Randhawa Vs. State of Punjab and others, 1997(3) SCT 468**, has held that employees are entitled for the release of the pensionary benefits within a reasonable time of their retirement unless there is a justifiable cause to withheld the same. In the present case, there was no justifiable cause with the respondents to retain the amount of leave encashment and gratuity for a period of five years after the retirement of the petitioner. The relevant paragraph of 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. Padmanabhan 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.”

Further, a Coordinate Bench of this Court in **J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355**, has held that where an amount for which an employee was entitled, has been retained and used by the respondents, employee will be entitled for the interest. The relevant paragraph of **J.S. Cheema's case (supra)** 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, there was no justifiable cause with the

respondents to withhold the leave encashment and gratuity of the petitioner after his retirement and it is a matter of fact that the amount was retained and used by the respondents and, therefore, even the law laid down by this Court in **J.S. Cheema's case (supra)** will also be applicable for the grant of interest.

Resultantly, the writ petition is allowed. Petitioner is held entitled for the interest @ 9% per annum from the date, the amount became due till the same is actually released in his favour. Let the calculation of interest be done by the respondents within a period of two months from the receipt of certified copy of this order and the amount so calculated shall be paid to the petitioner within a period of one month thereafter.

Writ petition is allowed in above terms.

September 12, 2019
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

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