IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-2662-2016
Date of decision: - 06.02.2019

Ajit Singh

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. R.K. Arora, Advocate,
for the petitioner.

Mr. Mehardeep Singh, Additional Advocate General, Punjab.

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HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the prayer which has been made by the petitioner is for the releasing of the retiral benefits for which he has become entitled for after superannuation, alongwith interest @ 18% per annum. Further, a prayer has been made that against the order of punishment dated 24.12.2014 (Annexure P-5), by which 10% cut was imposed on the pension of the petitioner, an appeal filed by the petitioner dated 28.02.2015 (Annexure P-6) but the same has not been decided by the respondents so far.

As per the facts stated in the present writ petition, the petitioner joined the respondents department on 20.06.1977 as an Inspector. Thereafter, he was promoted as Assistant Food and Supplies

Officer on 14.07.1998. Thereafter, he was promoted as District Food and Supplies Officer on 27.03.2000. Further, the petitioner was promoted as District Food and Supplies Controller on 27.03.2002 from which post he retired on 31.05.2005.

It is contended by counsel for the petitioner that though on the date of the retirement, there was no charge-sheet pending against the petitioner, but immediately thereafter, the charge-sheet was served upon the petitioner on 04.01.2006. The said issuance of the charge-sheet was challenged by the petitioner by filing a CWP No.16388 of 2005 and the same was disposed of by this Court on 24.04.2006 by giving direction to the respondents to dispose of the said charge-sheet within a period of six months.

It is further contended by counsel for the petitioner that in view of the above-said order passed by this Court, the respondents passed an order dated 20.10.2006 dropping the said charge-sheet. Before the said charge-sheet could be dropped, the petitioner was already issued two more charge-sheets on 04.04.2006, which the petitioner had appended as Annexures P-2 and P-3. In all, counsel for the petitioner states that there were two charge-sheets which were pending against the petitioner issued on 04.04.2006. These charge-sheets were challenged by the petitioner by filing a CWP No.19649 of 2006, which writ petition was withdrawn by the petitioner to raise all the issues including the maintainability of the charge-sheets before the enquiry officer.

The enquiry continued and ultimately, the allegations were proved and punishments were imposed, vide order dated 24.12.2014

(Annexure P-5), wherein 10% cut was imposed upon the pension of the petitioner by the respondents. Against the said order, the petitioner filed statutory appeal on 28.02.2015, which is stated to be pending even as of now.

Petitioner has filed the present writ petition claiming that the pensionary benefits for which he became entitled upon his retirement should be released as the pendency of the charge-sheet(s) cannot be taken as a ground for withholding the same. It has been admitted by counsel for the petitioner that during the pendency of the writ petition, all the benefits except the gratuity was released to the petitioner.

Counsel for the petitioner states that though the charge-sheets had come to end with the imposing of the punishment of cut of pension to the tune of 10% on 24.12.2014, still, the respondents did not release the gratuity of the petitioner.

Counsel for the petitioner further states that after the proceedings were culminated on 24.12.2014, there is no valid justification with the respondents to withhold the gratuity amount thereafter and the same should have been paid immediately to the petitioner.

Upon notice of motion, the respondents have filed the reply.

In the reply, the respondents had stated that as the proceedings were pending against the petitioner in respect of the charge-sheets dated 04.04.2006, all the retiral benefits could not be released. Further, in paragraph 10 of the reply, it has been mentioned that as the petitioner had filed an appeal against the order of imposition of punishment dated 24.12.2014, the said punishment order could not be treated as final so as to release the gratuity. The relevant paragraph 10 of the reply is as under:-

> "That it is submitted that as the punishment order has not attained finality, the retiral benefits of the petitioner have not been released."

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

From the facts narrated above, it is clear that the proceedings were pending against the petitioner in respect of the charge-sheets issued to him on 04.04.2006. The said proceedings only culminated with the imposition of punishments upon the petitioner on 24.12.2014, vide which 10% cut was imposed upon the pension of the petitioner. After the said order, there is no proceedings which can be stated to be pending against the petitioner even though he had filed an appeal against the order of punishments before the appellate authority. The reason given by the respondents to withhold the gratuity even after the imposition of punishments on 24.12.2014 that the appeal filed by the petitioner is pending with the competent authority and therefore, the order of punishment cannot be treated as a final, is not a valid ground to deny the release of the gratuity. As far as the respondents are concerned, the charge-sheet had attained finality. It is only the petitioner, who had filed appeal for setting aside of the order and therefore, the respondents cannot take a plea that the proceedings in respect of charge-sheet dated 04.04.2006 have not attained the finality so as to entitle them to withhold the gratuity.

Counsel for the petitioner states that the gratuity amount has been released to the petitioner now on 10.01.2019 and therefore, the petitioner is entitled for interest from the day when the charge-sheet proceedings culminated by imposing the punishments upon him on 24.12.2014.

The plea, which has been raised by counsel for the petitioner, is liable to be allowed and the petitioner is entitled for interest from 01.01.2015 after the proceedings came to end in respect of the charge-sheet dated 04.04.2006 by imposition of punishments and there was no valid reason with the respondents to withhold the gratuity amount thereafter.

As per the settled principle of law settled by a Full Bench of this Court in **A.S. Randhawa' case (supra),** the amount which has been retained by the respondents and there is a delay in releasing the same, the employee will be entitled for interest. The relevant paragraph 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 front 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."

Furthermore, in the case of **J.S. Cheema** Vs. **State of Haryana, 2014(13) RCR (Civil) 355,** this Court had held that an employee will be entitled for the interest on an amount which has been retained by the respondents without any valid justification. 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."

A bare perusal of the above would show that where the amount has been retained by the department, the employee has been held entitled to the interest.

In view of the above, it is clear that the respondents did not have any valid ground to retain the amount of gratuity after 24.12.2014. Hence, the petitioner is entitled for interest on the amount of gratuity released to him w.e.f. 01.01.2015 till the same was released to him on 10.01.2019. Consequently, the present writ petition is disposed of with the direction to the respondents to calculate the interest @ 9% per annum on the delayed payments, which have been made to the petitioner.

Let the calculation be done within a period of two months from the date of receipt of a certified copy of this order and the actual payment shall be released to the petitioner within one month thereafter.

Counsel for the petitioner states that even the statutory appeal, which the petitioner had filed against the order of the punishments dated 24.12.2014, is still pending consideration with the respondents.

No justification has been shown by the respondents as to why the said appeal has not been decided even after an expiry of a period of three years.

Under these circumstances, the respondents are directed to pass an appropriate speaking order on the appeal, which the petitioner had filed on 28.02.2015 against the punishment order dated 24.12.2014, within a period of three months from the date of receipt of certified copy of this order.

Present writ petition stands disposed of in the above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

February 06, 2019
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Whether reasoned/speaking? Yes
Whether reportable? Yes