IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-26621-2016
Date of decision: - 17.10.2019

Noor Mohd.

....Petitioner

Versus

Punjab Wakf Board and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Arvind Galav, Advocate
for the petitioner.

Mr. Jai Bhagwan, Advocate
for the respondents.

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HARSIMRAN SINGH SETHI, J. (ORAL)

The grievance which has been raised in the present writ petition is that the retiral benefits for which the petitioner was entitled for after his retirement on 31.10.2014, have been withheld by the respondents without any valid justification and the prayer of the petitioner is for issuance of a direction to the respondents to release the retiral benefits alongwith interest.

The facts as mentioned in the present writ petition are that petitioner was appointed as a Clerk-cum-Rent Collector with the respondent-Wakf Board Board on 15.03.1980. While working as such, petitioner was issued a charge-sheet on 15.05.2008 and the said charge-sheet remained pending till the petitioner attained the age of superannuation on 31.10.2014. As there was a charge-sheet pending, all the pensionary benefits of the petitioner were withheld. Petitioner has filed the present writ petition seeking the direction from this Court to the respondents to release all the pensionary benefits alongwith interest.

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

In the reply, respondents have stated that gratuity amounting to ₹3,50,000/- has been released to the petitioner on 09.11.2017; leave encashment amounting to ₹4,20,953/- has been released on 09.11.2017 and further, the provident fund has also been released on 16.06.2017. The reasons for not releasing the pensionary benefits have been given in paragraph 2 of the preliminary submissions. As per the reply, there were enquiry proceedings pending against the petitioner, which enquiry proceedings were concluded on 02.01.2017 and the petitioner was exonerated and after the exoneration, all the retiral benefits have been released to the petitioner. The relevant portion of the reply is as under: -

> "1. That present writ petition deserves to be dismissed on the grounds that the answering respondent has already released the retiral benefits i.e. death-cum-retirement gratuity Rs.3,50,000/- vide cheque No.011056 dated 09.11.2017 and also leave encashment of Rs.4,20,953/- after adjustment vide Cheque No.011055 dated 09.11.2017 and provident fund of (both shares also have been released by the answering respondent, the petitioner has withdrawn the same from the Bank after issuance of NOC to the Bank.
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> 2. That it is further submitted that so far as disciplinary proceedings initiated after retirement, in the said proceeding the Ld. Inquiry Officer on completion of inquiry proceedings submitted his inquiry report and petitioner stand exonerated by the inquiry officer

> and vide his inquiry report and exoneration order dated 02.01.2017. In this eventuality in the instant writ petition has become infructuous and deserves to be dismissed merely on these grounds."

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

Counsel for the petitioner has admitted that all the payments, for which the petitioner was entitled for upon his retirement, have been received by him and now the only grievance of the petitioner which survives is that as the payments were delayed for more than nine years, he is entitled for the interest on the said delayed payments.

The prayer of the petitioner for grant of interest is objected to by learned counsel for the respondents on the ground that the respondents had a valid ground to retain the benefits keeping in view the pendency of charge-sheet dated 15.05.2008 and it is only after the exoneration of the petitioner from the said allegations, petitioner became entitled for the release of the pensionary benefits, which have been released to him, therefore, the petitioner is not entitled for any interest.

Though, it is an admitted fact that charge-sheet dated 15.05.2008 was pending when petitioner retired from service on 31.10.2014, but the pendency of the charge-sheet does not give jurisdiction to the respondents to withhold all the benefits. The pension and provident fund, for which the petitioner became entitled after his retirement, could not have been withheld. The respondents could have withheld gratuity and leave encashment, if permissible under rules governing the service. No rule has been placed before this Court, which authorizes the respondents to withhold the pensionary benefits after the retirement of an employee.

Even otherwise, it has been admitted by counsel for the respondents that petitioner was exonerated in January, 2017 of the allegations, which were alleged against him, vide charge-sheet dated 15.05.2008. Once the petitioner has been exonerated in the charge-sheet, pendency of the charge-sheet dated 15.05.2008 cannot cause prejudice to the petitioner. Further, the respondents themselves alleged allegations against the petitioner, which they could not substantiate, therefore, pendency of charge-sheet qua those allegations cannot cause prejudice to the petitioner.

This amount was withheld by the respondents and the petitioner was not allowed to use the same for his benefit after his retirement. Therefore, once the petitioner has been exonerated of the charges, withholding of the same, has caused prejudice to the petitioner and the petitioner needs to be compensated for the same by award of interest.

The question of grant of interest on the delayed payment has already been answered by the Full Bench of this Court in **A.S. Randhawa Vs. State of Punjab and others**, **1997(3) SCT 468,** wherein, it has been held that the amount which has been retained by the respondents and that too without any justifiable reason, the employee will be entitled to 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."

Even otherwise, a Co-ordinate Bench of this Court in **J.S. Cheema** **Vs**. **State of Haryana, 2014(13) RCR (Civil) 355,** has held that an employee will be entitled for the interest on an amount, which has been retained and used 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."

In the present case, the amount which was due to the petitioner has been retained and used by the department, therefore, petitioner will be entitled for interest on this score also.

Keeping in the view the above, the writ petition is allowed. The claim of the petitioner for the grant of interest is allowed and the petitioner will be held entitled for the interest @ 9% per annum from the date the amount became due i.e. 01.11.2014 till the payments were actually released to the petitioner by the respondents.

Let the calculation of the amount of interest be done by the respondents within a period of two months from the date of receipt of a certified copy of this order and the actual amount, so calculated, shall be released to the petitioner within one month thereafter.

Present writ petition stands disposed of in the above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

October 17, 2019
naresh.k

Whether reasoned/speaking? Yes
Whether reportable? Yes