IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

(256) **CWP-23550-2017**
Date of Decision: July 17, 2019

Vishwas Sharma **.. Petitioner**

Versus

State of Haryana and others **.. Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Yashdeep Nain, Advocate, for the petitioner.

Ms. Nidhi Garg, AAG, Haryana.

Mr. Mahesh Dheer, Advocate, for respondent No.5, with
Mr. Rakesh Mahama, Deputy Manager, State Bank of India, respondent No.5 in person.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the grievance which is being raised by the petitioner is that he was not being paid the family pension for which he was entitled keeping in view the notification dated 17.04.2009 and a prayer has been made in the present writ petition for issuance of a direction to the respondents for releasing the correct amount of family pension to the petitioner alongwith interest.

As per the facts mentioned in the writ petition, father of the petitioner namely, Sh. Madan Mohan Sharma was appointed as a Master on 20.10.1972 on adhoc basis and thereafter, his services were regularized on 01.01.1979. Unfortunately, while in service, father of the petitioner died on 25.02.2007. After the death of petitioner's father, mother of the petitioner was given the benefit on the basis of last pay drawn by the father of the petitioner till he would have attained the age of superannuation i.e. 30.06.2015. After 30.06.2015, mother was entitled for the grant of family pension. Unfortunately, before 30.06.2015, mother of the petitioner namely, Santosh Rani, who was drawing last drawn benefit after the death of her husband, also died on 11.07.2012. At the time of the death of the mother, petitioner had not attained the age of 25 years and was neither married nor was earning, therefore, he became entitled for the grant of family pension under the Rules.

The grievance which is being raised by the petitioner in the present writ petition is that the petitioner was entitled for the enhanced pension of Rs.11,910/-, which was wrongly reduced by the respondents though, under the notification dated 17.04.2009, petitioner was entitled for the pension at enhanced rate. Petitioner made the claim of the same but as the request of the petitioner was not accepted, petitioner filed the present writ petition claiming the same.

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

In the reply, which has been filed by respondent No.3, it has been stated that it is only the State Bank of India, which has been authorized to release the pensionary benefits and thefore, the Treasury Officer, Kurukshetra had no role to play with regard to the claim which is being made by the petitioner.

State Bank of India has also filed the reply. In the reply, a plea has been taken by the State Bank of India that it is for the very first time that Office of the Accountant General, Haryana issued a letter on 13.02.2018 accepting the claim of the petitioner in respect of entitlement of the petitioner for the grant of enhanced pension keeping in view the notification dated 17.04.2009. After the receipt of the said letter dated 13.02.2018, the enhanced pension was calculated by the Bank and was released to the petitioner on 03.05.2018.

Learned counsel for respondent No.5 states that unless and until there was any information received from the competent authority i.e. Administrative Department or the Office Accountant General Haryana, Bank could not have enhanced the family pension on its own for which the petitioner became entitled for in view of the notification dated 17.04.2009.

No reply has been filed by the Administrative Department but learned counsel appearing on behalf of the State does not deny the fact that petitioner was entitled for enhanced family pesnion keeping in view the notification dated 17.04.2009, which benefit has been ultimately released to the petitioner in the year 2018.

Learned counsel for the petitioner submits that the amount for which the petitioner became entitled for on account of enhanced family pension, has already been calculated and released to the petitioner during the pendency of the writ petition and on 03.05.2018. The prayer which subsists in the present writ petition is for the grant of interest on the delayed release on the said enhanced amount.

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

It has not been disputed by the respondents that keeping in view the notification dated 17.04.2009, the claim of the petitioner for continuance with the enhanced family pension was justified. It has also been admitted by the respondents that the benefits accruing to the petitioner under the notification dated 17.04.2009, have already been given to the petitioner, though at a later stage i.e. as 03.05.2018.

It is the settled principle of law settled by a Co-ordinate Bench of this Court in ***J.S. Cheema Vs. State of Haryana and others, 2014 (1) S.C.T. 782***, that where an amount for which an employee was entitled for, has been retained and used by the respondents that too without any valid justification, employee will be entitled for interest. The relevant paragraph of the said judgment 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 has been released to the petitioner on 03.05.2018, petitioner was entitled for the same when he became entitled for the grant of family pension in July, 2012 when unfortunately mother of the petitioner passed away, making him eligible for the grant of family pension.

The notification dated 17.04.2009 was very much in existence in July, 2012 i.e. at the time when the benefit of family pension was to be extended to the petitioner at enhanced rates. Therefore, the denial of the said benefit to the petitioner was unjustified as the same was without any valid justification. Once, the amount has been retained and used by the respondents, as per ***J.S. Cheema's case (supra)***, petitioner will be entitled for interest on the same.

The writ petition is allowed. Petitioner is held entitled for interest @ 9% per annum from the date when the petitioner became entitled for the said amount till the release of the said amount on 03.05.2018. Let the amount be calculated keeping in view the interest for which the petitioner will be entitled for, 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 is allowed in above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

July 17, 2019
harsha

Whether speaking/reasoned: Yes
Whether reportable: Yes