IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP- 4210 of 2005
Date of decision: 24.10.2019

Bharat Sharma .... Petitioner

versus

State of Haryana and others .... Respondents

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Mohit Jaggi, Advocate
for the petitioner

Mr. C.S. Bakhshi, Addl. A.G. Haryana.

HARSIMRAN SINGH SETHI, J. .

The claim of the petitioner in the present writ petition is with regard to the family pension, for which the petitioner is entitled after the death of his mother namely Shashi Bala, who unfortunately died in a road accident on 27.09.1991.

As per the facts mentioned in the writ petition, the mother of the petitioner Smt. Shashi Bala was working as S.S. Mistress in the Education Department, Haryana and she died in a road accident on 27.09.1991. After the unfortunate demise of the mother of the petitioner, father of the petitioner Mr. Anil Kumar Sharma was sanctioned family pension, which he continued to get till the year 1993. In the year 1993, when father of the petitioner remarried, family pension was sanctioned in favour of the petitioner. Grievance of the petitioner only originated in the year 2003, when the respondents abruptly stopped payment of pension to the petitioner. The present writ petition has been filed, claiming the benefit of the arrears of the family pension starting from 01.07.2003 till the petitioner attained the age of 25 years along with interest.

Upon notice of motion, respondents have filed reply and in the reply respondents have stated that petitioner did not turn up before respondents to assure that the petitioner is still eligible to get the family pension and as no one turned up to claim the family pension, the same was stopped in the year 2003. It has further been stated in the reply by the respondents that arrears of family pension starting from 01.07.2003, when it was stopped, till the petitioner attained the age of 25 years amounting to Rs.5,45,252/- have already been released to the petitioner after deduction of Rs.31,978/-. The calculations have been attached by the respondents with the reply as Annexure R-5/6.

Learned counsel for the petitioner does not dispute the receipt of an amount of Rs.5,45,252/-, but argues that though the petitioner was entitled for this amount starting from the year 2003, but the same has only been released to the petitioner in the year 2015, hence, the petitioner is entitled for interest on the said amount.

Learned counsel for the respondents objects to the grant of interest to the petitioner on the ground that amount of pension was not claimed by the petitioner and hence, the same was stopped and it is only after the petitioner claimed the same, it was released to him, therefore, the petitioner is not entitled for interest.

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

The facts, which have been recorded above, are not in dispute. It is also not in dispute that since the year 1993, after the father of the petitioner remarried, family pension of the petitioner was being deposited by the respondents in the bank. Once the family pension was being deposited with the bank, there is no question for claiming the same again by the petitioner. It is the respondents, who stopped the pension without any prior information. Further, in the absence of any cogent reason, the respondents could not have stopped the family pension. At the time, when the family pension was stopped, the petitioner was still minor and he was only dependent upon family pension still the same was stopped by the respondents abruptly without any show cause notice or seeking any clarification from the petitioner or his guardian.

In the facts and circumstances of the present case, stopping of pension by the respondents was not in consonance with law and was an arbitrary act.

Learned counsel for the respondents is relying upon Rule 10.13(a) of the Punjab Civil Services Rule, Vol II to state that the family pension which remains undrawn for a period of more than one year is liable to be stopped and, pension can only be restarted after the approval of the Government. The said rule is not applicable upon the case of the petitioner. Being a minor, the pension was being deposited in the account of the petitioner starting from year 1993 till the same was stopped in the year 2003. Stopping of the pension by the respondents cannot be termed that the petitioner did not claim the same. No justification has been given in the reply, as to why, the pension remained unpaid from the year 2003 till 2014 and in the absence of any cogent reason, it can be safely said that the action of the respondents in stopping the pension was without any valid justification and was an arbitrary act, not supported by any rule or law.

Under these circumstances, the petitioner who has been refrained from utilising the amount of family pension, which was his entitlement needs to be compensated by way of grant of interest.

A Co-ordinate Bench of this Court in ***J.S. Cheema Vs. State of***

Haryana 2014 (13) RCR (Civil) 355 held that where an amount is retained and used by the respondents/employer, an employee will be entitled for interest on the same. In the present case, amount, for which the petitioner became entitled was stopped by the respondents in the year 2003 which has been retained and used by the respondents and the same was released in the year 2015 along with arrears and, therefore, in view of the judgement passed in **J.S. Cheema's case (supra)** the petitioner will be entitled for interest. Relevant paragraph of the 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."

Keeping in view the above, the present writ petition is allowed to the extent that the petitioner will be entitled for interest on the delayed release of family pension @ 9% per annum from the date it became due till the same was released to the petitioner.

Let a computation of the interest, for which the petitioner is entitled as per this order be carried out within a period of two months from the date of receipt of copy of this order and the payment so calculated be released to the petitioner within a period of one month thereafter.

(HARSIMRAN SINGH SETHI)
JUDGE

24.10.2019

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1. Whether speaking/non-speaking? Yes/No
2. Whether reportable? Yes/No