IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-25043 of 2018
Date of decision: 11.09.2019

Hem Raj Ghai .... Petitioner

versus

The Punjab State Cooperative Supply and Marketing Federation Ltd. and another .... Respondents

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Tahaf Bains, Advocate
for the petitioner.

Mr. Tarun Vir Singh Lehal, Advocate
for the respondents.

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HARSIMRAN SINGH SETHI, J. .

The grievance which is being raised by the petitioner in the present writ petition is that the petitioner superannuated on 31.05.2018 after availing extension for a period of two years, but his pensionary benefits are not being released by the respondents. Further prayer of the petitioner is in respect of punishment imposed upon him vide order dated 13.07.2018 (Annexure P/8), against which he had preferred an appeal before the Appellate Authority on 20.08.2018 (Annexure P/9), which is not being decided and the delay in deciding the appeal is causing prejudices to the petitioner as his pensionary benefits are not being released due to the pendency of the said appeal. The prayer of the petitioner is for issuance of direction to the respondents to release all the pensionary benefits of the petitioner in respect of the services which he had rendered with them.

The facts as stated in the present writ petition are that the petitioner was appointed as a Field Representative with respondents-Punjab State Co-operative Supply & Marketing Federation Ltd (hereinafter, referred as 'Markfed') on 26.09.1981 and, thereafter, he was promoted as Assistant Sales Officer, from which post, he retired on 31.05.2018 after availing extension of two years.

It is an admitted case that before the retirement of the petitioner, a show cause notice was issued to him on 18.06.2015, wherein allegations were made that the petitioner had caused a loss for sum of Rs. 7,84,949/- on account of non-recovery of the amount after supplying fertilisers. Petitioner submitted reply to the show cause notice on 14.08.2015 and the said show cause notice was decided by the respondents on 13.07.2018, (Annexure-P/8) by which, it was ordered that a sum of Rs.7,84,949/- be recovered in equal proportion from the petitioner along with three others, who were held guilty of the allegations along with the petitioners. Against the said order of punishment, petitioner filed an appeal on 20.08.2018 and the said appeal was pending till filing of the present writ petition. The grievance of the petitioner is that on account of pendency of the said appeal, filed by the petitioner, against the order of punishment dated 13.07.2018 (Annexure P/8), the pensionary benefits of the petitioner, for which the petitioner became entitled after his superannuation, are being withheld which act of the respondents, according to the counsel for the petitioner, is unjustified,. Counsel for the petitioner argues that after passing of the order of punishment on 13.07.2018, no proceedings can be stated to be pending against the petitioner and the appeal against the order of punishment was filed by the petitioner on 20.08.2018, therefore, there was no impediment in the release of pensionary benefits of the petitioner. Further prayer of the petitioner is that the respondents be directed to decide his appeal filed on 20.08.2018 (Annexure P-9) against the order dated 13.07.2018 (Annexure P/8) in a time bound manner.

Upon notice of motion, respondents have filed reply. In the reply, the respondents have stated that after the retirement of the petitioner, the pensionary benefits were not released due to the pendency of the show cause notice dated 18.06.2015 and after imposition of punishment upon the petitioner, in respect of the said show cause notice vide order dated 13.07.2018 (Annexure P/8), matter remained pending before the Appellate Authority keeping in view the appeal preferred by the petitioner against the said order of punishment dated 13.07.2018. Appeal of the petitioner, according to the respondents has been accepted by the Appellate Authority on 29.04.2019 and the punishment imposed upon the petitioner for recovery as well as stoppage of one increment has been set aside and after passing of the said order, all the benefits, for which the petitioner became entitled have been released to him by the respondents vide order dated 26.06.2019 (Annexure R-4).

Counsel for the petitioner does not dispute the grant of benefits vide order dated 26.06.2019 (Annexure R-4) but only states that as the benefits have been extended in the month of July, 2019, therefore, the petitioner is entitled for grant of interest on the amount which has been released vide order dated 26.06.2019 (Annexure R-4).

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

It is the settled principle of law that an employee is entitled for the release of his/her pensionary benefits within a reasonable time after his/her retirement until and unless there is a valid justification with the respondents to withhold the same. In the present writ petition, on the date, when the petitioner retired, a show cause notice was pending against him and the respondents were well within their jurisdiction to withhold the pensionary benefits of the petitioner, such as, leave encashment and gratuity only but withholding GPF and pension is not at all justified. It is admitted by the respondents that no benefits were released to the petitioner after he superannuated on 31.05.2018 only due to the pendency of the show cause notice.

Even otherwise, the punishment imposed upon the petitioner after his retirement, in pursuance to the show cause notice dated 18.06.2015 has already been set aside by the Appellate Authority vide order dated 29.04.2019 and the allegations as alleged in the show cause notice were found to be incorrect, which fact is not disputed by respondents, therefore, benefits for which the petitioner was entitled upon his retirement or within a reasonable time were not released and for the delay in releasing the pensionary benefits is the solely responsibility of the respondents.

A Full Bench of this Court in ***A.S. Randhawa vs. State of Punjab 1997(3) S.C.T. 468*** has held that an employee will be entitled for release of his pensionary benefits within a reasonable time after his retirement and the reasonable time as per the Full Bench is two months. In the present writ petition, the allegations in the show cause notice dated 18.06.2015 due to which pensionary benefits of the petitioner were withheld were found to be false. Thus, the petitioner is entitled to be compensated for the delay in release of pensionary benefits which were withheld by the respondents on account of false allegations. Relevant paragraph of the 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."

The case of the petitioner is fully covered for the grant of interest keeping in view the directions given by the Full Bench in A.S. Randhawa's case (supra). Not only this, 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. 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 pensionary benefits @ 9% per annum from 01.06.2018 till the amount was released to the petitioner in the month of July, 2019. 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.

At this stage, counsel for the petitioner states that the calculations of leave encashment of 300 days has not been done correctly by the respondents while releasing the amount. Petitioner will be free to raise this claim before the respondents by filing an appropriate representation.

The petition stands allowed in the above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

11.09.2019
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1. Whether speaking/non-speaking? Yes/No
2. Whether reportable? Yes/No