

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-5721 of 2016

Date of decision: 12.07.2019

Iqbal Masih (deceased) through LR's

.... Petitioner

versus

State of Punjab and others

.... Respondents

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. A.S. Manaise, Advocate
for the petitioner.

Mr. H.S. Sitta, AAG, Punjab.

HARSIMRAN SINGH SETHI, J.

In the present writ petition, the grievance of the petitioner is that the interest on delayed release of pensionary benefits has been denied to him on the ground that administrative department of the petitioner while discharging its duty had sanctioned the amount within given time frame but delay in actual release of the payment was due to the non-release of the same by the treasury and, therefore, administrative department cannot be made liable for non-release of the amount within reasonable time so as to make administrative department liable for grant of interest. The facts of the present writ petition are as under:-

The petitioner joined as temporary Sewadar in District Jail, Gurdaspur on 23.04.1981. He continued to perform his duties as such till 01.09.2004, when his service was regularized. After discharging his duties for the period of 33 years, the petitioner superannuated on 30.04.2014. It has been clearly stated that at the time of retirement, there was no impediment in the

release of pensionary benefit as there was no complaint or inquiry pending, so as to entitle the respondents to withhold the pensionary benefits. Counsel for the petitioner argues that after the retirement, a sum of Rs.2,65,810/- as leave encashment; a sum of Rs.4,17,734 as GPF and a sum of Rs.4,38,587 as gratuity were released to the petitioner on 16.08.2014, 12.03.2015 and 30.03.2015 respectively. As the payments were released after a delay ranging from four months to eleven months, the petitioner raised a claim through a legal notice dated 23.03.2015 (Annexure P/8) for the grant of interest. As no action was being taken by the respondents, the petitioner approached this Court by filing CWP-955 of 2015 titled as Iqbal Masih vs. State of Punjab and others claiming the interest on delayed release of payment. The said writ petition was disposed of by this Court on 21.01.2015 by directing the respondents to decide the legal notice of the petitioner and in pursuance to said directions, respondent No.3 passed an order declining the claim of the petitioner for the grant of interest. This said order dated 11.08.2015 (Annexure P/9) declining the interest is under challenge in the present writ petition. Though, the claim of the petitioner for the grant of ACP benefit was also declined but the counsel for the petitioner has given up the said claim at the time of hearing and restricted his claim only to grant of interest on delayed release of the retiral benefits.

Upon notice of motion, respondents have filed reply and in the reply, the dates on which the payments were made stands admitted. The respondents have rather defended order for non-grant of the interest to the petitioner on the ground that it is the District Treasury office, who has to release the actual payment to the petitioner and, therefore, the administrative department cannot be held liable to make payment of interest.

I have heard counsel for the parties and have gone through the

records with their able assistance.

It is admitted by the respondents that there is delay in the release of the actual benefit to the petitioner as far as the pensionary benefits are concerned. Petitioner retired from service on 30.04.2014 and the payments were made starting from 06.08.2014 and the last payment of gratuity was made on 30.03.2015. There is delay ranging from three and a half months to eleven months. The question to be decided is as to whether the administrative department will be liable, in case the amount in pursuance to the bills sent by the administrative department is not released by the treasury in a reasonable time. The duty to make payment of retiral benefits is not of the treasury but of the administrative department. Treasury is only an agent of administrative department to release the actual benefit for which they have been directed to by the administrative department. Treasury does not take decision independently or is the authority to grant pensionary benefits to the retired employee. Once the treasury office is only an agent of the administrative department, the administrative department will be liable, in case its agent (treasury) does not release the benefits as directed by the administrative department. Therefore, the ground which has been taken by the respondents that the treasury office was liable for the delay and, therefore, administrative department cannot be burdened with interest is not a valid argument and is liable to be rejected, and is rejected.

In the present writ petition, the delay is only in payment of GPF and gratuity which was paid to the petitioner on 12.3.2015 and 30.03.2015 respectively. A Full Bench in **A.S. Randhawa vs. State of Punjab 1997(3) S.C.T.468** has held that where there is delay of more than three months in the release of pensionary benefits and where there is no valid justification

employee will be entitled for interest. Relevant part 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 retiree 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 from 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 benefits 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.”

Not only this, a co-ordinate Bench of this Court in *J.S. Cheema vs.*

State of Haryana 2014 (13) RCR (Civil) 355 has also held that employee will be entitled for interest, where the amount was kept and used by the department/employer. Relevant para 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.”

The case of the petitioner is squarely covered by the law cited above for the grant of interest on payment of GPF and gratuity which was released on 12.3.2015 and 30.03.2015 respectively @ 9% per annum from the date it became due, till the same was released to him by the department. Let respondents/department calculate the interest, for which the petitioner is

entitled within a period of two months from the date of receipt of copy of this order and the same is released to the petitioner within a period of one month from the date it is calculated.

Petition stands disposed of in those terms.

12.07.2019

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1. Whether speaking/non-speaking?

2. Whether reportable?

(HARSIMRAN SINGH SETHI)

JUDGE

Yes/No

Yes/No