IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-7180 of 2015
Date of decision: -07.11.2019

Usha Rani .... Petitioner

versus

State of Punjab and others .... Respondents

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. K.B. Raheja, Advocate
for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

Mr. Ankit Midha, Advocate
for respondents No.2 and 3.

HARSIMRAN SINGH SETHI, J. .

In the present writ petition, the grievance of the petitioner is that he retired on attaining the age of superannuation on 31.07.2012 but the amount of gratuity and leave encashment was released to him on 12.04.2013 and 22.05.2014 respectively, which was approximately after one and a half years of his retirement and, therefore, he is entitled for interest on such delayed payments of gratuity and leave encashment.

Though, the petitioner is challenging the recoveries, which have been effected while making the payments of gratuity and leave encashment but at the time of hearing, learned counsel for the petitioner states that he is not pressing his claim against the recoveries, keeping in view the undertaking given by the petitioner at the time of receiving the certain benefits and restricts his claim for interest on delayed payments of the retiral benefits

As per the averments made in the writ petition, the petitioner retired from the post of Senior Assistant on 31.07.2012. The petitioner was granted benefit of adhoc service towards seniority, which benefit was under challenge before this Court in CWP 1267 of 1999 titled as **Darshan Sharma etc. vs. Punjab State Tubewell Corporation etc.** At the time of retirement, the petitioner had given an undertaking that in case decision in CWP-1267 of 1999 goes against him, he will refund the benefits, which he has already received keeping in view the seniority, which he was granted by taking into consideration adhoc service rendered by him. The said affidavit was given by the petitioner in the year 2007, a copy of which has been attached with the reply of the respondents as Annexure R-1. After retirement, the benefits of gratuity and leave encashment have not released to the petitioner within a reasonable time and the same were released only on 12.04.2013 and 22.05.2014 respectively. Counsel for the petitioner argues that withholding of these benefits by the respondents was without any jurisdiction as there were no proceedings pending against the petitioner, which would have entitled the respondents to withhold the gratuity and leave encashment, therefore, the petitioner is entitled for interest on these delayed payments.

Upon notice of motion, the respondents have filed reply and in the reply, the respondents have stated that gratuity as well as leave encashment of the petitioner was not released and were retained as security keeping in view the pendency of CWP 1267 of 1999 titled as **Darshan Sharma etc. vs. Punjab State Tubewell Corporation etc.** and after the said litigation came to an end, the benefits were released to the petitioner.

Counsel for the respondents states that after the decision in CWP-1267 of 1999, the petitioner became liable for refund of certain benefits keeping in view refixation of his salary on 19.05.2014 and after deducting the excess amount, benefit of leave encashment was released. Counsel for the respondents further states that pendency of the litigation was valid ground for withholding the amount of leave encashment and gratuity.

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

Litigation in CWP 1267 of 1999 titled as **Darshan Sharma etc. vs. Punjab State Tubewell Corporation etc.** was pending at the time of retirement of the petitioner. The petitioner became entitled for release of the pensionary benefits keeping in view the pay, which he was receiving at the time of his retirement. No rule has been cited by the learned counsel for the respondents to substantiate their stand that pendency of the litigation regarding grant of service benefits gives jurisdiction to them to withhold the pensionary benefits of the petitioner. Further, petitioner had already given an undertaking much before retirement that in case any excess amount is found due from him, he will refund the same.

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/her pensionary benefits within a reasonable time after his/her retirement and the reasonable time as per the Full Bench is two months. In the present case there was no impediment in the release of the pensionary benefits to the petitioner and the ground of pendency of litigation in CWP 1267 of 1999 titled as **Darshan Sharma etc. vs. Punjab State Tubewell Corporation etc** is not a valid ground to retain the pensionary benefits. It is only in case any rule authorise a department to retain the amount of pensionary benefits then only the benefits can be retained and not otherwise. Retaining of an amount as a matter of security so as to await the decision of litigation relating to grant of service benefits is not envisaged in any rule governing service and the action of the respondents of not releasing the retiral benefits on this account is arbitrary, especially, when petitioner has already given an undertaking to refund the excess amount in case any recovery is ordered. Therefore, the petitioner needs to be compensated by way of grant of interest on delayed payment of gratuity and leave encashment. 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 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 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."

Further, 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. The petitioner is entitled for interest on the delayed payment of gratuity and leave enashment @ 9% per annum from the day it became due till the payment was actually released to him.

Let 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)
07.11.2019 **JUDGE**
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1. Whether speaking/non-speaking? Yes/No
2. Whether reportable? Yes/No