IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

226 **CWP No.7126-2016(O&M)**
Date of Decision: March 14, 2019

Angad Kumar ......Petitioner(s)

versus

State of Punjab and others .....Respondent(s)

CORAM: HON'BLE MR.JUSTICE HARSIMRAN SINGH SETHI

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Present: Mr. Padam Kant Dwivedi , Advocate
for the petitioner(s).

Mr. Mehardeep Singh, Additional Advocate General, Punjab.

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HARSIMRAN SINGH SETHI , J. (Oral)

The present writ petition was filed seeking release of the pensionary benefits. As per the averments made in the writ petition, petitioner retired on 31.01.2014 while working as a Investigator with the respondents. The grievance which is being raised by the petitioner is that his retiral benefits were not being released which led the petitioner to file CWP No.6932 of 2015, which was disposed of by this Court on 10.04.2015 directing the respondents to decide the representation filed by the petitioner within a period of four months. In compliance of the order passed by this Court, respondents passed an order on 21-08-2015 admitting the payments but still no actual payment was released to the petitioner. The petitioner filed the present writ petition for the release of the payment.

2) Upon notice of motion, the respondents have filed a reply stating therein that due to shortage of the funds, the retiral benefits could not be released to the petitioner earlier but in Paragraph 3 of the reply, it has been mentioned that all the payments were released to the petitioner in March 2018. The relevant paragraph is as under:-

> *“.....*
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> *2. That due to short release of funds by the Governments permissible retiral benefits could not be paid to the petitioner. Now the funds has been released by the Govt. and the entire amount of permissible retiral benefits has been released to the petitioner.*
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> *3. That the amount of Retiral benefits like gratuity and Leave encashment has been calculated which comes to be Rs.16,28,400/- as per rules. Out of the said amount an amount of Rs.1,00,000/- has been received by the petitioner and the balance amount Rs.15,28,400/- has also been paid to the petitioner vide cheque No.522958 dated 31.03.2018 through this office letter No.2751 dated 31.03.2018. The receipt of this letter duly signed by the petitioner is annexed as Annexure R-1. The detail of retiral benefits is as under:-*

1 Amount of Gratuity	*10,00,000.00*
2. Leave encashment	*6,28,400.00*
Total	*16,28,400.00*

> *In view of the above submission, it is submitted that the entire entitled amount of retiral benefits has been paid to the petitioner and the same amount has been received by the petitioner. Therefore, it is humbly prayed that the present writ petition may kindly be dismissed.”*

3) Learned counsel for the petitioner states that as the petitioner retired from service on 31.01.2014 and the actual payments were released by the respondents in March 2018, hence petitioner is entitled for interest on the said delayed payments as there was no valid justification with the respondents to withhold the said amount.

4) Learned counsel for the respondents states that paucity of funds is a reasonable ground to withhold the amount and therefore, the petitioner is not entitled for interest.

5) I have heard the counsel for the parties and have gone through the record with their able assistance. A Division Bench of this Court has already held that paucity of funds is not a valid ground to withhold release of the pensionary benefits to an employee. Division Bench in ***CWP No.14426 of 2003 decided on 16-08-2005*** titled as ***"Ram Karan Vs. Managing Director, Pepsu Road Transport Corporation and another"*** reported as ***2005(3) PLR 580*** has held that the weak financial position is no ground for withholding the pensionary benefits. The Relevant paragraph of the said judgment is as under:-

> *"8. On careful consideration of the rival submissions and the facts of the case, we do not find ourselves in agreement with the arguments advanced by the learned counsel for the respondent-Corporation. In a welfare State it is the duty of the State to ensure the 'right to live' of every individual. The term 'life' as mentioned in Article 21 of the Constitution of India includes livelihood and so many other facets thereof. It means something more than mere existence and inhabitation against the proposition of life and rather it extends to all the facilities by which life is enjoyed. In case a pensioner is not even paid the genuine dues like the medical reimbursement, he is not expected to enjoy the life nor will he feel secure. The Constitution of India contains a large number of rights which guarantee human rights. It recognises the right of every citizen to an adequate standard of life for himself and his family members, which also includes the improvement of living conditions besides providing adequate food, clothing and housing. A welfare State has to take all appropriate steps to ensure the realisation of these rights. The Apex Court in the case of* ***Chameli Singh v. State of U.P., 1996(2) SCC 549****, has held as under :-*
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> *"In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All*

human rights are designed to achieve this object. Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights know to any civilised society.

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Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organised civic community one should have permanent shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a useful citizen and equal in the Fundamental Duties and to be a useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being...."

A right to carry on business is reciprocated with a duty and constitutional obligations provided under the Constitution. Financial stringency may not be a ground for not issuing requisite directions when a question of violation of fundamental rights arises. The Apex Court has also highlighted this aspect in a number of decisions, namely, ***Municipal Council v. Ratlam, 1980(4) SCC 164****;* ***B.L. Wadhera v. Union of India, AIR 1996 SC 2969****;* ***All India Imam Organisation and others v. Union of India and others, 1993(3) SCT 531 (SC) : 1993(3) SCC 584****,* ***Kapila Hingorani v. State of Bihar, 2003(3) SCT 679 (SC) : 2003(3) RSJ 42.*** *As far back as in the year 1993, the Apex Court in All India Imam Organization's case (supra) observed as under :-*

"6.... Much was argued on behalf of the Union and the Wakf Board that their financial position was not such that they can meet the obligations of paying the Imams as they are being paid in the State of Punjab. It was also urged that the number of mosques is so large that it would entail heavy expenditure which the Boards of different States would not be able to bear. We do not find any correlation between the two. Financial difficulties of the institution cannot be above the fundamental right of a citizen. If the Boards have been entrusted with the responsibility of supervising and administering the Wakf then it is their duty to harness resources to pay those persons who perform the most important duty namely of leading community prayer in a moseque the very purpose for which it is created."

We are surprised at the insensitive attitude adopted by the respondent-Corporation in

> *respect of its own employees/pensioners. An employer is not only to look forward to the economic growth but also to look after the welfare of its employees including health, social security and other human needs. It is the obligation of the State or its functionaries to work within the scope of their authority to combat and overcome the miseries of its employees. The Courts in such a situation are obliged to issue necessary directions to mitigate the extreme hardship of the employees involving violation of their human rights by the State or its functionaries like the respondent-Corporation, which are fully controlled by it."*

6) Once, it is found that the weak financial position is not a valid ground, there is no justification with the respondents to deny interest on the delayed released of pensionary benefits. As per the Full Bench judgment passed by this Court in "**A.S. Randhawa Vs. State of Punjab, 1977(3) S.C.T.468"** if there is delay in release of the pensionary benefits without any justifiable reason, the employee will be entitled for interest. The 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."*

7) A Co-ordinate Bench of this Court in a judgment passed in "***J.S. Cheema Vs. State of Haryana and others, 2014(13) R.C.R.(Civil) 355"*** has held that where an amount belonging to an employee has been retained and utilized by

the departments, the 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 laying 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."*

8) Case of the petitioner is squarely covered by the above mentioned decisions passed by this Court for the grant of interest. Accordingly, the present petition is allowed and the petitioner is held entitled for grant of interest @ 9% per annum from the day when payment became due till the release of the same.

9) Let the calculation of the interest be done by the respondents within a period of two months from the date of receipt of copy of this order and the amount so calculated shall be released to the petitioner within a period of one month thereafter.

CM No.7439-2016

CM is disposed of as being rendered infructuous in view of the above order.

March 14, 2019 **[HARSIMRAN SINGH SETHI]**
sonia arora **JUDGE**

Whether speaking/reasoned : Yes
Whether Reportable : Yes