IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-9167-2015 (O&M)
Date of decision: - 15.02.2019

Karnail Singh

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Hari Om Sharma, Advocate
for the applicant-petitioner.

Ms. Deepali Puri Sandhu, Additional Advocate General, Pb.

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HARSIMRAN SINGH SETHI, J. (ORAL)

CM-17488-CWP-2018

Present application has been filed to place on record the synopses of the case.

Application is allowed, as prayed for. Synopses filed on behalf of the applicant-petitioner is taken on record.

CM stands allowed.

CWP-9167-2015

In the present writ petition, the claim which is being made by the petitioner is for the grant of interest on the delayed release of the payments/pensionary benefits.

Counsel for the petitioner states that though the payments for which the petitioner is entitled for have already been released, but the same have been released without the interest, for which petitioner is entitled for as there was no justifiable reason with the respondents to withhold the pensionary benefits.

As per the averments made in the writ petition, petitioner retired as a Tehsildar on attaining the age of superannuation on 31.10.2007. At the time when the petitioner retired, there was a criminal case pending against him being FIR No.40 dated 27.03.2004 and further there was a departmental enquiry, which was also pending against the petitioner. Further, the pension was disbursed to the petitioner on 02.04.2013; commutation of pension was given to him on 19.03.2013; Gratuity/revised gratuity was paid to him in February, 2013; leave encashment was paid to him on 22.01.2013/01.08.2013; and General Provident Fund was paid to him in respect of the missing credits in July, 2013. A chart showing the dates on which the benefits were released to the petitioner is as under: -

Sr. No.	Description of benefit	Due date for granting benefit	Date for releasing benefit/disbursement	
1	Pension	01.11.2007	02.04.2013	
2	Commutation of Pension	01.11.2007	19.03.2013	Rs.5,30,969/-
3	Retirement Gratuity	01.11.2007	28.02.2013	Rs.5,06,105/-
4.	Leave encashment Revised Leave encashment	01.11.2007	22.01.2013 01.08.2013	Rs.3,06,730/- Rs.11,990/-

Sr. No.	Description of benefit	Due date for granting benefit	Date for releasing benefit/disbursement
5	General Provident Fund Missing credits of GPF	01.11.2007	Paid in April 2008. Rs.2,54,237 (interest paid up to 31.10.2007 only) Paid on 31.07.2013 Rs.12,887/- (interest paid up to 31.10.2007 only)
6	Arrears of Pay and allowances, after granting ACP and pay fixation	01.11.2007	17.07.2013 Rs.1,68,555/
7.	Arrears of pay from 10.03.1988 to 16.11.1989	16.11.1989	16.08.2012 Rs.53688/- plus interest Rs.75308 (calculated on Rs.53,688/- up to 31.07.2012 only) paid on 07.02.2013
8	-do-	16.11.1989	Rs.10751/- alleged to have been drawn on 15.10.2012 but not deposited into the account of the petitioner. Interest too not calculated and paid to the petitioner.
9	-do-	16.11.1989	Rs.6513/- paid to the petitioner on 19.11.2012, interest too not calculated and paid to the petitioner
10	Pay from 20.07.2004 to 01.05.2005	30.10.2012	05.06.2013 Rs.88624/-
11	Pay from 06.05.2005 to 21.06.2005	01.04.2009	18.03.2013 Rs.12524/-
12	Arrears of pay and other emoluments	31.10.2007	03.11.2014 Rs.2,98,904

Argument raised on behalf of the petitioner is that there was no justifiable reason with the respondents to withhold the above-mentioned benefits for a period more than 5½ years and therefore, as per the settled principle of law settled by a Full Bench of this Court in **A.S. Randhawa** Vs. **State of Punjab and others, 1997(3) SCT 468**, the petitioner is entitled for interest on the delayed release of the payments.

Upon notice, reply has been filed on behalf of the respondents disputing the claim of interest as being made by the petitioner.

In reply, the respondents have stated that there was a criminal case pending against the petitioner, the proceedings of which were only culminated on 08.06.2011 wherein the petitioner was exonerated. Further, in respect of the charge-sheet, which was pending against the petitioner, the same was concluded by the Financial Commissioner on 12.07.2012 and therefore, keeping in view the provisions of the Punjab Civil Services Rules, the benefits were withheld till the conclusion of the judicial/departmental proceedings. The relevant portion of the reply is as under: -

> "That so far as the payment of interest to the petitioner from the date of retirement i.e. 1-11-2007 is concerned, it is submitted that the petitioner, in para No.2 of this writ petition, has mentioned that he was involved in a criminal case, and a departmental enquiry was also pending against him at the time of his retirement. He also remained under suspension from 20-7-2004 to 1-5-2005. The petitioner has further stated that he was exonerated by the Court, as well as in departmental enquiry concluded by the Financial Commissioner (Revenue) Punjab, vide order dated 28-6-2012, issued vide letter dated 12-7-2012. The petitioner has also mentioned that his suspension period was treated as duty, vide order dated 23-10-2012, conveyed on 30-10-2012. So, in these circumstances, as per rule 9.14(c) of CSR Volume II, the gratuity to petitioner was rightly not paid to him till the conclusion of judicial/deparmental proceedings and issue of final order thereon. Further, according to rule 11.1(b) of the CSR Volume-II, the petitioner was also not entitled to commutation of his pension till the conclusion of judicial/departmental proceedings. Further more, in Punjab Govt. letter No.4/56/2002-3FPPC/3827 dated 3-5-2002 it has been mentioned that a retired employee is not to be given pensionary benefits till the conclusion of judicial/departmental

> proceedings. Thus, the petitioner was not entitled to any interest on gratuity, commutation of pension, and other retirement benefits till the conclusion of the judicial/departmental proceedings. After the conclusion of the judicial/departmental proceedings, the petitioner has been given all the benefits i.e. revised pension, gratuity, commutation of pension, leave encashment, arrears of pay etc. Thus, the petitioner is not entitled to any interest w.e.f. 1-11-2007 the date of retirement, and his present writ petition is liable to be dismissed."

In rebuttal, counsel for the petitioner states that even if it is assumed that the respondents were well within their jurisdiction to withhold the pensionary benefits till the conclusion of judicial/departmental enquiry, still the petitioner will be entitled for interest as the criminal proceedings came to end on 08.06.2011 and the departmental proceedings came to end on 12.07.2012 and therefore, after the said date i.e. July, 2012, there was no valid justification with the respondents to withhold the amount and therefore, the petitioner in any case will be entitled for interest from the said date till the actual release of the payment.

Counsel for the respondents is not able to dispute or give any justifiable reason as to why, once the disciplinary proceedings against the petitioner had culminated in July, 2012 and there was no other proceeding pending against him, the payments were not released within a reason time thereafter. In the absence of any valid justification for withholding the retiral benefits, when there was no proceeding pending against the petitioner i.e. after 12.07.2012, the petitioner certainly will be entitled for interest from the said date in view of the settled principle of law settled by a Full Bench of this Court in **A.S. Randhawa' case (supra),** wherein it has been held that the amount which has been retained by the respondents and there is a delay in releasing the same, the employee will be entitled for interest. The relevant paragraph of the said 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."

Furthermore, in the case of **J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355,** this Court had held that an employee will be entitled for the interest on an amount which has been retained by the respondents without any valid justification. The relevant paragraph of **J.S. Cheema's case (supra)** 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."

A bare perusal of the above reproduced judgments would show that where the amount has been retained by the department, the employee has been held entitled to the interest.

Therefore, the petitioner is held entitled for interest on the delayed release of the benefits, which have been noticed in the preceding paragraph i.e. pension, commutation of pension, gratuity, leave encashment and GPF from 01.08.2012 onwards till the same is released to him @ 9% interest per annum.

In view of the above, the present writ petition is disposed of with the direction to the respondents to pay interest @ 9% per annum on the payments which have been released to the petitioner from the date it became due till the disbursement of the same.

Let the calculation of interest be done within a period of two months from the date of receipt of certified copy of this order and the actual amount shall be paid to the petitioner within a period of one month thereafter.

Counsel for the petitioner, at this stage, states that there were other benefits for which the petitioner was entitled for including the interest on other payments.

The said fact is being disputed by the respondents.

Be that as it may, petitioner is granted the liberty to file appropriate representation with the respondents bringing to their notice his grievance in respect of grant of interest or release of any other payment, to which petitioner is entitled for.

The respondents shall pass an appropriate order on the representation in case the same is filed by the petitioner, within a reasonable time, preferably, within a period of three months from the date of receipt of the same.

Present writ petition stands disposed of in the above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

February 15, 2019
naresh.k

Whether reasoned/speaking? Yes
Whether reportable? Yes