

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

(232)

CWP-8875-2016

Date of Decision: July 04, 2019

C.B. Mittal

.. Petitioner

Versus

Dakshin Haryana Bijli Vitran Nigam Ltd & ors.

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Subash Rana, Advocate, for
Mr. Harish Nain, Advocate, for the petitioner.

Mr. Piyush Khanna, Advocate, for the respondents.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the grievance of the petitioner is that after his retirement, the respondents had withheld a sum of Rs.3,04,806/- from the DCRG due to the pendency of some show cause notices. Petitioner prays that the said amount has been released now after dropping the show cause notices but the said amount was retained by the respondents for more than eight years and therefore, he will be entitled for interest on the said amount.

As per the facts mentioned in the writ petition, petitioner was appointed as Assistant Foreman on 11.04.1973. Thereafter, he was promoted as a Junior Engineer from which post, petitioner retired on attaining the age of superannuation on 31.01.2008. At the time of retirement, the respondents withheld an amount of Rs.3,04,806/- on account of shortage of oil and breakage/damage of transformers for which, show cause notice had been issued to the petitioner. Respondents did not decide the said show cause notice and sat over the matter and ultimately, petitioner approached this Court by filing CWP No.20822 of 2015. The said writ

petition was disposed of by this Court on 30.09.2014 directing the respondents to decide the legal notice dated 20.07.2015 served by the petitioner within a period of three months.

In pursuance to the direction given by this Court, the respondents passed an order on 19.02.2016 by which the respondents decided to release the amount of Rs.3,04,806/-, meaning thereby that the show cause notices issued to the petitioner were dropped.

Learned counsel for the petitioner argues that as the amount for which the petitioner was entitled for after his retirement i.e. Rs.3,04,806/- was retained by the respondents without any valid justification therefore, the petitioner is entitled for interest on the same.

Upon notice of motion, a short reply has been filed wherein, it has been stated that there were proceedings pending against the petitioner due to which the amount of Rs.3,04,806/- was withheld out of the DCRG and after dropping the proceedings, the said amount was released and there are no instructions from the department to provide interest on the delayed payments and therefore, the claim of the petitioner for the grant of interest is liable to be rejected.

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

It is an admitted case that a sum of Rs.3,04,806/- out of the retiral benefits was withheld by the respondents. The same was done due to the pendency of the show cause notices, which notices have been dropped by the respondents and the amount has been released in February, 2016. The said amount has been retained by the respondents for more than eight years.

Once the show cause notices were dropped and the allegations on the basis

of which the amount was retained could not be proved by the respondents, the pendency of the said show cause notices cannot cause prejudice to the petitioner.

Government of Haryana has also issued instructions in this regard on 20.02.2002 with regard to the grant of interest in respect of the employees, who are exonerated of the allegations which were alleged against him and were pending against them at the time of their retirement. As per para 5 of the said instructions, where an employee is exonerated, he will be entitled for the interest on the delayed release of the payment. Respondents have not been able to controvert the same.

A Coordinate Bench of this Court while deciding ***J.S. Cheema Vs. State of Haryana and others, 2014 (1) S.C.T. 782***, has held that in case an amount for which the employee is entitled for, has been retained by the department and used, the employee will be entitled for the interest on the same. 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 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.”

Further, as per the instructions which have been issued by the Finance Department of Haryana dated 20.02.2002, which deals with the grant of interest, the respondents-State itself has mentioned in paragraph

5 (i) that where the charges against an employee are not proved, he will be entitled for interest. The relevant paragraph of the said instructions is as under:-

“5. However, these instructions would not be applicable in cases where the payment of retiral benefits is withheld on account of disciplinary proceedings pending against the said employee at the time of his retirement. A further issue would also arise regarding payment of interest on the retiral benefits in case of such employees who are facing disciplinary proceedings at the time of their retirement/superannuation from Government service. These cases should be decided in the following manner:

*(i) In the case of an employee against whom disciplinary proceedings are pending at the time of retirement and the employee is **clearly exonerated** and steered clear of all the charges during the process of disciplinary proceedings and proved innocent, the retiral benefits due to him should be paid along with interest from the date of retirement till the date of payment.”*

In the present writ petition, the respondent-department had retained the amount and used the same and the allegations on the basis of which the said amount was retained, were not proved by the respondents and therefore, the case of the petitioner is squarely covered by the above said judgment and hence, petitioner becomes entitled for interest on the payment of Rs.3,04,806/- from the date it became due till the same was released on 19.02.2016.

The present writ petition is allowed. The petitioner is found entitled for payment of interest at the rate of 9% per annum. Let the amount of interest be calculated by the respondents for which the petitioner is entitled, within a period of two months from the receipt of copy of this order

and the amount so calculated shall be released to the petitioner, within a period of one month thereafter.

July 04, 2019
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned: Yes
Whether reportable: Yes