IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

(239) **CWP-3913-2017**
Date of Decision: May 01, 2019

Kawaljit Singh **.. Petitioner**

Versus

Punjab State Cooperative Supply and Marketing Federation Ltd Chandigarh **.. Respondent**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sajjan Singh, Advocate, for
Mr. Manu K. Bhandari, Advocate, for the petitioner.

Mr. Vikas Singh, Advocate, for the respondent.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the claim of the petitioner is to release the service benefits of the petitioner from the date of his dismissal till the petitioner superannuated on 31.01.2001 and the pensionary benefits for which the petitioner becomes entitled for after his superannuation on 31.01.2001.

The facts as mentioned in the writ petition are that the petitioner was appointed as Field Assistant with the respondent-Punjab State Cooperative Supply and Marketing Federation Limited (hereinafter referred as 'Markfed') in the year 1970. While petitioner was in service, a charge-sheet was served upon the petitioner on 14.03.1985 and after the enquiry was conducted against the petitioner and others who were also charge-sheeted for the same offence, vide enquiry report dated 04.04.1988, the petitioner was held guilty of the allegation. On the basis of enquiry so conducted, punishing authority passed an order on 25.11.1988 dismissing the petitioner from service.

Against the order of dismissal, petitioner preferred a revision petition before the Additional Registrar Co-operative Society Punjab, who vide his order dated 06.04.1992 accepted the appeal and set aside the order of dismissal. The said order dated 06.04.1992 was challenged by the respondent-Markfed before this Court by filing CWP No.11449 of 1992. Interim order was passed in favour of the Markfed and the writ petition was admitted. Keeping in view the interim order, the petitioner was not allowed to join despite the fact that the revisional authority had already set aside the order of dismissal on 06.04.1992. Ultimately, on 30.03.2016, the writ petition filed by the respondent-Markfed (CWP No.11449 of 1992) was dismissed by this Court and the order passed by the revisional authority setting aside the order of dismissal dated 06.04.1992 was upheld.

By the time, the writ petition was dismissed, the petitioner had already attained the age of superannuation on 31.01.2001 and therefore, the petitioner started making representation for the grant of benefit for which he was entitled for in pursuance to the order dated 06.04.1992 including the service benefits from the date of his dismissal till the date the petitioner attained the age of superannuation i.e. 31.01.2001 and thereafter, the pensionary benefits.

As the said relief was not extended to the petitioner, he has filed the present writ petition claiming the said benefits.

Upon notice of motion, a short reply was filed by the respondents wherein, the facts narrated hereinbefore, were admitted. In the short reply, a prayer was made that the benefits for which the petitioner was entitled for in pursuance to the order dated 06.04.1992 will be released to the petitioner within a period of four weeks. Short reply of the respondents is as under:-

> "*1. That the factual position in the present case is that the petitioner had joined the service of Markfed as Field Assistant in the year 1970. Subsequently, he was issued a charge sheet dated 14.03.1985. The petitioner was dismissed vide order dated 25.11.1988. The said order was circulated on 01.06.1989. Against this order, the petitioner filed revision petition and the said revision petition was heard by the Additional Registrar (Admn.) Cooperative Societies Punjab Chandigarh. The revision petition was accepted vide order dated 06.04.1992 and the following directions were given:-*
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> *"Under the circumstances the alleged shortage had occurred which could not be attributed to the petitioner. The orders appeal against are, therefore, set aside. The petitioner may be treated on duty for all intends and purposes for the intervening period."*
>
> *2. That the respondent Federation challenges the above said order before this Hon'ble Court through CWP No.11449 of 1992. The writ petition ultimately came up for hearing on 30.03.2016 and was dismissed. The order is already on record as Annexure P-5.*
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> *3. That although at one time decision was taken to file a Letters Patent Appeal against the said judgment but no such appeal was filed. The order dated 30.03.2016 has thus attained finality.*
>
> *4. That now the petitioner has filed the present writ petition praying for a direction that he should be paid his service benefit from 25.11.1988 to 31.01.2001 and should also be paid his retiral benefits.*
>
> *5. That the matter has been considered by the competent authority and the arrears of salary from the date of*

dismissal till the date the petitioner attains the date of superannuation i.e. 31.01.2001 will be released to the petitioner. Whatever retiral benefits the petitioner is entitled would also be released to the petitioner. The answering respondent prays that it may be granted four weeks time to do the needful.

It is, therefore, respectfully prayed that the writ petition may kindly be decided in view of the submissions made above."

Keeping in view the undertaking given by the respondents in their reply, the time as asked for by the respondents were given and today, another affidavit has been filed wherein, the benefits for which the petitioner is entitled for i.e. the salary from 25.11.1988 till 31.01.2001 and the gratuity as well as the leave encashment, which are the retiral benefits for which the petitioner is entitled for after his retirement, have stated to be paid. The relevant portion of the affidavit is as under:-

" *1. That the salary of Sh. Kanwaljit Singh was re-fixed in order to calculate the arrears of salary as well as the retiral benefits. The same was audited and then vide order dated 01.04.2019, the salary was fixed. A copy of the said order is attached herewith as* ***Annexure R-1.*** *Thereafter an order dated 09.04.2019 was passed whereby sanction was accorded for payment of retiral benefits. Both these orders were sent to Sh. Kanwaljit Singh, however, the letters were received back undelivered.*

2. That the arrears of salary from 25.11.1988 to 31.01.2001 have been calculated and his gratuity and leave encashment has also been calculated. After deducting TDS and employees share of EPF, the total amount payable to Sh. Kanwaljit Singh is ₹7,80,696/-. Accordingly a cheque No.242203 drawn on State Bank of India Branch Faridkot dated 29.04.2019 has been prepared and is being submitted in the Court. The breakup of above amount is as follows:-

(1) Salary arrears from 25.11.988 to 31.01.2001: ₹7,85,819/-
Less: TDS 20% as pan card not provided: ₹1,57,164/-
Less: EPF employee share 12% on ₹6,88,467/: ₹82,616/-
₹5,46,039/-
(2) Gratuity for 15 months ₹1,41,570/-
(3) Leave encashment of 300 days ₹93,087/-
Total Amount Payable ₹ 7,80,696/-"

Learned counsel for the petitioner states that though the benefits have been released to the petitioner but the same have been released without interest. Counsel for the petitioner argues that petitioner was entitled for these benefits starting from the year 1992 onwards but the same have only been paid in the year 2019 and the petitioner has suffered a lot litigating with the respondents starting from the year 1988 onwards, therefore, petitioner is entitled for interest on the payments released now in 2019.

Learned counsel for the respondents, on the other hand, states that the respondent-Markfed had taken legal recourse to the order dated 06.04.1992 and as there was an interim order in their favour in the writ petition filed challenging the order dated 06.04.1992 (CWP No.11449 of 1992), non-release of the benefits to the petitioner was justified and it is only on 30.03.2016 that the writ petition was dismissed therefore, the claim of the petitioner for the grant of interest is not justified.

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

It is a matter of fact that the order of dismissal dated 25.11.1988 already stood quashed by the competent authority on 06.04.1992 and said order has been upheld even by this Court and the writ petition filed by the Markfed has been dismissed. The interim order granted by this Court during the pendency of the writ petition filed by the Markfed challening the order dated 06.04.1992 cannot cause prejudice to the petitioner as the said writ petition was ultimately dismissed and the order of the competent authority dated 06.04.1992 setting aside the order of dismissal of the petitioner from service was upheld. The pendency of the writ petition will not be a ground in favour of the respondents to deny the legitimate right of the petitioner to claim interest on the benefits he was entitled for in the year 1992.

Merely releasing the benefits which the petitioner was entitled for in the year 1992, in the year 2019 will not suffice or compensate the petitioner as the value of the salary, which is being paid to the petitioner in the year 2019, which the petitioner would have got in the year 1992 needs to be compensated by awarding interest on these payments.

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 if an amount for which an employee was entitled for, has been withheld and retained by the department without any valid justification and used, the employee will be entitled for the interest. The relevant portion 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."

In the present case, the amount which has now been released to the petitioner in respect of the salary from the year 1988 onwards till 2001 and the pensionary benefits which the petitioner would have got immediately upon his retirement in the year 2001 has been retained and used by the respondent.

The case of the petitioner for the grant of interest is squarely covered by the judgment in ***J.S. Cheema's case (supra)***.

The present writ petition is allowed. Respondent-federation is directed to pay the petitioner interest @ 6% per annum in view of the facts and circumstances of the present case, from the date the same became due till the same was released by the respondent. Let the calculation of the amount be done by the respondent 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.

(HARSIMRAN SINGH SETHI)
May 01, 2019 **JUDGE**
harsha

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No