

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 7213 of 2017

Date of decision : 01.10.2019

Jai Singh Dahiya

....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. P.R. Yadav, Advocate for the petitioner.

Mr. C.S. Bakhshi, Additional Advocate General, Haryana.

Harsimran Singh Sethi, J. (Oral)

In the present writ petition, it is averred that in the year 1995, petitioner was asked to deposit a sum of ₹90,767/- on account of alleged shortage in wheat stock, for which a notice dated 05.10.1995 (Annexure P-2) was sent to the petitioner by the respondents and the said notice was ultimately withdrawn by the respondents on 06.02.2014 (Annexure P-9) and after withdrawing the said notice, the amount of ₹90,767/- was decided to be refunded to the petitioner vide order dated 06.03.2014, which was actually refunded in the year 2017 after the filing of the present writ petition. The claim of the petitioner is that as the amount of ₹90,767/- has been kept by the respondents with them for a period of more than 12 years, petitioner is entitled for interest on the said amount.

The facts as stated in the present writ petition are that petitioner

was appointed in the Indian Navy in the year 1965 and was discharged on medical grounds in February, 1970. After the discharge, the petitioner joined Haryana Civil Secretariat as a Clerk in August, 1970 and worked there up to 29.06.1972. On 30.06.1972 petitioner was appointed as Sub Inspector in the Food and Supply Department and thereafter promoted as Inspector on 13.04.1975. While working as Inspector, a notice was served upon the petitioner on 05.10.1995 (Annexure P-2) alleging that there is a shortage of 209 quintals of wheat stock and, therefore, the amount of ₹90,767/- equivalent to 209 quintals of wheat be deposited by the petitioner. On the very next day, the petitioner filed a detailed reply that the amount, which is being asked for, is being deposited under protest and he will claim the refund of the said amount with interest in case the allegations alleged are not proved against the petitioner. Petitioner immediately deposited the amount to the tune of ₹90,767/-.

Thereafter, on account of shortage of 209 quintals of wheat, the respondents got an FIR No. 444 dated 28.12.1995 registered against the petitioner. After the registration of the FIR, a charge-sheet was also served upon the petitioner on 02.08.1996 on the same allegations initiating departmental proceedings. In respect of the FIR No. 444 dated 28.12.1995, the petitioner was convicted by the trial Court on 08.07.2004 and sentenced to two years of rigorous imprisonment and further fine of ₹5000/-. Petitioner filed an appeal against the said conviction and he was acquitted by the appellate Court vide order dated 26.03.2007. After the petitioner was acquitted in respect of the criminal charges, he attained the age of superannuation and retired on 30.06.2007.

The charge-sheet, which was issued to the petitioner on 02.08.1996, remained pending even upto the date when the petitioner retired from service on 30.06.2007. Thereafter, petitioner approached this Court by filing CWP No. 4301 of 2010 for deciding the disciplinary proceedings at the earliest, which was disposed of by this Court directing the respondents to decide the legal notice submitted by the petitioner within a period of 2 months. Ultimately, keeping in view the direction given by this Court, the respondents passed an order on 06.10.2010 (Annexure P-8) holding that there was no shortage of wheat and petitioner is entitled for refund of ₹90,767/-, which petitioner was wrongly asked to deposit on account of shortage of 209 quintals of wheat. After the petitioner was exonerated, even in the departmental proceedings, the respondents passed an order on 06.02.2014 (Annexure P-9) that the charge-sheet issued to the petitioner stands dropped and the suspension period of the petitioner from 14.11.1995 till 06.08.1999 will be treated as a duty period.

After the charge-sheet was dropped, petitioner sent a legal notice to the respondents on 08.10.2015 (Annexure P-10) demanding the refund of ₹90,767/- alongwith interest. As the claim of the petitioner for the refund of the amount was not being looked into by the respondents, petitioner again filed a writ petition bearing CWP No. 5691 of 2016 which was disposed of by this Court on 28.03.2016 (Annexure P-11) again directing the respondents to decide the claim of the petitioner wherein petitioner was demanding refund of ₹90,767/- alongwith interest.

In pursuance to the said direction respondents passed an order dated 09.12.2016 (Annexure P-13), wherein, the interest on the said amount

has been declined on the ground that there were disciplinary proceedings pending against the petitioner in respect of the charge-sheet, wherein, there was a shortage of wheat to the tune of 209 quintals and the said proceedings only came to an end in the year 2014 after which, it was decided by the respondents to release the amount of ₹90,767/- and, therefore, the amount was retained due to the pendency of the charge-sheet and hence, no interest is payable on the said amount. The said order dated 09.12.2016 (Annexure P-13) is under challenge in the present writ petition.

Upon notice of motion, respondents have filed the reply and in the reply also, the respondents have again stated that the amount of ₹90,767/- was deposited by the petitioner suo-moto and once the amount has already been released to the petitioner, there is no justification to claim interest on the said amount as the disciplinary proceedings in respect of the said amount remained pending till the year 2014.

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 allegation alleged against the petitioner was for shortage of 209 quintals of wheat and vide order dated 05.10.1995 (Annexure P-2), the respondents directed the petitioner to deposit the deficient amount of the stock, which was found short. It was under these circumstances that the petitioner deposited the sum of ₹90,767/-. It is very strange that without holding the petitioner guilty in a departmental proceeding, respondents had directed the petitioner to deposit the amount equivalent to the shortage of 209 quintals wheat in the year 1995, whereas, the charge-sheet on the said allegation was served upon the

petitioner on 02.08.1996. Not only a charge-sheet was issued to the petitioner but even criminal proceedings were initiated against the petitioner, in which he has been exonerated by the Competent Court of Law. Even in respect of the charges qua the alleged shortage of wheat, the ultimate order passed by the respondents is that the allegations of shortage of wheat could not be substantiated and the charge-sheet was dropped. Once the charges have been dropped due to the fact that the same were not proved, the retaining of the amount of ₹90,767/- equivalent to the amount of 209 quintals of wheat cannot be treated as a valid recovery from the petitioner. In the present case, the petitioner was held guilty and was made to pay the amount of the wheat found short by alleging the allegation against him without even proving the charges. Therefore, on the amount, which has been retained by the respondents by alleging shortage of 209 quintals of wheat upon the petitioner, which charge has ultimately found to be incorrect, the petitioner is held entitled for interest as the amount belonged to the petitioner from the day one, which has been retained by the respondents for more than 12 years.

It has been held by a Co-ordinate Bench of this Court in the case of **J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355**, that where an amount which belongs to an employee, has been retained and used by the department, 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 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, ₹90,767/-, which the petitioner was forced to deposit, was actually the amount which belongs to the petitioner but he was forced to deposit the same even before being held guilty of the allegation. After the allegations were dropped, it was incumbent upon the respondents to return the said amount with interest as the said amount has been retained and used by the respondents and, therefore, petitioner needs to be compensated by the grant of interest. Petitioner is, therefore, held entitled for interest @ 9% per annum from the date the said amount was deposited till the refund of the said amount. Let the interest be calculated by the respondents within a period of two months from the date of receipt of certified copy of this order and the amount so calculated shall be released to the petitioner within a period of one month thereafter.

Writ petition is allowed in above terms.

October 01, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking? Yes
Whether reportable? Yes