IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-7340-2017
Date of decision: - 31.10.2019

Satbir Singh

....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Surinder Gaur, Advocate
for the petitioner.

Ms. Safia Gupta, Assistant Advocate General, Haryana.

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HARSIMRAN SINGH SETHI, J. (ORAL)

The claim in the present writ petition is for the grant of interest on the delayed payment of the gratuity amounting to ₹4,07,030/-, which was paid to the petitioner after a period of approximately five years of his retirement.

As per the facts mentioned in the writ petition, petitioner joined as a Forest Guard with the respondents and thereafter, he was promoted on the post of Forester and ultimately retired from the said post on attaining the age of superannuation on 31.07.2011. After the retirement, a charge-sheet was issued to the petitioner on 01.06.2012 and on the basis of the said charge-sheet, the gratuity of the petitioner was withheld. The charge-sheet dated 01.06.2012 was taken to its logical end and the punishing authority passed an order dated 14.05.2014, wherein, the petitioner was held liable for the recovery of the amount of ₹1,75,150/-. Thereafter, petitioner challenged the said order of punishment before the appellate authority by filing an appeal and the appellate authority accepted the appeal of the petitioner vide order dated 03.08.2015 and the punishment order imposing recovery of ₹1,75,150/-, was withdrawn and petitioner was discharged from the allegations, which were alleged against him in the charge-sheet dated 01.06.2012. After the said disciplinary proceedings came to an end, the respondents released the gratuity of the petitioner amounting to ₹4,07,030/- on 15.07.2016. The claim of the petitioner in the present writ petition is that he is entitled for the interest on the said amount of gratuity as the said amount was withheld by the respondents without any jurisdiction.

Upon notice of motion, respondents have filed the reply.

In the reply, the respondents have taken the stand that there was a charge-sheet dated 01.06.2012, which was issued to the petitioner under Rule 7 of the Haryana Punishment and Appeal Rules, 1987 and when the proceedings in respect of the said charge-sheet came to an end, the amount of gratuity, which was withheld, was released to the petitioner and therefore, the amount of gratuity was withheld keeping in view the pendency of the disciplinary proceedings, which action was well within the jurisdiction of the respondent-department 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 fact that on the date when the petitioner attained the age of superannuation and retired on 30.07.2011, there were no proceedings pending against him. Once, there were no proceedings pending against the petitioner on the date of retirement, respondents were under an obligation to release the pensionary benefits within a reasonable time of his retirement. A Full Bench of this Court in **A.S. Randhawa Vs. State of Punjab and others**, **1997(3) SCT 468** has held that pensionary benefits of an employee are to be released within a reasonable time after retirement in case there is no impediment and the reasonable time for releasing the pensionary benefits is two months after the retirement of the employee.

In the present writ petition, the charge-sheet, which was served to the petitioner, which has been made a ground to withhold the gratuity, was issued to the petitioner on 01.06.2012, which is approximately 11 months after his retirement.

It is a settled principle of law that position with regard to the pendency of the disciplinary proceedings or proceedings before any Competent Court of Law, is to be seen on the date of retirement. In case there are no proceedings pending against the employee on the date of retirement, respondents do not have the jurisdiction to withhold the pensionary benefits of the employee. No rule has been cited by the learned State counsel that the charge-sheet, which has been served after the retirement, will give the respondents the right to withhold the pensionary benefits, which right has already been accrued to an employee for the release of the same upon his retirement. In the absence of any rule, the position is to be seen on the date of retirement and any charge-sheet or disciplinary proceedings, initiated against the employee after retirement, will not give the jurisdiction to the respondents to withhold the pensionary benefits.

This question of law has already been settled by this Court in **L.R. Dhawan** Vs. **State of Haryana and others**, **1996(3) S.C.T. 11**, wherein, it has been held that the gratuity can only be withheld if there is an enquiry pending on the date of retirement. The relevant part of the said judgment is as under: -

> "4. Gratuity due to an employee is payable to him on the date of retirement. Payment of the gratuity can be deferred in a case where the employee is under cloud at the time of his retirement, namely, in a case where he is facing departmental inquiry or judicial proceedings. If no inquiry or judicial proceeding is pending on the date of retirement of the employee, the Government/employer does not have any authority to withhold the payment of gratuity. Similarly, full pension payable to an employee can be withheld during the pending of the departmental inquiry or judicial proceedings. The Government is also possessed with the power to withhold the pension or a part thereof or recover any pecuniary loss caused to the Government from the pension payable to an employee in case such Government servant is found guilty of grave misconduct or negligence in the discharge of his duties during the course of service. Deduction from the pension can be made even on the basis of an inquiry which may be initiated against the employee after his retirement but subject to the fulfilment of the conditions enumerated in proviso to Rule 2.2(b). However, proceedings initiated against an employee under proviso to Rule 2.2 (b) cannot be made a ground for withholding of death-cum-retirement gratuity or the pension payable to an employee on the date of his retirement. In the case in hand, no inquiry was pending against the petitioner on the date of his retirement. The proceedings

> have been initiated against him after over three years and nine months of his retirement from service. That may ultimately lead to the withholding of the pension or part thereof or recovery therefrom in terms of Rule 2.2(b) but there does not appear to be any legal justification for withholding of death-cum-retirement gratuity payable to the petitioner on the ground that inquiry has been initiated against him under Rule 2.2(b) with the issue of notice dated 26.12.1986."

In the present case, there was no charge-sheet, which was pending against the petitioner on the date of retirement and therefore, withholding of the pensionary benefits by the respondents on the basis of a charge-sheet issued 11 months after the retirement, was without jurisdiction.

This question again came up for consideration in **Amarjit Singh** Vs. **Punjab State Civil Supplies Corporation Limited and another**, **2016(4) PLR 191**, wherein, this Court after relying upon **L.R. Dhawan's case (supra)** this Court held that the retiral benefits can only be withheld on the basis of a charge-sheet, which has been issued prior to the date of the retirement of an employee. The relevant part of the said judgment is as under: -

> "To the extent gratuity is claimed by the petitioner, this petition must succeed. To claim such benefit, learned counsel for the petitioner relies appropriately on the case law in Narinder Dev Sharma Vs. State of Punjab & another, 1996 (1) SCT 623; L.R.Dhawan Vs. State of Haryana & others, 1996 (3) SCT 11 and Ram Narain Dua Vs. Dakshin Haryana Bijli Vitran Nigam Ltd. & others, 2007 (1) SCT 161. This is because the respondents admit that no charge-sheet was served on the petitioner prior to his

retirement and therefore, gratuity could not have been withheld. Neither can gratuity be withheld by initiating inquiry under Rule 2.2 (b) of the Punjab Civil Services Rules, Volume II after employee retires and departmental proceeding were not contemplated during service. This is for the reason that gratuity is a one-time payment which falls due and payable on the date of retirement and is not a recurring right like pension. However, an enquiry based on a charge-sheet issued after retirement under Rule 2.2(b) can be conducted and concluded. The charge-sheet was issued in this case on 02.04.2013 for an incident of alleged misconduct which occurred during the period 2009-10, while the petitioner retired from service on 30.04.2011. To that extent no court directions are called for in this petition to draw the curtains on the departmental proceedings.

For the foregoing reasons, this petition is allowed while setting aside the impugned decision withholding gratuity for no rhyme or reason. Since the amount of gratuity has been withheld for the wrong reason, the petitioner would be entitled to interest on delayed payment @ 8.7% p.a. i.e. the rate payable on long term fixed deposits sitting invested in nationalized Banks."

While deciding **CWP-13449-2014** titled as '**Hans Raj Vs. Registrar, Cooperative Societies, Punjab and others'**, **decided on 24.05.2017**, this Court once again held that the gratuity cannot be withheld on the basis of the charge-sheet, which has been served after the retirement. The relevant portion of the judgment is as under: -

"Now, the further question would arise as to whether the gratuity of the petitioner could be withheld or not? The petitioner retired from service on 30.9.2012. Charge sheet was served upon him on 11.4.2014 i.e. after more than one and half years of the said retirement. The gratuity is otherwise required to be released immediately on the retirement. It goes to show that the gratuity of the petitioner was probably not released immediately on account of the impending charge sheet. Petitioner is getting provisional pension and if the department finds that the charges are proved, they are always at liberty to impose a cut in the pension. However, the gratuity of the petitioner cannot be withheld for indefinite period on the basis of the charge sheet which is issued after more than one and half years of his retirement.

Accordingly, the present writ petition is partly allowed to the extent that the gratuity of the petitioner is ordered to be released with interest @ 9% per annum starting three months from the date of retirement till the date of actual payment."

Also the Division Bench of this Court in '**Ram Narain Dua** Vs. **Dakshin Haryana Bijli Vitran Nigam Ltd. and others**, **2007(1) S.C.T. 161**, has held that gratuity payable to an employee cannot be withheld on account of allegations which have emanated after the date of retirement of the employee. The relevant paragraph of judgment is as under: -

"2. Having heard the learned Counsel for the parties, we are of the considered view that the respondents could not have with-held any amount of gratuity payable to the petitioner on account of allegation which have been emanated after the date of his retirement. Such a course is not available to the respondents. In some what similar circumstances, this Court has earlier also in the case of **Hans Raj Sharma** v. **Uttar Haryana Bijli Vitran Nigam Limited and Ors. 2004(4) SCT 117 (P&H), Civil Writ Petition No. 152 of 2004, decided on October 28, 2004** has allowed the writ petition by following the judgment of Hon'ble the Supreme Court in **P.R. Naik v. Union of India, AIR 1972 SC 554.** It has been laid down in the aforementioned judgment that issuance of charge-sheet for initiation of departmental enquiry is a sine qua non.

3. In view of the above, we allow the writ petition and

> quash the impugned order dated March 1, 2005 (P-15). We further direct the respondents to release the 100% pension, arrears of pension, gratuity and commutation of pension amount to the petitioner within a period of one month from the date a certified copy of this order is presented to the respondents. In case, the needful is not within one month, then the petitioner shall be entitled to interest at the rate of 6% per annum from the date the amount is payable till its actual payment."

Keeping in view the law cited above, it is clear that action of the respondents in withholding of the gratuity amount of the petitioner on the basis of a charge-sheet issued 11 months after the retirement was beyond their jurisdiction and was contrary to the settled principles of law and therefore, as the amount of gratuity was retained by the respondents without any jurisdiction, petitioner needs to be compensated for the said illegal action, by the grant of interest.

The question of law in respect of grant of interest on the delayed payment of retiral benefits has already been settled by the Full Bench of this Court in **A.S. Randhawa's case (supra),** wherein, it has been held that the amount for which an employee becomes entitled on account of retiral benefits is to be released within a reasonable time and reasonable time fixed by this Court is two months from the date of retirement and in case, retiral benefits have been retained by the respondents and that too without any justifiable reason, 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."

Even otherwise, a Co-ordinate Bench of this Court in **J.S. Cheema** **Vs**. **State of Haryana, 2014(13) RCR (Civil) 355,** has held that an employee will be entitled for the interest on an amount, which has been retained and used 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."

In the present case, the amount, which was due to the petitioner after his retirement, has been retained and used by the department, therefore, petitioner will be entitled for interest on this score also. Therefore, the case of the petitioner is squarely covered by the above-said decisions for the grant of interest on the delayed release of the gratuity amount, which was withheld by the respondents for approximately five years after his retirement.

In view of the above, the writ petition is allowed. The claim of the petitioner for the grant of interest is allowed and the petitioner is held entitled for the interest @ 9% per annum from the date the amount of gratuity became due till the payment was actually released to the petitioner by the respondents.

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

Present writ petition stands disposed of in the above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

October 31, 2019
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Whether reasoned/speaking? Yes
Whether reportable? Yes