IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-4910-2018
Date of decision: - 07.03.2019

Manohar Lal

....Petitioner

Versus

The Punjab State Cooperative Supply & Marketing Federation Limited and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Amit Sharma, Advocate, for the petitioner.

Ms. Manpreet Dhaliwal, Advocate, for the respondents.

****

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the grievance which is being raised by the petitioner is that vide order dated 28.11.2017 (Annexure P-5), he has been denied interest on the payments of gratuity from the date it became due and interest only with effect from the date of serving the legal notice has been allowed.

As per the facts stated in the writ petition, petitioner retired from the service of respondents on 31.12.2012 while working as an Accountant. As per the averments made in the para No.4 , respondents released his pensionary benefits such as leave encashment and gratuity in the month of October, 2015. While calculating the gratuity of the petitioner, the respondents wrongly calculated the gratuity and resultantly instead of sum of ₹10,10,169/-, he was paid ₹7,22,271/- only. Petitioner represented the respondents for the release of remaining amount keeping in view the provisions of the Payment of Gratuity Act, 1972.

As the required payment was not being made, petitioner filed a CWP No.22181 of 2017, which was disposed of by this Court on 27.09.2017, directing the respondents to pass an appropriate speaking order on the legal notice served by the petitioner on 13.08.2017 annexed as Annexure P-3 in the present writ petition.

In compliance of the order passed by this Court, respondents passed an order dated 27.11.2017 by which the benefit of interest has been denied to the petitioner. Further, the interest @ 10% has only been allowed from the date of serving of the legal notice and not from the date when the payments became due to the petitioner.

This order is under challenge in the present writ petition.

Upon notice of motion, reply has been filed on behalf of the respondents today in the Court and the same is taken on record. A copy thereof has been supplied to counsel for the petitioner.

In the reply, respondents have reiterated their stand that all the payments due to the petitioner have already been made and further interest @ 6% has been paid on the delayed payments w.e.f. 01.03.2013 till the payment of leave encashment was released to the petitioner. Further, interest on the gratuity has also been paid, but from the date of the legal notice as the petitioner only raised the claim for the payment of the gratuity vide his legal notice and therefore, it has been stated that the petitioner is entitled for interest from the date the payment became due to the petitioner.

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

It is an admitted fact that the payments, which have been released to the petitioner by the respondents, was his legal right accruing to him on account of rendering approximately 40 years of service with the respondents.

Once, the petitioner retired from service on 31.12.2012, he became entitled for the release of the pensionary benefits as he was entitled for under the Rules governing the service. No justification has been given as to why the payment of leave encashment was delayed for more than 1½ years and why all the payments in respect of the gratuity were not released to the petitioner within a reasonable time of his retirement. There is no requirement of serving the notice for the payment for which an employee is legally entitled for. The legal notice is a form of a complaint and not a demand and therefore, the action of the respondents in only restricting the interest, vide impugned order from the date of legal notice, is not at all sustainable.

A Full Bench of this Court in **A.S. Randhawa Vs. State of Punjab and others, 1997(3) SCT 468** while deciding the question of grant of interest to the retired employee has 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.

In the present case, it is undoubted that petitioner was entitled for all the pensionary benefits immediately upon his retirement. The said amount has been used by the respondents to their own benefits and that too without any valid justification.

In view of the above, the impugned order dated 28.11.2017 (P-5) is set aside to the extent that it only grant the interest to the petitioner from the date the legal notice was served, therefore, the petitioner is held entitled for interest on all the delayed payments from the day it accrue till the actual date of payment @ 9% per annum.

Let the calculation of interest be done by the respondents 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.

Present writ petition stands disposed of in the above terms.

March 07, 2019 **(HARSIMRAN SINGH SETHI)**
naresh.k **JUDGE**

Whether reasoned/speaking? Yes
Whether reportable? Yes