IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

(217) **CWP-7742-2017**
Date of Decision: August 30, 2019

Shiv Charan Dass .. **Petitioner**

Versus

State of Punjab and others .. **Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Harinder Sharma, Advocate, for the petitioner.

Ms. Sunint Kaur, AAG, Punjab.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the grievance raised by the petitioner is that all the pensionary benefits, for which the petitioner was entitled for, after he superannuated from service on 31.08.2012, are not being released. The prayer made in the present writ petition is for issuance of a direction to the respondents to release all the pensionary benefits of the petitioner along with interest, which were delayed by the respondents due to the pendency of a charge-sheet.

During the course of hearing, learned counsel for the petitioner informs that all the pensionary benefits have been released but the same have only been released by the respondents in the year 2015 and 2017, therefore, the petitioner is entitled for interest on delayed release of payments.

The facts as stated in the present writ petition are that the petitioner was appointed as Excise and Taxation Officer in the department of Excise and Taxation of the Government of Punjab on 15.05.1989. In the year 2005, he was promoted as Assistant Excise and Taxation

Commissioner. Thereafter, on 20.09.2011, he was further promoted as Deputy Excise and Taxation Commissioner and ultimately retired from the said post on attaining the age of superannuation on 31.08.2012. About a week before the retirement, a show cause notice was served by the respondents upon the petitioner on 23.08.2012 for initiating departmental proceedings under Rule 10 of the Punjab Civil Services Rules (Punishment and Appeals), Rules, 1970. The said proceedings remained pending against the petitioner after the retirement as well and were not decided though the petitioner had immediately filed the reply to the said show cause notice.

After the retirement, petitioner was released some portion of leave encashment in November, 2012 and his GP fund was released in February, 2013 and the balance payment of leave encashment was released to the petitioner in June, 2013.

Learned counsel for the petitioner states that in June, 2013, the provisional gratuity was also released to the petitioner alongwith provisional pension as well as the arrears of revised pension. The amount of general insurance scheme was released to the petitioner on 12.01.2015.

As per the averments made in the writ petition, the respondents decide to drop the show cause notice issued to the petitioner vide order dated 04.08.2016 (Annexure P-15) and a direction was issued that the remaining pensionary benefits of the petitioner should also be released and ultimately in April, 2017, 10% of the gratuity, which was withheld, was also released. Therefore now, claim of the petitioner which remains, in the present writ petition, is for the grant on the interest on the delayed release of the retiral benefits.

Upon notice of motion, the respondents are contesting the claim of the petitioner for the grant of interest on the ground that the proceedings were initiated against the petitioner during his service career, which continued even after his retirement and it was only in August, 2016, the said proceedings were dropped and after the dropping of the proceedings, whatever the payment was due to the petitioner in respect of the gratuity, was also released and therefore, no grievance can be made by the petitioner regarding withholding of the benefits or the denial of the interest on the payments, which have been released to the petitioner after dropping of the discliplinary proceedings. The relevant paragraph of the reply as submitted by the respondents is as under:-

> " *2. That the petitioner has approached this Hon'ble Court through the present Civil Writ Petition to seek the payment of 10% of Gratuity which was withheld as the show cause notice issued under Rule 10 of Punjab Civil Rules was pending and to regularize 100% pension along with the payment of interest @ 12% per annum on the delay in releasing the retiral benefits. As a show cause notice under Rule 10 of the Punjab Civil Services Rules (Punishment and Appeal) was issued to the petitioner on account of framing wrong assessment of Mukatsar dealers, provisional pension amounting to Rs.16,337/- was granted by the respondent No.2 w.e.f. 01.09.2012 onwards vide order dated 28.09.2012 (Annexure P-4), which was further revised to Rs.16,812/- vide order dated 07.06.2013 conveyed vide memo, dated 14.06.2013. Despite the pendency of show cause notice, the process to disburse the retiral benefits to the petitioner was initiated immediately and in well time sent to treasury. Even the gratuity to the extent of 90% amounting to Rs.6,32,250/- (after withholding 10% of the gratuity), was also paid. Apart from withholding of 10% of gratuity, grant of regular pension*

was also withheld.

3. That as the show cause notice issued to the petitioner under Rule 10, was dropped, the Deputy Excise and Taxation Commissioner (Appeals), Faridkot Division, Head Quarter, Bathinda was directed to send the pension case of the petitioner directe to the Accountant General, Punjab for further necessary action at their end. (Annexures/P-15).

4. That the Accountant General, Punjab vide letter, dated 08.02.2017 (Annexues/P-16 (Sic)) cleared the case for the payment of gratuity and regular pension by issuing the clear directions that the payment of gratuity be made after adjusting 90% of the Gratuity already paid to the petitioner.

5. That from the facts narrated above, it is evident that all the payments relating to retiral benefits were made to the petitioner immediately after retirement, as detailed below:-

Sr. No.	Particulars	Amount	Date of sanction/ Date of sending the Bill to Try.
1	Leave Encashment	Rs.5,73,540/-	02-11-2012/ 19-11-2012
2	GP Fund	Rs.2,88,902/-	16-01-2013/ 14-02-2013
3	Balance payment of leave encashment	Rs.24,330/-	21-03-2013/ 20-06-2013
4	Provisional Gratuity	Rs.6,32,250/-	08-04-2013/ 26-06-2013
5	Provisional Pension Revised Provision Pension	Rs.16,337/- Rs.16,812/-	29-09-2012/ 07-06-2013
6	GIS	Rs.46,158/-	12/01/15
7	Final payment of 10% of Gratuity as show cause notice issued under Rule 10 was dropped.	Rs.90,657/-	27-03-2017/ 17-04-2017

6. That keeping in view the facts stated in the foregoing paragraphs, only the payment of Rs.90,657/- pertaining to 10% of gratuity was withheld by the Government but released immediately when the notice issued under Rule 10 was dropped. The respondents have not committed any violation on account of delay in releasing 10% gratuity, hence no interest is *payable to the petitioner nor any further payment on account of retiral benefit is payable."*

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

It is an admitted case that when the petitioner retired, there were proceedings pending against the petitioner under Rule 10 of the Punjab Civil Services (Punishment and Appeals) Rules, 1970. Respondents were within their jurisdiction to withhold certain benefits, keeping in view the pendency of the said proceedings. In the facts and circumstances of present case, though the respondents could have withheld the leave encashment and gratuity both, but the leave encashment was released to the petitioner in November 2012/June, 2013. Even 90% of the gratuity was also released to the petitioner in June, 2013 i.e. during the pendency of the disciplinary proceedings. Even the amount of GIS was also released during the pendency of the disciplinary proceedings and only the payment of Rs.90,657/- i.e. 10% of the remaining gratuity, was released after the dropping of the show cause notice and the said payment was released in April, 2017.

Counsel for the respondents is not able to dispute that the show cause notice, which was issued to the petitioner, was ultimately dropped. Once the said show cause notice was dropped, it can very well stated that the allegations mentioned in the show cause notice were not correct. Therefore, once the show cause notice was dropped, the pendency of the said show cause notice cannot cause prejudice to the petitioner in any manner. Respondents though released certain payments during the pendency of the show cause notice, but the same were released after a delay, which cannot be treated as reasonable and 10% payment of the gratuity was released after the dropping of the show cause notice. A charge-sheet/show cause notice which stands dropped against an employee, cannot cause prejudice to an employee so as to deny him the benefit of interest. The issuance of the show cause notice by an authority on an allegation which the authority fails to substantiate, due which action, employee had suffering prejudice as pensionary benefits are withheld, in these circumstances, the employee has to be compensated.

As per the decision of the full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab, 1997(3) S.C.T. 468 ,*** the reasonable time within which the retiral benefits are to be released, is two months from the date of retirement after which, an employee needs to be compensated for the delay which has been caused by the grant of 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 from the date of retirement which time limit has been laid down by the Apex Court in M. Padmanbhan 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.*"

Not only this, 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 and used by the department, 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.*"

The details, which have been reproduced, wherein the dates of the release of the retiral benefits to the petitioner has been given, clearly shows that the petitioner was entitled for the release of his pensionary benefits by 31.10.2012 but as a matter of fact, all the benefits were released much after the said date either due to inaction on the part of the respondents or due to the pendency of the show cause notice which was ultimately dropped, as the case may be. Once the show cause notice has been dropped, petitioner becomes entitled for to be compensated by awarding interest on all the payments, which have been released after a period of two months from the date of retirement.

Therefore, the petitioner is held entitled for interest on the payments which have been released after 31.10.2012 at the rate of 9% per annum. Petitioner will be entitled for interest from 01.11.2012 onwards till the payments have been actually released in his favour. Let the respondents calculate the amount for which the petitioner will be entitled for, under this order, within a period of two months from the receipt of certified copy of this order and the amount so calculated will be disbursed to the petitioner, within a period of one month thereafter.

The writ petition is allowed in above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

August 30, 2019
harsha

Whether speaking/reasoned: Yes
Whether reportable: Yes