IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

(226) **CWP-8384-2017**
Date of Decision: November 28, 2019

Maya Devi **.. Petitioner**

Versus

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

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Surinder Garg, Advocate, for the petitioner.

Ms. Sunint Kaur, Assitant Advocate General, Punjab.

Mr. Karan Garg, Advocate, for respondent No.4.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the grievance which is being raised by the petitioner is that after the petitioner retired from service on attaining the age of superannuation on 31.08.2016, the pensionary benefits of the petitioner were not released within a reasonable time and therefore, a direction is sought by the petitioner to the respondents that the pensionary benefits of the petitioner be released alongwith interest.

The facts as stated in the writ petition are that the petitioner was appointed as a Safai Sewak with respondent No.4-Municipal Council on 04.08.1988 and while working as such, she retired on attaining the age of superannuation on 31.08.2016. As the pensionary benefits of the petitioner were not being released, she waited for a period of eight months and then filed the present writ petition seeking a direction to be issued to respondent No.4-Municipal Council to release all the pensionary benefits for which, she is entitled in respect of the service rendered by her, forthwith.

Upon notice of motion, the respondents have filed the reply. In the reply, the respondents have stated that all the pensionary benefits have already been released in her favour and a sum of Rs.7,17,000/- has been paid to the petitioner and no other retiral benefits of the petitioner remains to be paid, hence the present writ petition has been rendered infructuous. The relevant paragraph of the reply is as under:-

> *2. That it is respectfully submitted that the petitioner was appointed as Safai Sewak with the answering respondent on 04.08.1988 and she retired on 31.08.2016. Petitioner was entitled to total retiral benefits of Rs.7,17,425/-, after taking her basis pay as Rs.14,090/- and DA as 119% (as explained in reply on merits). Out of the said amount of Rs.7,17,425/-, Rs. 7,17,000/- has already been paid to the petitioner. As such nothing survives in the present petition and the same is liable to be dismissed. The amount of Rs.7,17,000/- has been paid to the petitioner in the following manner:-*

CHEQUE NO.	DATE	AMOUNT PAID (In Rs.)
004568	31.08.2016	1,00,000/-
026937	09.07.2017	50,000/-
026942	14.09.2017	3,00,000/-
029317	27.11.2017	1,00,000/-
032972	17.01.2018	1,67,000/-
Total		**7,17,000/-**

Learned counsel for the petitioner does not dispute the payment of Rs.7,17,000/- in favour of the petitioner but states that the benefits have been wrongly calculated by the respondents by taking the DA as 119% whereas at the relevant time, the DA was 132% and therefore, petitioner is entitled for the higher amount then calculated by the respondents. Further, the prayer of the petitioner is for the grant of interest on the delayed release of the pensionary benefits.

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

It is not disputed by learned counsel for the respondents that there was no impediment in the release of the pensionary benefits of the petitioner on the date when she retired on 31.08.2016. Learned counsel for the respondents states that the delay has only occured due to financial instability of the Municipal Council and as the funds were not available, the pensionary benefits, for which the petitioner was entitled, could not be released immediately upon her retirement.

As per the settled principle of law settled by the Division Bench of this Court in ***Ram Karan Vs. Managing Director, Pepsu Road Transport Corporation and another, 2005 (3) PLR 580***, the financial instablity is not a valid ground to withhold the pensionary benefits of an employee as retiree has no other means to survive except the pensionary benefits, which he/she receives after retirement, in order to lead a dignified life. In the absence of a valid justification to retain the pensionary benefits, the respondents have contributed to the misery which the petitioner had to suffer in these hard days. The relevant paragraph of the judgment is as under:-

> *"8. On careful consideration of the rival submissions and the facts of the case, we do not find ourselves in agreement with the arguments advanced by the learned Counsel for the respondent-Corporation. In a welfare State it is the duty of the State to ensure the 'right to live' of every individual. The term 'life' as mentioned in Article 21 of the Constitution of India includes livelihood and so many facts thereof. It means that something more than mere existence and inhabitation against the proposition of life and rather it extends to all the facilities by which life is enjoyed. In case a pensioner is not even paid the genuine dues like the medical reimbursement, he is not expected to enjoy the life nor will he feel secure. The Constitution of India contains a large number*

*of rights which guarantee human rights. It recognises the right of every citizen to an adequate standard of life for himself and his family members, which also includes the improvement of living conditions besides providing adequate food, clothing and housing. A welfare State has to take all appropriate steps to ensure the realisation of these rights. The Apex Court in the case of **Chameli Singh v. State of U.P. 1996(2) SCC 549** has held as under:-*

"In any organised society right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designated to achieve this object. Right to live guaranteed in any civilised society implies to right to food, water, decent environment, education,medial care and shelter. These are basic human rights known to any civilised society.

xx xx xx xx Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organised civic community one should have permanent shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being."

9. A right to carry on business is reciprocated with a duty and constitutional obligations under the Constitution. Financial stringency may not be a ground for not issuing requisite directions when a question of violation of *fundamental rights arises. The Apex Court has also highlighted this aspect in a number of decisions, namely, Municipal Council, Ratlam, (1980)4 S.C.C. 163,* ***B.L Wadhera v. Union of India, All India Imam Organisation and Ors. v. Union of India and Ors., Kapila Hingorani v. State of Bihar, 2003 (3) R.S.J. 42****. As far as back as in the year 1993, the Apex Court in All India Organisation's case (supra) observed as under:-*

"6... Much was argued on behalf of the Union and the Wakf Boards that their financial position was not such that they can meet the obligations of paying the Imams as they arc being paid in the State of Punjab. It was also argued that the number of mosques is so large that it would entail heavy expenditure which the Boards of different States would not be able to bear. We do not find any correlation between the two. Financial difficulties of the institution cannot be above the fundamental right of a citizen. If the Boards have been entrusted with the responsibility of supervising and administering the Wakf then it is their duty to harness resources to pay those persons who perform the most important duty namely of leading community prayer in a mosque the very purpose for which it is created.

We are surprised at the insensitive attitude adopted by the respondent-Corporation in respect of its own employees/pensioners. An employer is not only to look forward to the economic growth but also to look after the welfare of its employees including health, social security and other human needs. It is the obligation of the State or its functionaries to work within the scope of their authority to combat and overcome the miseries of its employees. The Courts in such a situation are obliged to issue necessary directions to mitigate the extreme hardship of the employees involving violation of their human rights by the State or its functionaries like the respondent-Corporation, which are fully controlled by it."

Keeping in view the above, it is clear that the financial instability is not a valid ground to withhold the pensionary benefits of an employee and therefore, the justification given by the respondents for delaying the release of the pensionary benefits is not a valid justification.

The Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab, 1997(3) S.C.T. 468,*** has held that an employee is entitled for the release of his/her pensionary benefits within a reasonable time after his/her retirement and the reasonable time fixed is two months after the retirement and in case, there is a delay beyond the reasonable time in the release of the pensionary benefits, employee has been held entitled for interest as a matter of compensation. 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."*

In the present case, though the petitioner retired on 31.08.2016, payments were made starting from 09.07.2017 onwards till 17.01.2018 which is much beyond the reasonable period fixed by the Full Bench in ***A.S. Randhawa's case (supra)***.

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, 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."*

Keeping in view the above, the delay in releasing the pensionary benefits is totally attributable to the respondents, due to which the petitioner has suffered, hence she needs to be compensated. Petitioner is held entitled for interest @ 9% per annum from the date the amount became due till the same was released. It is made clear that petitioner will not be entitled for any interest on the payment, which was extended to her on 31.08.2016 amounting to Rs. 1 lac. Let the interest be calculated within a period of two months from the receipt of certified copy of this order and the interest so calculated shall be released to the petitioner within a period of one month thereafter.

Learned counsel for the petitioner states that even the pensionary benefits have not been calculated correctly. He prays that petitioner be granted liberty to approach the respondents in this regard by filing an appropriate representation.

Learned counsel for respondent No.4 states that in case any such representation is received, the same will be disposed of by passing an appropriate speaking order within a period of three months from the receipt of said representation.

The writ petition is allowed, in above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

November 28, 2019
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Whether speaking/reasoned: Yes
Whether reportable: Yes