

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP-8483 of 2017 (O&M)
Date of decision: 13.08.2019**

Dr. Kanwaljit Kaur `

.... Petitioner

versus

State of Punjab and others

.... Respondents

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: None for the parties.

HARSIMRAN SINGH SETHI, J.

In the present writ petition, the claim which is being raised by the petitioner is for the grant of interest on retiral benefits. The facts which have been stated in the present writ petition are that the petitioner retired as Medical Officer in the month of November, 2013. The retiral benefits of the petitioner were withheld by the respondents as the petitioner stood surety of one Dr. Kiran Bala, who was also working as Medical Officer and had executed a bond on 15.01.2005 to the tune of Rs.5,00,000/-. As per the bond, Dr. Kiran Bala was required to serve the State for the said period of five years and in case, she fails to serve the State for a period of five years, she was bound to refund a sum of Rs.5,00,000/-. Dr. Kiran Bala failed to adhere to the undertaking and did not serve the State of Punjab for a period of five years after doing her post graduation and also did not deposit a sum of Rs.5,00,000/-. The said Dr. Kiran Bala filed CWP No.14612 of 2015 challenging the provisions of bond.

As the pensionary benefits of the petitioner were stopped so as to recover the bond money being surety the petitioner served a legal notice dated 25.08.2014 upon the State. In reply to the legal notice, petitioner was asked to deposit a sum of Rs.9,45,000/- which included Rs.5,00,000/- as bond amount to be deposited by Dr. Kiran Bala and Rs.4,45,000/- as interest. The petitioner approached the Court by filing CWP No.25651 of 2015 claiming release of pensionary benefits, which was decided by this Court on 30.03.2016, issuing direction to the respondents to release the retiral benefits of surety within a period of three months from the date of receipt of certified copy of the said order. Relevant portion of the order is as under:-

“Accordingly, this Court is of the view that the same principle would apply in the present set of cases, specially in view of the undertaking now given by the State. Accordingly, the present writ petitions are disposed of with liberty to the State to avail alternative remedy of recovery by resorting to file civil proceedings. It is, however, made clear that merely because of filing of the suits or a decision to file a suit would not be a ground to withhold any original documents of the petitioners. Similarly, any retiral benefits of the sureties, who have signed on the bonds, would not be withheld on the same principle, as the State would also have the same right of recovery against those sureties also.

In case, any retiral benefits of any surety have been withheld, the same will be disbursed within three months from the receipt of the certified copy of this order.”

After the release of benefits by the respondents, for which the petitioner was entitled, the petitioner has filed present writ petition claiming interest on the delayed release of pensionary benefits.

Upon notice of motion, reply has been filed. In the reply, the respondents have taken the stand that the petitioner was bound to pay a sum of Rs.9,45,000/- keeping in view the surety, which the petitioner stood for Dr. Kiran Bala and after decision of the writ petition filed by the petitioner being CWP-25651 of 2015 decided on 30.03.2016, the remaining retiral

benefits of the petitioner. Relevant portion of the reply is as under:-

“That the petitioner had joined as medical officer on dated 27.01.1987 on (ad hoc) basis and her services were regularized on 05.07.1991. The petitioner has taken premature retirement on dated 19.11.2013. She stood surety for Rs.5,00,000 in favour of Dr. Kiran Bala for her doing P.G. Course in Government Medical College Patiala. Dr. Kiran Bala completed the P.G. Course and she was bound to serve Punjab Govt. service for the period of five years. But she left the service before five years and as per surety bond signed between the petitioner and Dr. Kiran Bala, the petitioner is bound to pay Rs.9,45,000/- (actual amount 5,00,000 and interest Rs.4,45,000) with interest. But the petitioner has not deposited surety amount. Then the petitioner's pensionary benefits were withheld by the respondent No.3.

That the present writ petition is not maintainable at all as the same relief has already been claimed by the petitioner in the earlier Civil Writ Petition NO.25651 of 2015 which has been decided on 30.03.2016, so the present writ petition suffers by the principle of res judicata in view of the judicial pronouncement of Hon'ble Supreme Court and D.B. Of Hon'ble High Court reported in 2005 AIR (SC) 3165 and 1979 PLJ page 576.

That in the earlier Civil Writ Petition No.25651 of 2015 the Hon'ble Court has not awarded the interest though it has been specifically claimed in the writ petition. Since the court has not awarded the interest it tantamount to declining that relief, therefore, the present writ petition is not maintainable at all.

That the petitioner is not entitled for any interest on delay of payment of retiral benefits. The retiral benefits have been paid to the petitioner in time. It was specifically mentioned in the order dated 30.03.2016, that the retiral benefits of sureties who have signed on the bonds would not be withheld. In case any retiral benefit of any surety has been withheld the same will be disbursed within three months of the receipt of the certified copy of this order. The certified copy of order dated 30.03.2016 received by the Office of the answering respondent on 18.07.2016.

That the pensionary benefits already have been released and paid to the petitioner's Account number 10883233297 (State Bank of India) as under:-

Sr. No.	Type of payment	Bill No.	Date	T.V. No.	Date	Amount
1	Group Insurance Scheme	413	14.06.2016	13	06.09.2016	55,648/-
2.	Leave Encashment	750	08.09.2014	362	31.12.2014	7,14,609/-
3	Death-cum-retirement gratuity	717	17.08.2016	16	01.09.2016	10,00,000/-
4	General Provident fund	1165	04.12.2014	196	09.01.2015	11,68,718/-

Bare perusal of the narration would show that the petitioner had stood surety for Dr. Kiran Bala and keeping in view the fact that Dr. Kiran Bala did not comply with the undertaking given to serve the State of Punjab for a period of five years after completing post graduation course, she was liable to refund a sum of Rs. 5,00,000/- which she did not do and the petitioner being a surety on behalf of Dr. Kiran Bala was asked to pay the said amount along with interest after her retirement. The pensionary benefits of the petitioner were stopped for the said reason, which could not be said to be justifiable at that stage. Petitioner filed Civil Writ Petition No.25651 of 2015 for the release of pensionary benefits, wherein the only direction given by the Court was to release the pensionary benefits within a period of three months from the date of receipt of certified copy of the order. No interest was granted by this Court while giving the said directions. Respondents have stated in their reply that the certified copy of the order was received on 18.7.2016, and within a period of three months, the benefits which were remaining to be paid to the petitioner were also released. Factum that group insurance scheme amount and Death-cum-retirement gratuity was released in the month of September 2016, whereas, leave encashment and GPF were released to the petitioner in December, 2014 and January 2015 respectively stands admitted by the petitioner.

Once, this Court while giving direction to the respondents to release pensionary benefits to the petitioner did not grant interest, while passing the order in CWP-25651 of 2015, it amounts to denial of the interest. Petitioner never agitated the grant of interest before this Court at the relevant time. As per the settled principle of law, a relief prayed for, but

not granted, amounts to denial of the same. Hon'ble Supreme Court of India in *State Bank of India vs. Ram Chandra Dubey, 2001(1) SCC 73*, has held as under:-

“The principles enunciated in the decisions referred by either side can be summed up as follows:

Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33C(2) of the Act. The benefit sought to be enforced under Section 33C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and right or benefit, which is considered, just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33C(2) of the Act while the latter does not. **It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding.** Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages.”

Keeping in view the above, present writ petition is not maintainable as the grant of interest stood denied to the petitioner in the earlier litigation. It is not the case that the petitioner never demanded the interest while filing CWP-25651 of 2015 and non-grant of the said prayer amounts to rejection of the same, therefore, the present writ petition is not

maintainable for the grant of interest.

No ground to grant interest is made out.

Dismissed.

(HARSIMRAN SINGH SETHI)
JUDGE

13.08.2019
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| 1. | Whether speaking/non-speaking? | Yes/No |
| 2. | Whether reportable? | Yes/No |