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

(261) **CWP-784-2018**
Date of Decision: May 09, 2019

Parveen Kumar Sharma **.. Petitioner**

Versus

State of Haryana and others **.. Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Arvind Rajotia, Advocate, for the petitioner.

Ms. Safia Gupta, AAG, Haryana.

Ms. Gunjan Gera, Advocate, for
Mr. Padam Kant Dwivedi, Advocate, for respondent No.3.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the grievance of the petitioner is that though he retired on 30.09.2017 but his pensionary benefits were released by the respondents without any valid justification starting from October, 2017 onwards. The claim of the petitioner in the present writ petition is for the grant of interest on the delayed release of the pensionary benefits.

In the writ petition, the petitioner has stated that the petitioner, who was working as a Mandi Supervisor with the Haryana State Agricultural Marketing Board, retired on 30.09.2017. On the date when the petitioner retired, there were no proceedings which were pending against the petitioner, which would entitle the respondents to withhold the pensionary benefits but still after retirement, the pensionary benefits were not released to him.

As all the pensionary benefits for which the petitioner was entitled for, were not released to him, hence petitioner has filed the present writ petition seeking the release of the pensionary benefits along with interest.

Upon notice of motion, the respondents have filed the reply.

In the reply, stand taken by the respondents is that before the petitioner retired on 30.09.2017, a complaint has been received on 10.08.2017, which was being looked into and as, the complaint was under process, the pensionary benefits of the petitioner were not released immediately.

Learned counsel for the respondents states that all the pensionary benefits including the pension, commuted value, earned leave and gratuity was released to the petitioner on 05.03.2018. Learned counsel for the respondents states that as the complaint was under process, the benefits of the petitioner were rightly withheld and therefore, the petitioner is not entitled for interest on the delayed payments as the same was stopped due to a justifiable ground.

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

It is an admitted fact that the petitioner retired on 30.09.2017 after which the petitioner was entitled for the release of the pensionary benefits. The question to be decided in the present writ petition is as to whether on the basis of complaint, the pensionary benefits of the petitioner could have been withheld or not. A mere complaint wherein certain allegations have been alleged, is no ground to withhold the pensionary benefits of an employee, unless and until any substantiative action, which is within the jurisdiction of the department is taken on the basis of the said complaint such as issuance of the charge-sheet or other proceedings. In the present case, it is not even the case of the respondents that any substance was found in the said complaint so as to withhold the amount for which the petitioner became entitled for upon his retirement on 30.09.2017. As per the settled principle of law settled by the Hon'ble Supreme Court in ***Union of India Vs. Jankiraman, 1991 AIR (SC) 2010***, it is only if the charge-sheet is pending against an employee, it can be said that departmental proceedings are pending against an employee which gives jurisdiction to the department that certain benefits can be withheld. Even when the charge-sheet is pending, the provisional pension and the provident fund are to be released. The petitioner, in the present case, is at a much better footing as no disciplinary proceeding were pending against the petitioner on the date of retirement and no such proceedings were initiated against the petitioner even after retirement. Therefore, the pendency of a complaint cannot be a justification for withholding the pensionary benefits. Ground as being raised by the respondents to justify the delay in release of the pensionary benefits cannot be treated as a valid justification and is rejected.

A Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab, 1997(3) S.C.T. 468 ,*** has held that where the pensionary benefits of an employee has been withheld without any valid justification and the same have been released after undue delay, 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 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."*

Furthermore, 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 by the department and used, 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."*

In the present case, the ground which is being raised by the respondents to withhold the benefits has already been held to be unjustified.

Under these circumstances, the case of the petitioner for the grant of interest is squarely covered by the above said judgments.

Therefore, the petition is allowed. The petitioner is held entitled for interest @ 9% per annum from the date it became due till the release of the same. Let the amount of interest be calculated by the respondents for which the petitioner is entitled for, within a period of two months from the receipt of copy of this order and the amount so calculated will be released to the petitioner, within a period of one month thereafter.

(HARSIMRAN SINGH SETHI)
JUDGE

May 09, 2019
harsha

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No