

**IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH
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**RSA-933-2016 &
CM-2566-C-2016**

Date of decision: 22.04.2019

STATE OF PUNJAB AND OTHERS

...APPELLANTS

VS.

NARINDER SINGH KALEKA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. T.P.S.Chawla, DAG, Punjab,
for the appellants.

Mr. N.K.Manchanda, Advocate,
and Mr. Padamkant Dwivedi, Advocate,
for the respondent.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal by the appellants-defendants is to the judgment and decree passed by the learned Additional District Judge, Patiala dated 24.11.2015, whereby the appeal preferred by the respondent-plaintiff against the judgment and decree passed by the Civil Judge (Junior Division), Patiala awarding interest @9% per annum w.e.f. 17.02.2015 has been modified to the extent of granting interest @9% per annum w.e.f. 01.06.2012 i.e. one month after the date of retirement of the respondent-plaintiff as the date of retirement was 30.04.2012.

It is the contention of the learned counsel for the appellants that the suit, which has been preferred by the respondent-plaintiff, has been decreed in his favour to the extent of grant of interest on delayed payment of

gratuity from three months subsequent to the date of his acquittal by the trial Court which period has been reduced to one month subsequent to the date of his retirement which cannot sustain in the light of Rule 2.2 (c) (1) and Rule 6.16 AA (9) of the Punjab Civil Services Rules Volume-II. He contends that the interest, which has been granted to the respondent-plaintiff by the Lower Appellate Court being contrary to the statutory Rules cannot sustain and, therefore, deserves to be set aside.

On the other hand, learned counsel for the respondent-plaintiff contends that the respondent has rightly been granted interest after 30 days of his date of retirement as on acquittal, the respondent-plaintiff became entitled to the gratuity, which was wrongly withheld by the appellants by not releasing at the time of his retirement and, therefore, interest, as has been granted by the Lower Appellate Court, is in consonance with law. He contends that the judgment, as passed by the Lower Appellate Court, cannot be said to be not in accordance with law especially in the light of the judgment of this Court in **Des Raj Bhagat vs. State of Punjab and others**, 2016 (2) PLR 561, where this Court has held that where in an enquiry, which has been initiated against an employee, he has been exonerated, the employee would be entitled to interest from the date of his retirement. Reliance has also been placed upon a Division Bench judgment of this Court in **The Financial Commissioner and Principal Secretary to Govt. of Haryana vs. Hasan Singh Kanwar**, 2011 (2) SCT 157, where it has been held that the employee would be entitled to interest on delayed payment from the date it became due till the date of payment. He, thus, contends that the judgment passed by the Lower Appellate Court being in consonance with the judgments passed by this Court does not call for any

interference.

On the other hand, counsel for the appellants has placed reliance upon a Full Bench judgment of this Court passed in LPA No. 113 of 2012 titled as **Punjab State Civil Supplies Corporation Limited and others vs. Pyare Lal**, decided on 11.08.2014, where it has been held by the Full Bench of this Court that the leave encashment can be withheld on the same principles as the gratuity in the light of the judgment of this Court in **Dr. Ishar Singh vs. State of Punjab and another**, 1993 (3) PLR 999. He, therefore, contends that there can be no doubt that the gratuity can be withheld. Relying upon the judgment of the Supreme Court in the case of **R.Veerabhadram vs. Govt. of Andhra Pradesh**, 2000 (4) SCT 1101, he contends that the gratuity can be withheld when a criminal case is pending against an employee as in the present case and the employee would not be entitled to the gratuity till the conclusion of the proceedings. Interest would also not be granted in case there is no delay in disbursal thereof subsequent to the decision.

I have considered the submissions made by the learned counsel for the parties and with their assistance, have gone through the records of the case, the judgments passed by the Courts below as also the judgments, which have been relied upon by the counsel for the parties.

Rule 2.2 (c) (1) of the Punjab Civil Services Rules Volume-II reads as follows:-

“2.2 (c) (1) Where any departmental or judicial proceeding is instituted under clause (b) of rule 2.2 or where a departmental proceeding is continued under clause (i) of the proviso thereto against an officer who has retired on attaining the age of

compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceedings, final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service up to the date of retirement or if he was under suspension on the date of retirement up to date immediately proceeding to the date on which he was placed under suspension; but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceedings and of final orders thereon.

The gratuity, if allowed to be drawn by the competent authority on the conclusion of the proceedings will be deemed to have fallen due on the date of issue of final orders by the competent authority:

Provided that where Departmental proceedings have been instituted under rule 10 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 for imposing any of the penalties specified in clauses (i), (ii) and (iv) of rule 5 of the said rules, the payment of gratuity or death-cum-retirement gratuity, as the case may be, shall not be withheld.”

and similarly Rule 6.16 AA(9) reads as follows:-

“6.16 AA (9) If the amount of gratuity is not paid to the officer within three months from the date of becoming the same due, an interest at the rate applicable to deposits in General Provident Fund, may be allowed to be paid by the competent

authority for the period beyond the period of three months to the end of the month preceding the month in which the payment is actually made, if such payment was delayed because of administrative lapse or reasons beyond the control of the officer concerned. In all such cases where interest has to be paid, action should be taken to fix responsibility for the delay and disciplinary action should be taken against the officer responsible for it.

Note.—Nothing contained in this sub-rule will apply to the payment of arrears which may become due as a result of enhancement of the emoluments after retirement or liberalisation of the Pension Rules from a date prior to the date of retirement of Government employee.”

A perusal of the above Rule 2.2 (c) (1) would indicate that an employee would be entitled to grant of gratuity to him on the date of passing of the final order i.e. the conclusion of the proceedings, which have been initiated against him which could be either departmental or judicial. Rule 6.16 AA, on which reliance has been placed by the counsel for the State, would not be applicable to such cases where departmental proceedings have been initiated as it would relate to such cases where in routine, an employee becomes entitled to the grant of gratuity. It is under those circumstances, the period of three months has been prescribed. As far as the entitlement of an employee where proceedings have been initiated is concerned, the same would be governed by Rule 2.2 (c) (1), according to which, an employee would be entitled to death-cum-retirement gratuity on the conclusion of the proceedings initiated against him.

In the present case, as per the admitted facts, the respondent-plaintiff was acquitted by the Criminal Court on 17.11.2014 and, therefore, would be entitled to the interest on the date of the said order especially in the light of the fact that no appeal has been preferred against the said judgment and the said judgment has attained finality. It has been admitted by the counsel for the State on instructions from the official, who is present in Court, that the respondent-plaintiff has already been granted the benefit of interest w.e.f. 17.02.2015.

In view of the above, the respondent-plaintiff is held entitled to interest from the date of his acquittal till the date of his actual payment/disbursement of the gratuity amount. The difference of interest be released to the respondent-plaintiff within a period of one month from today.

As regards the judgments, on which reliance has been placed by the counsel for the state, suffice it to say that in the light of the Full Bench judgment of this Court in Dr. Ishar Singh's case (supra), gratuity could have been withheld by the respondents and that too, till the conclusion of the proceedings against the employee. The judgment of the Hon'ble Supreme Court in the case of R.Veerabhadram (supra) clearly laid down that an employee would not be entitled to interest till the judicial proceedings are pending against him.

In the present case, the date of acquittal of the respondent-plaintiff is 17.11.2014 and, therefore, he cannot be held entitled to interest prior to the said date in the light of the judgment of the Supreme Court, referred to above. The judgments, on which reliance has been placed by the learned counsel for the respondent-plaintiff i.e. The Financial Commissioner

and Principal Secretary to Govt. of Haryana (supra) as well as Des Raj Bhagat (supra), the said judgments would not be applicable to the case in hand in the light of the judgment of the Supreme Court in the case of R.Veerabhadram (supra), which judgment has not been brought to the notice of the Court.

In view of the above, the present appeal is partly allowed to the extent that the respondent-plaintiff would be held entitled to interest @9% per annum from the date of his acquittal till the date of disbursement. The amount of interest be calculated and released to the respondent-plaintiff within a period of one month from today.

Copy of the order be given ***dasti*** to the counsel for the State for compliance.

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In view of the disposal of the main appeal, the present application has been rendered infructuous and the same is disposed of as such.

April 22, 2019
pj

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No