IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-6577-2016
Date of decision: - 27.05.2019

G.D. Sharma

....Petitioner

Versus

Haryana State Agricultural Marketing Board

.....Respondent

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Raman B. Garg, Advocate
with Ms. Gitanjali, Advocate,
for the petitioner.

Mr. R.D. Bawa, Advocate,
Mr. Randhir Bawa, Advocate
and Mr. Rohit Sharma, Advocate,
for the respondent.

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HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the grievance which is being raised by the petitioner is that though he has retired on 31.05.2015, but all the pensionary benefits for which he was entitled for upon his retirement such as gratuity and commutation of pension has not been released.

As per the facts mentioned in the writ petition, petitioner retired while working as a Superintending Engineer (Electrical) on 31.05.2015. On the date of his retirement, there was no proceeding pending against him either departmental or judicial, which would entitle the respondents to withhold the pensionary benefits.

Counsel for the petitioner argues that before the retirement, 90% of the GPF was paid to the petitioner on 10.03.2015 and the rest of 10% was paid on 26.05.2015 i.e. prior to the date of his retirement. Even the leave encashment was released to the petitioner on 29.05.2015, though, he was to retire on 31.05.2015,

The grievance of the petitioner only relates to the release of the gratuity and commutation of pension, which was not released to him though he retired on 31.05.2015. As the benefits were not released, the petitioner filed the present writ petition.

Upon notice of motion, respondents have filed the reply.

In the reply, the respondents have stated that at the time when the petitioner retired, the department was contemplating issuance of a charge-sheet to the petitioner, but ultimately, in the meeting of the Administrative Committee, held on 17.12.2015, the case of the petitioner for the issuance of the charge-sheet was considered and in the minutes of the proceeding which were released on 11.02.2016, the Administrative Committee decided not to issue any charge-sheet to the petitioner. Thereafter, the benefits of the gratuity and the commutation of pension was sanctioned by the competent authority and the PPO order in this regard was issued on 05.05.2016 and the benefits were released to him thereafter.

Counsel for the petitioner does not dispute the above-mentioned position stated by the respondents.

Counsel for the petitioner states that once there was no charge-sheet issued to the petitioner, withholding of the benefits of the petitioner by the respondents was beyond their jurisdiction and therefore, petitioner is entitled for interest on the delayed release of the payment of gratuity and the commutation of pension.

Counsel for the respondents on the other hand defends the action of the respondents in not paying the interest by contending that once the department was contemplating for issuance of a charge-sheet at the time when the petitioner retired and it was ultimately only on 11.02.2016 when the department decided not to issue charge-sheet, there was no delay in the release of the pensionary benefits as the same were released within a period of three months from taking the decision of not issuing any charge-sheet to the petitioner which was taken on 11.02.2016, hence, petitioner is not entitled for the interest on those payments.

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

It is a matter of fact that when the petitioner retired on 31.05.2015, there was no proceeding pending against him, which would have entitled the respondents to withhold the pensionary benefits. Further, it is a matter of fact that though it might be under the consideration of the respondents to issue a charge-sheet to the petitioner, but is a matter of fact that no such charge-sheet was ever issued to him and the pensionary benefits of the petitioner were ultimately sanctioned on 05.05.2016, which was released thereafter.

As per the settled principle of law settled by a Full Bench of this Court in **A.S. Randhawa Vs. State of Punjab and others**, **1997(3)**

SCT 468, the amount which has been retained by the respondents and that too without any justifiable reason, the employee will be entitled to interest. In the present case the justification being advanced that department was contemplating issuing of charge-sheet to the petitioner after retirement to deny interest on delayed payment cannot be accepted as a valid justification. 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 front the date of retirement which time limit has been laid down by the Apex Court in M. Padmanabhan 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 case of **J.S. Cheema** Vs. **State of Haryana, 2014(13) RCR (Civil) 355,** a Co-ordinate Bench of this Court had held that an employee will be entitled for the interest on an amount which has been retained by the respondents without any valid justification. The relevant paragraph of **J.S. Cheema's case (supra)** 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 case of the petitioner is squarely covered by the above-said judgments. Once, there was no impediment in the release of the pensionary benefits, withholding of the same by the respondents is to be treated as unjustified. It is a matter of fact that no proceeding was pending on the day when the petitioner retired or no proceeding was initiated even after his retirement, therefore, the reason being given by the respondents that they were actively considering for issuing a charge-sheet due to which they have withheld the amount, holds no ground and the said ground cannot be treated as a justifiable ground to withhold the rightful claim of the petitioner, who was entitled for the release of the pensionary benefits immediately upon his retirement.

In view of the above, the present writ petition is allowed and the petitioner is held entitled for interest @ 9% per annum on release of the gratuity and the commutation of pension from the date it became due till the release of the same.

Let the calculation of the amount of interest be done by the respondents within a period of two months from the date of receipt of a certified copy of this order and whatever the amount, the petitioner is found entitled for as interest, shall be released to him within one month thereafter.

Present writ petition stands disposed of in the above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

May 27, 2019
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Whether reasoned/speaking? Yes
Whether reportable? Yes