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

(Sr. No. 245)

(1) CWP No. 5451 of 2019
Date of Decision : 16.01.2020

Nishan Singh

....Petitioner

Versus

State of Punjab and others

.....Respondents

(2) CWP No. 5463 of 2019

Kulwant Singh

....Petitioner

Versus

State of Punjab and others

.....Respondents

(3) CWP No. 8408 of 2019

Krishna

....Petitioner

Versus

State of Punjab and others

.....Respondents

(4) CWP No. 5466 of 2019

Harinderjit Singh

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Pawan Kumar Goklaney with
Mr. Ashish Kumar Goklaney, Advocate and
Mr. Amarpreet Singh Bains, Advocate for the petitioner(s).

Mr. Navdeep Chhabra, Deputy Advocate General, Punjab.

Mr. G.S. Khokhar, Advocate
for respondent No. 4 (in CWP No. 8408 of 2019).

Mr. Anhad S. Miglani, Advocate
for respondents No. 2 and 5 (in CWP No. 5451 of 2019),
for respondents No. 3 and 5 (in CWP No. 8408 of 2019) and
for respondent No. 4 (in CWP No. 5466 of 2019).

Ms. Harsharan Preet Kaur, Advocate for
Mr. Amit Singh Sethi, Advocate
for respondents No. 2 and 5 (in CWP No. 5463 of 2019).

Mr. Sarthak Gupta, Advocate
for respondent No. 4 (in CWP No. 5451 of 2019).

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<u>Harsimran Singh Sethi, J. (Oral)</u>

By this common order, four writ petitions, the details of which have been mentioned in the heading, are being disposed of as all the writ petitions involve the same question of law and similar facts. For the purpose of this order, the facts are being taken from CWP No. 5451 of 2019.

In the present writ petition, the grievance of the petitioner is that though he had already retired from service after availing two years extension on 31.03.2018 but the pensionary benefits for which he is entitled, were not released by the Municipal Council, Ferozepur. Feeling aggrieved against the non-release of the pensionary benefits, petitioner filed a writ petition i.e. CWP No. 21626 of 2018, which was disposed of on 07.09.2018 directing the respondents to decide the claim of the petitioner for the release of the pensionary benefits. Keeping in view the direction given by this

Court in CWP No. 21626 of 2018, respondents passed an order dated 17.01.2019 (Annexure P-4), whereby, it was stated that though there was no impediment in the release of the pensionary benefits of the petitioner and certain pensionary benefits have already been released but full pensionary benefits for which the petitioner is entitled, could not be released due to the financial constraint and the pending amount of retiral benefits will only be released after receiving the special fund from the Government. The said action of non-release of the pensionary benefits is under challenge in the present writ petition with a prayer for issuance of a direction to the respondents to release all the pensionary benefits of the petitioner alongwith interest forthwith.

Upon notice of motion, respondent-Municipal Council, Ferozepur has put in appearance. No reply has been filed to the writ petition.

The writ petition came up for hearing before this Court on 05.11.2019, on which date, keeping in view the ground taken by the respondents for not releasing the pensionary benefits i.e. the financial crunch was discussed and the same was negated keeping in view the decision of the Division Bench of this Court in ***Ram Karan Vs. Managing Director, Pepsu Road Transport Corporation and another,*** 2005(3) PLR 580. The respondents were directed to place on record the data of income and expenditure of the Municipal Council, Ferozepur of the last five years so that this Court could inquire as to where the income, which was generated by the Municipal Council, Ferozepur, was being spent.

Nothing has been produced by the respondents to justify as to how and on what account, the respondents are taking the plea of the financial difficulty. Learned counsel for the respondents have very fairly admitted that the income of the Municipal Council, Ferozepur always remained more than 10 Crores in last five financial years.

Be that as it may, the Division Bench of this Court has already considered as to whether the weak financial position can be taken as a ground to decline the pensionary benefits to the retired employees. Division Bench while deciding ***Ram Karan's case (supra)*** has held that keeping in view the fact that the State is a welfare State and the retired employees have no other source of income to lead a dignified life, the retiral benefits cannot be declined or withheld on account of financial difficulty. The relevant paragraph of the said 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 other facts thereof. It means 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 organized 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 designed 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.*
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> *xx xx xx xx*
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> *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 Vs. Ratlam, (1980)4 S.C.C. 164, ***B.L Wadhera v. Union of India, AIR 1996 SC 2969 All India Imam Organisation and Ors. v. Union of India and Ors.,***

1993 (3) SCT 531 (SC) : 1993 (3) SCC 584 ***Kapila Hingorani v. State of Bihar*****, *2003 (3) R.S.J. 42***. *As far back as in the year 1993, the Apex Court in All India Imam Organisation's case (supra) observed as under:-*

> *"6... Much was argued on behalf of the Union and the Wakf Board that their financial position was not such that they can meet the obligations of paying the Imams as they are being paid in the State of Punjab. It was also urged 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.*
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> *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 plea, which has been taken by the respondent-Municipal Council, Ferozepur for not releasing the pensionary benefits of the petitioner(s), is contrary to the settled principle of law settled by this Court in ***Ram Karan's case (supra)***.

Today, at the time of hearing, learned counsel for the respondent(s) have stated that all the pensionary benefits of the petitioner(s) have been released during the pendency of the writ petition. This fact has not been disputed by the learned counsel for the petitioner(s).

Learned counsel for the petitioner(s) argues that though the pensionary benefits have been released to the petitioner(s) but the same were liable to be released immediately upon the retirement of the petitioner(s) and as the release of the pensionary benefits has been delayed, petitioner(s) are entitled for the grant of interest.

Learned counsel for the respondents oppose the plea of the petitioner(s) for the grant of interest on the ground that Municipal Council, Ferozepur is already under financial crisis and, therefore, the grant of interest will put further burden upon the Municipal Council and hence, the claim of the petitioner(s) for the grant of interest may be declined.

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

From the facts, which have been stated above, it is clear that there was no impediment in the release of the pensionary benefits of the petitioner(s). There were no proceedings pending against the petitioner(s), which would entitle the respondents to withhold their pensionary benefits. The only reason, which has been advanced by learned counsel(s) for the respondents not to release the pensionary benefits of the petitioner(s) is financial instability of the Municipal Council, Ferozepur.

Once, as per the settled principle of law settled in ***Ram Karan's case (supra)***, financial instability is no ground to withhold the pensionary benefits, the same cannot be projected to justify the inaction on the part of the Municipal Council for not releasing the pensionary benefits of the retired employees. Retired employees have to support their life on the retiral benefits only. A retired employee can only lead a dignified life as enshrined in Article 21 of the Constitution of India, in case he/she is allowed the retiral benefits in time. In the absence of the release of the retiral benefits, no retired employee will be able to lead a dignified life, which will be contrary to Article 12 of the Constitution of India. Further, nothing has been produced before this Court that there was any financial crunch, as it has been admitted by learned counsel for the respondent-Municipal Council that the income of the Municipal council has always been more than 10 crores in the last five financial year.

Be that as it may, the Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab and others, 1997(3) SCT 468*** has held that employee is entitled for the release of the pensionary benefits within a reasonable time after the retirement in case there is no impediment. The reasonable time fixed by the Full Bench of this Court in ***A.S. Randhawa's case (supra)*** is two months after the retirement. In case of the failure of the authority to release the pensionary benefits, employee has been held entitled for interest so as to compensate the employee for the delay. The relevant paragraph of 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 present case, the respondents themselves have admitted the delay as the pensionary benefits of the petitioner(s) have been released in the year 2020, whereas the petitioner-Nishan Singh (in CWP No. 5451 of 2019) and petitioner-Kulwant Singh (in CWP No. 5463 of 2019) had retired in the year 2018 and petitioner-Harinderjit Singh (in CWP No. 5466 of 2019) had retired in the year 2017 and petitioner-Krishna had, unfortunately, died in the year 2018. The case of the petitioner(s) is squarely covered for the grant of interest as per ***A.S. Randhawa's case (supra).***

Also, a co-ordinate bench of this Court in ***J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355*** has held that where an amount belonging to an employee has been retained and used by the department, employee will be entitled for interest. 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 amount for which the petitioner(s) were entitled for as retiral benefits, which is being released now, was retained by the department and used to their benefit and, therefore, petitioner(s) will be entitled for interest on the said amount.

Keeping in view the above, the claim of the petitioner(s) for the grant of interest is allowed. Petitioner(s) are held entitled for interest @ 9% per annum. The interest shall be granted from the date the amount became due till the same was actually released to the petitioner(s). Let the calculation of interest under this order be done by the respondents within a period of two months from the date of receipt of certified copy of this order and the interest so calculated by the respondents shall be paid to the petitioner(s) within a period of one month thereafter.

Writ petition is allowed in above terms.

January 16, 2020 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

Whether reasoned/speaking? Yes
Whether reportable? Yes