

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-16155-2005 (O&M)

Date of decision: - 26.02.2020

Mohinder Singh

....Petitioner

Versus

The Punjab State Civil Supplies Corporation

.....Respondent

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Vipin Mahajan, Advocate,
for the petitioner.

Ms. Deepali Puri Sandhu, Advocate,
for the respondents.

HARSIMRAN SINGH SETHI, J. (ORAL)

CM-15157-CWP-2006

Present application has been filed on behalf of applicant-petitioner to place on record replication to the written statement filed on behalf of the respondents alongwith accompanying documents as Annexures P-11 to P-16.

In view of the averments made in the application, the same is allowed. Replication alongwith accompanied documents (Annexures P-11 to P-16), are taken on record, subject to all just exceptions.

CWP-16155-2005

In the present writ petition, petitioner is challenging the impugned order dated 11.08.2005, having endorsement dated 23.08.2005

(Annexure P-10), by which, the respondents after the retirement of the petitioner, had ordered that keeping in view the pendency of the departmental proceedings, leave encashment and gratuity of the petitioner will be withheld. Further, prayer of the petitioner is for the release of the gratuity and leave encashment alongwith interest. Petitioner is also making a claim for the grant of benefit of Assured Career Progression Scheme after rendering 16 and 24 years of service.

As per the facts stated in the writ petition, petitioner initially joined as an Inspector Grade-II on 03.01.1975. In the year 1977, he was promoted as a Inspector Grade-I, on which post, he continued working till he attained the age of superannuation on 31.08.2005. At the time when the petitioner retired, a charge-sheet dated 07.09.1999 issued to him was pending. Apart from the said charge-sheet, another show-cause notice dated 08.08.2005 issued to the petitioner was also pending consideration with the respondents.

As the disciplinary proceedings were pending against the petitioner in the shape of charge-sheet dated 07.09.1999 as well as the show-cause notice dated 08.08.2005, respondents passed an order dated 11.08.2005 (P-10) that though the petitioner stands retired, but his gratuity and leave encashment will be withheld till the decision of the disciplinary proceedings. In the present writ petition, the petitioner is challenging the said order with a further prayer that the respondents be directed to release leave encashment and the gratuity forthwith alongwith interest.

Learned counsel for the parties are agreed that during the

pendency of the writ petition, charge-sheet dated 07.09.1999 was dropped by the respondents-department on 23.08.2006 and show-cause notice dated 08.08.2005 was also dropped by the respondents on 29.03.2006 and after the dropping of the disciplinary proceedings, even the benefit of gratuity and leave encashment was released to the petitioner on 05.09.2006. The only question, which survive and is being agitated by the petitioner, is for the grant of interest on the delayed release of the retiral benefits of gratuity and leave encashment.

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

The facts which have been stated hereinbefore are not in dispute. It is not disputed that at the time of the retirement, the petitioner was facing the disciplinary proceedings in the shape of charge-sheet dated 07.09.1999 as well as show-cause notice dated 08.08.2005. That being so, the respondents were well within their jurisdiction to withhold the gratuity and leave encashment of the petitioner keeping in view the settled principle of law settled by the Full Bench of this Court in **LPA No.113 of 2012** titled as '**Punjab State Civil Supplies Corporation Limited and others** Vs. **Pyare Lal**', decided on 11.08.2014, wherein, it has been held that in case, any disciplinary proceedings are pending against an employee at the time of the retirement, the gratuity as well as the leave encashment of an employee can be withheld by the department. Hence, no grievance can be made by the petitioner in respect of impugned order dated 11.08.2005, having endorsement dated 23.08.2005 (P-10).

Further, it is not disputed by the learned counsel for the

parties that during the pendency of the writ petition, charge-sheet dated 07.09.1999 was dropped on 23.08.2006 and even the show-cause notice dated 08.08.2005 was dropped on 29.03.2006. That being so, it is clear that the respondents failed to prove the allegations alleged against the petitioner in the charge-sheet dated 07.09.1999 as well as show-cause notice dated 08.08.2005. Once, the proceedings have been dropped by the respondents and thereafter, the benefit of leave encashment and gratuity were released to the petitioner on 05.09.2006, petitioner needs to be compensated for the said delay. As the respondents failed to prove the charges, pendency of the charge-sheet as well as show-cause notice cannot cause prejudice to the petitioner and delay is to be attributed to the respondents.

This Court while deciding **CWP-16282-2018** titled as **'Gurinder Pal Kaur Vs. The State of Punjab and others'**, decided on **10.04.2019** held that where the respondents fail to prove the allegations in the charge-sheet and due to the pendency of the charge-sheet, the retiral benefits were withheld, the employee has been held entitled for interest on the ground that the pendency of the charge-sheet, wherein, the allegations were not proved against an employee cannot cause prejudice to him/her in any manner and employee will be entitled for the grant of interest. The relevant portion of the judgment is as under:-

“Further, once the respondents failed to substantiate the allegations for which the charge-sheet was served upon the petitioner, and the same charge-sheet was dropped, the said pendency of the charge-sheet served by the respondents cannot cause prejudice to the petitioner. Because of the said action, the

pensionary benefits of the petitioner were delayed for approximately one year. The said delay has to be treated as unjustified for the reason that the respondents withheld the benefits on the basis of allegations which were alleged by them against the petitioner.”

A Coordinate Bench of this Court in **J.S. Cheema Vs. State of Haryana and others**, 2014(13) RCR(Civil) 355, has held that where the benefit of an employee has been retained and used by a Department, employee will be entitled for interest. The relevant paragraph of the judgment reads 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.”

Keeping in view the above, the petitioner is held entitled for interest @ 9% per annum on the amount of leave encashment as well gratuity from the date the petitioner retired till the actual payment of the benefits of leave encashment and gratuity.

With regard to the claim of the petitioner for grant of benefit of Assured Career Progression Scheme, learned counsel for the respondents states that the same was considered after dropping of the disciplinary proceedings and a detailed order was passed granting petitioner the said benefit with effect from the year 2004.

This order was passed by the authorities on 27.10.2006. The said order is not under challenge, therefore, once after dropping of the proceedings, the respondents have already considered the claim of the petitioner for the grant of ACP benefits and the benefits for which the petitioner was found entitled for have already been released to him and there is no grouse raised by the petitioner after the passing of the said order, no further orders are required to be passed by this Court in that regard.

Keeping in view the above, the present writ petition is allowed qua the grant of interest as detailed above. Let the respondents compute the interest for which the petitioner becomes entitled under this order within a period of two months from the date of 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

February 26, 2020
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Whether reasoned/speaking?	Yes
Whether reportable?	Yes