IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(208)

CWP-12439-2020
Date of decision: - 04.12.2020

Meena Kumari

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Puneet K. Sharma, Advocate,
for the petitioner.

Ms. Monica Chhibber Sharma, Sr. DAG, Punjab.

(Through Video Conferencing)

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HARSIMRAN SINGH SETHI, J. (ORAL)

The grievance which is being raised by the petitioner in the present writ petition is that the benefits for which the petitioner is entitled for in respect of the service, which her late husband performed with the respondents are not being released to her for the last about six years and that too without any valid justification.

As per the pleadings, husband of the petitioner was appointed as a daily wager on 19.11.1994 and was performing the duties of a Cook in the Commandant 5th Commando Battalion, Bahadurgarh, Patiala. The services of the husband of the petitioner were regularized by the respondents on 09.11.2011, but unfortunately, husband of the petitioner died while in service on 19.12.2014. After the death of the husband of the petitioner, petitioner was not given the benefits for which she is entitled for in respect of the service rendered by her late husband including the pension on the ground that w.e.f. 01.01.2004, only the Contributory Pension Scheme is in operation and as the services of the husband of the petitioner were regularized on 09.11.2011, he was to be governed by the said Contributory Pension Scheme and not the Old Pension Scheme, under which the pension was available to the employees. Petitioner approached the respondents for the grant of pension and other benefits under the Old Pension Scheme by placing reliance upon the judgment of this Court in **CWP No.2371 of 2010** titled as **'Harbans Lal Vs. State of Punjab and others', decided on 31.08.2010** to contend that the employees, who were already in service on 01.01.2004, are to be treated under the Old Pension Scheme and the said law has already attained finality.

Keeping in view the said representation of the petitioner, the respondents considered the claim of the petitioner and found it sustainable and the case of the petitioner was sent to the authorities on 10.10.2017 for approval for allowing the petitioner the benefits under Old Pension Scheme in respect of the service rendered by her late husband. In the absence of any approval by the Department of Home, Government of Punjab, petitioner was not given the benefits, though, the respondents themselves found the petitioner eligible for the grant of benefits in respect of the service rendered by her late husband under the Old Pension

Scheme.

Feeling aggrieved against the non-grant of benefits despite the fact that petitioner was found entitled for the benefits under the Old Pension Scheme by the respondents themselves, petitioner has approached this Court. As per the petitioner, she has been running from pillar to post for the last six years to get the benefits for which she is entitled for and despite the fact that the respondents have found her claim genuine and in accordance with law, she has not been granted the benefit on account of pending approval by the Department of Home.

After the notice of motion was issued, respondent No.5 has filed the reply, in which, it has been admitted that late husband of the petitioner, namely, Krishan Bahadur was appointed on daily wage basis on 19.11.1994 and his services were regularized on 09.11.2011. It has been admitted in the reply that the petitioner is entitled for the benefits under the Old Pension Scheme and the approval of the competent authority has been sought vide letter dated 10.10.2017. The relevant paragraphs of the reply are as under: -

> "2. That actual facts are that previously husband of petitioner was appointed as a daily wager on 19.11.1994 and was performing duties as a cook in the 5th Commando, Battalion, Bahadurgarh, Patiala and thereafter service of said Krishan Kumar was regularized on 09.11.2011 by the Commandant 5th Battalion, Bahadurgarh Patiala. Lateron said Krishan Kumar was died on 19.12.2014.
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> 3. That after death of husband of petitioner amount detailed below has already been paid to the petitioner.
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> 4. That vide notification dated 02.03.2004 of Government of Punjab it was ordered that newly recruited

employees w.e.f. 01.04.2004 are not entitled for pension benefits and as service of husband of petitioner was regularized only on 09.11.2011, due to which pension benefits to husband of petitioner were not released.

5. That after that widow of Puran Bhadur No.5-C/3-WC, who was appointed on daily wages on 01.05.1994 and lateron was regularized on 09.11.2011, had filed a petition before the Hon'ble High Court for getting pension benefits and said petition was allowed by the Hon'ble High Court. In compliance of order passed by the Hon'ble High Court case of said Pooran Bahadur was transferred in old pension scheme.

6. That as case of the petitioner also falls in same category, so file of the petitioner was sent by respondent No.5 to respondent No.3 vide letter No.17726/Court Clerk dated 10.10.2017, for shifting the case of petitioner on old pension scheme. Said case of petitioner was further forwarded to Government of Punjab, now said case of petitioner is still pending.

7. That at this stage short reply is being filed before the Hon'ble Court and reserves its right to file detailed reply to the petition after deciding of case of petitioner by Government of Punjab."

A short reply has also been filed on behalf of respondent No.1, wherein, an effort has been made to explain the delay, which has been caused for approving the claim of the petitioner for the grant of benefits under the Old Pension Scheme, in respect of the service rendered by late husband of the petitioner. In the reply, it has been mentioned that there are large number of cases, which are pending seeking approval of the Department of Home citing judgment of this Court in **Harbans Lal (supra),** hence, delay has been caused, but the same is not intentional but is procedural. It has been admitted that the case of the petitioner is covered for the grant of benefits under the Old Pension Scheme in respect of the service rendered by her late husband.

Today, learned State counsel has produced an order dated 02.12.2020, having endorsement dated 03.12.2020, wherein, it has been mentioned that the petitioner will be entitled for the benefits under the Old Pension Scheme in respect of the service rendered by her late husband and the daily wage service rendered by late husband of the petitioner prior to the regularization of his services, will also be counted as a qualifying service.

Learned counsel for the petitioner submits that though the petitioner has been held entitled for the benefits vide order dated 02.12.2020, but the actual benefits in terms of the said order are yet to be released to the petitioner and further, the petitioner is also entitled for the grant of interest on the delayed payments, which she will receive in pursuance to the order dated 02.12.2020.

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

It is very unfortunate to note that despite a settled principle of law settled by this Court in **Harbans Lal's** **(supra)** having attained finality more than a decade ago to the effect that the employees, who were in service on 01.01.2004, will be entitled for the benefits under the Old Pension Scheme, even though, their services were regularized much after 01.01.2004, still claimants have to wait for the benefits for which they are entitled to under the said law. Cases have been kept pending due to the non-grant of approval by the Department of Home.

Once, a settled principle of law is already there, this Court fails to understand that as to why, in each and every case an approval is being sought by the Department of Home. No justification has been given for seeking the approval of the Department of Home before releasing the benefits to the employee, who is covered under the settled principle of law. In the absence of any valid justification, this process of seeking approval in each and every case, is not appreciated as the same is causing delay in release of the benefits and prejudice to the claimants, who not only suffer financially but mentally and physically also as they have to run from pillar to post seeking the benefits under the settled principle of law including approaching to this Court. This seeking of approval of Department of Home before any benefit is released to the claimant under **Harbans Lal's (supra)** needs reconsideration and should be done away with being not required, as the law stands settled finally on this subject a decade earlier.

Admittedly, there is a delay and the delay is not caused due to any action of the petitioner and is attributable to the respondents only. It is the duty of the department to consider the claim of an employee as per the rules and regulations coupled with the settled principle of law as and when an employee or the legal heirs become entitled for the benefits in respect of the service rendered by an employee.

It is not disputed before this Court that on the date of the death of the husband of the petitioner in the year 2014, the law in **Harbans Lal's (supra)** also stood settled and finalised. It was incumbent upon the respondents themselves to release the benefits to the petitioner, who is a widow and wife of a Class IV employee that she gets the benefits for which she is entitled for under the Old Pension Scheme without any delay so as to survive after the death of the only bread winner. The delay of six years in the release of the benefits, especially in view of the fact that the respondents had already come to the conclusion in October, 2017 that petitioner is entitled for the benefits under the Old Pension Scheme is unjustified as the approval for the release of the benefits has been given for the release of the said benefits after the petitioner approached this Court.

This Court in somewhat similar circumstances while deciding **CWP No.637-2017** titled as '**Yog Raj** Vs. **State of Punjab and others**, **on 25.11.2019** has held that declining or non-release of a benefit despite being entitled in view of **Harbans Lal's (supra)**, an employee will be entitled for interest. The relevant paragraphs of the judgment are as under: -

> "It is not denied by the respondents that petitioner was in service on the post of Gang-Man starting from July, 1984 and his services were regularized by the respondents on 22.12.2011. It is also not disputed that as per Clause 8 of the regularization order, it was mentioned that the petitioner will be covered under the New Contributory Pension Scheme, but this Court while deciding **CWP No.2371 of 2010** titled as **'Harbans Lal Vs. State of Punjab and others', decided on 31.08.2010**, which order has already attained finality up to the Hon'ble Supreme Court has held that if an employee was in service as on 01.01.2004 though his/her services might have been regularized after the said date, he/she will be entitled for the benefit of the Old Pension Scheme. The relevant portion of the said judgment is as under:
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> > "The writ petition was allowed and the petitioners were held entitled to count their entire service w.e.f.

17.8.1965 to 30.9.2001 as qualifying service for the purposes of pension. However, the Contributory Provident Fund was required to be adjusted and deducted from the arrears of her pension. We come to the conclusion that the petitioners' initial date of appointment after regularization will be the date on which employee takes charge of the post. Once the entire service of a daily wager is to be counted as qualifying service then his date of appointment will relegate back to his initial date of appointment i.e. 1988 and he cannot be ousted from pension scheme by applying the date of regularization i.e. 28.3.2005 which is evidently after the new scheme or new restructured defined Contribution Pension Scheme came into force w.e.f. 1.1.2004."

Moreover, learned counsel for the respondents has not been able to point out as to how the case of the petitioner will not be covered by the **Harbans Lal's case (supra)** for the grant of benefit of pension under the Old Pension Scheme. Once, it is an admitted fact that the petitioner was in service on 01.01.2004, though his services were regularized in the year 2011, he will be governed by the Old Pension Scheme keeping in view the settled principle of law settled in **Harbans Lal's case (supra)**.

The said judgment passed by the Division Bench has already been upheld by the Hon'ble Supreme Court and therefore, the objection raised by the respondents that the petitioner will be governed by the New Contributory Pension Scheme in view of the fact that his services were regularized in the year 2011, is hereby rejected.

In view of the above, it is held that the petitioner is entitled for the pensionary benefits under the Old Pension Scheme. The respondents are directed to consider the claim of the petitioner for the grant of the pensionary benefits under the Old Pension Scheme.

As the action of the respondents in declining the relief to the petitioner in the year 2015 is contrary to the settled principle of law as settled in **Harbans Lal's case (supra)**, which judgment was rendered in August, 2010, the petitioner will be entitled for interest as he has been forced to approach this Court despite settled law, hence, the petitioner is held entitled for interest @ 9% per annum on the benefits, which will be released to him under this order, from the date he retired till the actual payment of the same.

Let the benefits under the Old Pension Scheme be granted to the petitioner within a period of two months from the date of receipt of certified copy of this order.

Present writ petition stands allowed in the above terms."

Further, the question of law in respect of grant of interest on the delayed payment of retiral benefits has already been settled by the Full Bench of this Court in **A.S. Randhawa Vs. State of Punjab and others**, **1997(3) SCT 468,** wherein, it has been held that the amount for which an employee becomes entitled on account of retiral benefits, is to be released within a reasonable time and reasonable time fixed by the Full Bench of this Court is two months from the date of retirement. This Court in **A.S. Randhawa (supra)** has further held that in case, retiral benefits have been retained by the respondents for more than two months and that too without any justifiable reason, 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. 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."

The import of the judgment can be done in the case of the employees, who die while in service, in case, there is no impediment, the benefits needs to be released to the legal heirs of the deceased employees within a reasonable time fixed by this Court in **A.S. Randhawa (supra)**.

Case of the petitioner is fully covered by the ratio of **A.S. Randhawa (supra)** as in the present case the delay in the release of the benefits is not only attributable to the respondents, but is also without any valid justification.

A Co-ordinate Bench of this Court in **J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355,** has held that an employee will be entitled for the interest on an amount, which has been retained and used by the respondents without any valid justification. The relevant paragraph of **J.S. Cheema (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."

In the present case also, the delay in releasing the undisputed claim of the petitioner is attributable upon the respondents and the same is not justified, hence, the petitioner is held entitled for interest @ 9% per annum from the date the amount became due till, the said amount is released to the petitioner.

It is directed that the benefits for which the petitioner becomes entitled for in pursuance to the order dated 03.12.2020, be released to the petitioner, without any fail, within a period of two months from today along with interest @ 9% per annum. The failure of release of the amount will be viewed seriously and in case, the failure is brought to the notice of this Court, this Court will have no option but to add costs to the order itself.

Present writ petition stands allowed in the above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

December 04, 2020
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Whether reasoned/speaking? Yes/No
Whether reportable? Yes/No