IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-1182 of 2016
Date of decision: 18.02.2020

Harbinder Singh .... Petitioner

versus

State of Punjab and others ... Respondents

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Malhar Singh Dhami, Advocate
for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

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HARSIMRAN SINGH SETHI, J.

In the present writ petition, the grievance which is being raised by the petitioner is that though, the petitioner attained the age of superannuation on 31.01.2015 but, he was allowed to work till 31.03.2015, on which date the petitioner was relieved from service and retired from service w.e.f 31.01.2015 but, he has not been paid salary for the months of February and March, 2015. Further grievance of the petitioner is that the respondents had delayed the release of his retiral benefits, for which he needs to be compensated by way of grant of interest.

As per the averments made in the writ petition, the petitioner joined as a Lecturer in Physics with the Education Department, Punjab on 06.07.1990 and thereafter, he was promoted as Principal w.e.f. 24.12.2009.

While working as a Principal of the Government Senior Secondary School, Datarpur, Tehsil Mukerian, District Hoshiarpur, the petitioner attained the age of superannuation on 31.01.2015. Though, the petitioner attained the age of superannuation but, as he had applied for the grant of extension in service, he continued working as Principal till his request for grant of extension in service was declined, after which the petitioner was relieved from the service on 31.03.2015.

After the petitioner was relieved from service on 31.03.2015, release of his pensionary benefits was delayed by the respondents and the same were only released in May, 2016 and July, 2016. The petitioner claims that the delay in release of pensionary benefits is attributable to the respondents and for the said delay the petitioner needs to be compensated by way of grant of interest. Petitioner further claims the salary for the period from 01.02.2015 till 31.03.2015.

Upon notice of motion, the respondents have filed reply. In the reply, the respondents have not denied the fact that the petitioner continued working even after he attained the age of supernnuation on 31.01.2015 and it is admitted that the petitioner was relieved from service on 31.03.2015. With regard to the delay in release of the pensionary benefits, the respondents have stated that a charge sheet was pending against the petitioner on the date of his retirement on 31.01.2015 and in the said proceedings the petitioner was found guilty and was imposed a punishment of 20% cut in pension on 07.12.2015. After the proceedings came to an end, the amount of gratuity was released to the petitioner on 05.07.2016, Provident Fund amount was released on 23.07.2016 and leave encashment amount was released on 13.05.2016. Respondents raise an objection against the claim of the petitioner for the grant of interest that the pensionary benefits were delayed as the disciplinary proceedings were pending against the petitioner and therefore, as the delay is attributable to the petitioner, he is not entitled for interest.

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

It is an admitted fact that though, the petitioner attained the age of superannuation on 31.01.2015 but, he was allowed to continue in service till 31.03.2015 by the respondents. The stand of the respondents is that the petitioner continued in service at his own risk and responsibility as the claim of the petitioner for the grant of extension in service was under consideration and after the rejection of the same, the petitioner was immediately relieved and, therefore, he is not entitled for the grant of salary for the said period.

Once the petitioner was allowed to discharge his duties by the respondents and he has worked for the period from 01.02.2015 till 31.03.2015, he will be entitled for the grant of salary for the said period. In case the claim of the petitioner for grant of extension in service was pending, the respondents could have restrained the petitioner from discharging duties till the said claim is decided either way but, once the petitioner has been allowed to continue and he has discharged the duties, he is entitled for the grant of salary for the said period as there is implied consent of the respondents to allow the petitioner to perform duties after attaining the age of superannuation.

So as to the question of grant of interest on the delayed release of pensionary benefits to the petitioner is concerned, it is not disputed that till 07.12.2015, there were proceedings pending against the petitioner and the respondents were well within their jurisdiction to withhold his pensionary benefits. But after the said date, no impediment has been cited by the learned counsel for the respondents to withhold the pensionary benefits any further. After the impediment was removed, the respondents were under an obligation to release the pensionary benefits of the petitioner within reasonable time.

A Full Bench of this Court in **A.S. Randhawa vs. State of Punjab 1997(3) S.C.T. 468** has held that reasonable time after the retirement within which the pensionary benefits of an employee are to be released, if there is no impediment, is two months and in case the benefits are not released within the said reasonable time, an employee needs to be compensated by way of grant of interest. Relevant paragraph of the judgement 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."

A Co-ordinate Bench of this Court in ***J.S. Cheema Vs. State of***

<u>Haryana 2014 (13) RCR (Civil) 355</u> held that where an amount is retained and used by the respondents/employer, an employee will be entitled for interest on the same. Relevant paragraph of the 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 claim of the petitioner is fully covered by the judgements of this Court in **A.S. Randhawa's case (supra)** and **J.S. Cheema's case (Supra)** as after 07.12.2015, there was no impediment in the release of the pensionary benefits of the petitioner but, still the benefits were released in March and July, 2016 and once the reasonable time has been fixed by the Full Bench of this Court to be two months, it was incumbent upon the respondents to release the pensionary benefits within the said reasonable time after the impediment in the release of the benefits no longer exist and retaining the same beyond the reasonable time entitles the petitioner for grant of interest.

Keeping in view the settled principles of law as stated above, the petitioner is held entitled for grant of interest on the delayed payment of pensionary benefits @ 9% per annum from 01.02.2016 onwards till the payments were actually released to the petitioner.

Let computation of the amount, for which the petitioner is entitled under this order be carried out within a period of two months from the date of receipt of copy of this order and the payment so calculated be released to the petitioner within a period of one month thereafter.

The petition stands allowed in the above terms.

(HARSIMRAN SINGH SETHI)
18.02.2020 **JUDGE**
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1.Whether speaking/non-speaking? Yes/No
2.Whether reportable? Yes/No