IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP-13501-2016

Sanjeev ....Petitioner

Versus

State of Punjab and others .....Respondents

2. CWP-13148-2016

Binder ....Petitioner

Versus

State of Punjab and others .....Respondents

Date of decision: - 18.02.2020

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Puneet Kumar Bansal, Advocate
for the petitioner.

Mr. Navdeep Chhabra, Deputy Advocate General, Punjab.

Ms. Meena Bansal, Advocate
for respondent No.4 in CWP-13501-2016.

None for respondent No.4 in CWP-13148-2016.

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HARSIMRAN SINGH SETHI, J. (ORAL)

By this order, above-mentioned two Civil Writ Petitions are being disposed of in the light of common question of law and similar facts involved. For the sake of convenience, the facts are being extracted from CWP-13501-2016 titled as 'Sanjeev Vs. State of Punjab and others'.

The facts which have been stated in the writ petition are that father of the petitioner, namely, Sh. Harbans Lal was appointed as a Safai Sewak in the year 1984 with the Municipal Council, Ferozepur. He continued working as such till he unfortunately died on 11.10.2015. After the death of Sh. Harbans Lal, petitioner being the legal heir, became entitled for the grant of benefits in respect of service rendered by his father. After the benefits were calculated by respondent No.4, a dispute arose as to whether the petitioner will be entitled for computation of gratuity under the Payment of Gratuity Act, 1972 or under the Punjab Civil Services Rules, which governs the service of the employees. Respondent No.4 calculated the gratuity under the Payment of Gratuity Act, 1972 and released it to the petitioner, but as he was claiming the gratuity under the Punjab Civil Services Rules, which was more beneficial to him, which prayer of the petitioner was not accepted, he has approached this Court by filing the present writ petition.

Learned counsel for the petitioner argues that the claim, as being raised in the present writ petition(s), has already been considered and allowed by this Court while deciding **CWP No.22081-2015** titled as '**Kamal Kumar and another** Vs. **State of Punjab and others**', **on 30.03.2017 (Annexure P-3)** wherein it has been held that the gratuity is to be calculated under the Punjab Civil Services Rules, which are applicable upon the employees, petitioner be also granted the same benefit as granted to **Kamal Kumar (supra).**

Upon notice of motion, respondents have filed the reply.

In the reply, respondents have stated that petitioner has been paid the gratuity amounting to ₹4,75,320/- by calculating the same under the provisions of the Payment of Gratuity Act, 1972 and the petitioner is not entitled for the gratuity under the Punjab Civil Services Rules. Further, the averments that a similar situated employee of the same Municipal Council, namely, Rattan Lal, to who's legal heirs claim for the benefit of gratuity under the Punjab Civil Services Rules has already been allowed by this Court while deciding **Kamal Kumar (supra)**, has not been denied in the reply.

Learned counsel for the respondents states that the said judgment is already under challenge before this Court in the LPA and therefore, no benefit of the same be given to the petitioner, at this stage.

Learned counsel appearing on behalf of the petitioner states that though, the LPA has been filed by the respondent-Municipal Council, but as there was no interim order, the benefit has been allowed to the petitioner therein and therefore, the objection which is being raised by learned counsel for the respondents for not giving the benefit to the petitioner, as given by this Court in **Kamal Kumar (supra)**, may kindly be rejected.

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

It is not disputed that the benefit, which the petitioner is seeking in the present writ petition, has already been allowed by this Court in the case of a similarly situated employee, namely, Rattan Lal while deciding **Kamal Kumar (supra)**. Once, a similarly situated legal heir of an employee has been extended the benefit by this Court, which is being claimed by the petitioner herein, there is no reason for this Court to take a divergent view in the absence of any valid/cogent reason. Further, no differentiating point has been raised by learned counsel for the respondents so as to dis-entitle the petitioner to claim, as allowed by this Court in **Kamal Kumar (supra),** who was admittedly similarly situated as the petitioner herein. That being so, the claim of the petitioner is also allowed in the same terms as in **Kamal Kumar (supra)** as far as computation of the amount of gratuity is concerned.

At this stage, another argument raised by learned counsel for the petitioner is that the petitioner is also entitled for interest on the delayed release of the benefits in respect of the service rendered by his father.

Learned counsel for the petitioner argues that father of the petitioner unfortunately died while in service on 11.10.2015, whereas, the benefits were released from 14.01.2016 onwards till January, 2017. Learned counsel for the petitioner further argues that as there is a delay in the release of the pensionary benefits and that too without there being any impediment, the petitioner be compensated for the delay by the grant of interest.

Learned counsel for the respondents does not dispute that the petitioner was entitled for a sum of ₹9,47,846/- as computed by the respondents themselves for which he was held entitled for after the death of his father. That being so, the petitioner should have been released the said amount within a reasonable time after the death of his father. No impediment has been cited by the respondents in their written statement, due to which, the benefit were withheld/delayed unreasonably. In the absence of any cogent reason for the delay, it can be presumed that the delay in releasing the pensionary benefits is attributable to the respondents and that too without any valid justification.

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 for release of the benefits is attributable to the respondents and non-release of the benefit was 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, the amount, for which the respondents themselves found the petitioner eligible i.e. ₹9,47,846/-, should have been released to the petitioner, but as the same was retained and used by the department, petitioner became entitled for the grant of interest.

Accordingly, the claim of the petitioner for the grant of interest on the amount of ₹9,47,846/- is allowed @ 9% per annum from the date the amount became due till the same was released.

Let the interest for which the petitioner became entitled for under this order be calculated by the respondents within a period of two months from the date of receipt of certified copy of this order and the amount, so calculated, be released to the petitioner within a period of one month thereafter.

Present writ petitions stand allowed in the above terms.

(HARSIMRAN SINGH SETHI)
February 18, 2020 **JUDGE**
naresh.k

Whether reasoned/speaking? Yes
Whether reportable? Yes