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

(208) **CWP No. 13971 of 2016**
Date of Decision : 30.01.2020

Yash Mitra

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. D.K. Bhatti, Advocate for the petitioner.

Mr. Mehardeep Singh, Additional Advocate General, Punjab.

***

Harsimran Singh Sethi, J. (Oral)

In the present writ petition, the claim which is being raised by the petitioner is that release of his pensionary benefits were delayed beyond the reasonable time fixed by the Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab and others, 1997(3) SCT 468*** and, therefore, he is entitled for interest on the said delayed payments.

As per the facts stated in the writ petition, petitioner was appointed as a Medical Officer with the respondent-department initially on ad-hoc basis on 10.08.1979 and thereafter, on regular basis from 10.04.1980. During the service career, petitioner was granted promotion as Deputy Director-cum-Civil Surgeon, on attaining the age of superannuation, petitioner retired on 30.11.2013. Before the retirement, keeping in view the Instructions dated 08.10.2012 issued by the Government of Punjab, petitioner applied for the grant of extension for a period of one year beyond the age of superannuation. As the said request was not accepted by the authorities, petitioner approached this Court by filing CWP No. 5046 of 2014 claiming the benefit of extension, which writ petition was dismissed by the Co-ordinate Bench of this Court on 07.08.2014 (Annexure P-6). Thereafter, against the order passed in CWP No. 5046 of 2014, petitioner preferred an LPA No. 1420 of 2014, which was also dismissed on 01.09.2014 (Annexure P-7).

After the proceedings, initiated by him qua the grant of extension in service, came to an end, petitioner claimed the retiral benefits for which he was entitled to in respect of the service, which he had rendered with the State of Punjab. Leave encashment was released to the petitioner in October, 2014. The amount of GPF was released to the petitioner on 30.03.2015 and gratuity amount was released to the petitioner on 12.02.2016. In the present writ petition, the petitioner is claiming interest on these delayed payments on the ground that the delay was attributable to the respondents and, therefore, he is entitled for interest on the delayed release of the pensionary benefits so as to compensate him for the delay.

Respondents have filed the reply contesting the claim of the petitioner. In the reply, respondents have mentioned that the required papers for the release of the GPF were submitted by the petitioner on 31.12.2014 and were received by the authorities in January, 2015 and as those papers were incomplete, they were sent back to the petitioner and thereafter, the complete papers were received from the petitioner on 10.02.2015. GPF was released to the petitioner on 23.02.2015. Further, the respondents have stated that as the petitioner was required to submit his pension papers six months prior to the retirement but the same were only submitted on 30.09.2014 i.e. much after the retirement, therefore, the delay in release of the pension and gratuity was attributable to the petitioner.

No replication has been filed by the petitioner controverting the averments made by the respondents in the written statement.

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

The interest can be claimed by an employee on the delayed release of the pensionary benefits, in case the delay is attributable to the respondent-department and the delay is unreasonable. In the present case, it has not been denied by the petitioner that he did not submit the pension papers six months prior to his retirement. The same were submitted approximately 10 months after his retirement in September, 2014. That being so, the delay cannot be attributed to the respondents as the case of the petitioner for the release of the benefits cannot be processed without there being any proper documents duly signed by the petitioner, hence, in case of the GPF and gratuity, no grievance can be raised by the petitioner as those can only be released after due filling of the documents by the petitioner.

With regard to the grant of leave encashment, petitioner has a genuine claim. It has been admitted by the respondents in their reply that the claim of the petitioner for the release of leave encashment was processed and approved in January, 2014 but the payment could not be released to him in the said financial year by the treasury for the reasons best known to the treasury and in the next financial year, the bill was again sent and the payment of leave encashment was released to the petitioner in October, 2014. Keeping in view the facts stated, the delay in release of the leave encashment after the same was duly approved in January, 2014, is attributable to the respondents. Full Bench of this Court in ***A.S. Randhawa's case (supra)*** has held that where the delay in release of the pensionary benefits is beyond two months and the same is without any valid justification and the said delay is attributable to the respondents, an employee will be entitled for interest. 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 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."*

Apart from this, a Coordinate 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 a department, employee will be entitled for the interest. The relevant paragraph of **J.S. Cheema's case (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 of leave encashment once approved, becomes the property of the petitioner but the same was retained by the department and that too without any valid justification till the same was released in October, 2014 and, therefore, petitioner will be entitled for interest on the delayed payment of leave encashment, which delay was attributable to the respondents only.

In view of the above, writ petition is allowed. Interest @ 9% per annum on the payment of leave encashment amounting to ₹14,46,750/- shall be released in favour of the petitioner from 02.01.2014 onwards till the said payment was released to him on 31.10.2014. Let the interest on this amount be calculated by the respondents within a period of three months from the date of receipt of certified copy of this order and the interest so calculated be released to the petitioner within a period of one month thereafter.

Writ petition is allowed in above terms.

January 30, 2020 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

Whether reasoned/speaking? Yes
Whether reportable? Yes