

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-14667-2017

Date of decision: - 11.02.2020

Vishnu Kumar

....Petitioner

Versus

Punjab Water Supply and Sewerage Board and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Mayank Mathur, Advocate, for the petitioner.

Mr. Vijay K. Kaushal, Advocate, for the respondents.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the grievance which is being raised by the petitioner is that though he retired on attaining the age of superannuation on 31.08.2016, but his pensionary benefits are not being released by the respondents due to a show-cause notice dated 12.09.2016 (Annexure P-2), which was issued subsequent to his retirement. Prayer of the petitioner is for directing the respondents to release the pensionary benefits and also for quashing the show-cause notice dated 12.09.2016 (P-2).

As per the facts mentioned in the writ petition, petitioner retired on attaining the age of superannuation on 31.08.2016. On the said date, there were no proceedings, which were pending against the petitioner, which would have entitled the respondents to withhold his

pensionary benefits. After the retirement, petitioner was issued a show-cause notice on 12.09.2016 (P-2) and that too for a clarification so the respondents could decide whether the departmental proceedings are to be initiated against him or not. On the basis of the said show-cause notice, all the retiral benefits of the petitioner including provident fund, gratuity, leave encashment etc. were withheld by the respondents. Petitioner has approached this Court by way of present writ petition for seeking a direction to the respondents to release the pensionary benefits forthwith and also for quashing the show-cause notice dated 12.09.2016 (P-2), which has been issued to him after his retirement.

Upon notice of motion, the respondents have filed the reply.

In the reply, respondents have stated that during the pendency of the writ petition, the benefits accruing to the petitioner upon his retirement have already been released. The details of the amount have been given in para No.1 of the preliminary submissions. In para 4 of reply on merits, the respondents have further admitted that even show-cause notice dated 12.09.2019 (wrongly mentioned as 18.09.2017) has already been withdrawn.

That being so, the grievance of the petitioner for the release of the pensionary benefits, as raised in the present writ petition, stands redressed. The prayer of the petitioner, which subsists is for the grant of interest on the delayed payments.

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

It is an admitted fact that there were no proceedings pending

on the day when the petitioner superannuated on 31.08.2016. The show-cause notice, which was issued to the petitioner on 12.09.2016, was after his retirement.

This question of law has already been settled by this Court in **L.R. Dhawan Vs. State of Haryana and others, 1996(3) S.C.T. 11**, wherein, it has been held that the gratuity of an employee can only be withheld if there is an enquiry pending on the date of retirement. The relevant part of the said judgment is as under: -

“4. Gratuity due to an employee is payable to him on the date of retirement. Payment of the gratuity can be deferred in a case where the employee is under cloud at the time of his retirement, namely, in a case where he is facing departmental inquiry or judicial proceedings. If no inquiry or judicial proceeding is pending on the date of retirement of the employee, the Government/employer does not have any authority to withhold the payment of gratuity. Similarly, full pension payable to an employee can be withheld during the pending of the departmental inquiry or judicial proceedings. The Government is also possessed with the power to withhold the pension or a part thereof or recover any pecuniary loss caused to the Government from the pension payable to an employee in case such Government servant is found guilty of grave misconduct or negligence in the discharge of his duties during the course of service. Deduction from the pension can be made even on the basis of an inquiry which may be initiated against the employee after his retirement but subject to the fulfilment of the conditions enumerated in proviso to Rule 2.2(b). However, proceedings initiated against an employee under proviso to Rule 2.2 (b) cannot be made a ground for withholding of death-cum-retirement gratuity or the pension payable to an employee on the date of his retirement. In the case in hand, no inquiry was pending against the petitioner on the date of his retirement. The proceedings

have been initiated against him after over three years and nine months of his retirement from service. That may ultimately lead to the withholding of the pension or part thereof or recovery therefrom in terms of Rule 2.2(b) but there does not appear to be any legal justification for withholding of death-cum-retirement gratuity payable to the petitioner on the ground that inquiry has been initiated against him under Rule 2.2(b) with the issue of notice dated 26.12.1986.”

In the present case, there was no charge-sheet, pending against the petitioner on the date of his retirement and therefore, withholding of the pensionary benefits by the respondents on the basis of a show-cause notice issued after the retirement, was without jurisdiction.

Even otherwise, the said show-cause notice has already been dropped by the respondents as they failed to prove the allegations against him. Once, a show-cause notice has been dropped, the pendency of the same cannot cause prejudice to the petitioner in any manner. Thus, the delay in releasing the pensionary benefits is attributable to the respondents. Once, the respondents are responsible for the delay in the release of the pensionary benefits, the petitioner needs to be compensated for the delay, which has occurred in the release of the pensionary benefits and the same can be done by way of grant of interest on the delayed release of the pensionary benefits.

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'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, as no valid justification has been given by the respondents for withholding the pensionary benefits and the justification so given, is contrary to the settled principle of law, the petitioner is held entitled for interest @ 9% per annum from the date the amount became due till the same was released to him.

Let the calculation of the amount of interest be done within a period of two months from the date of receipt of a certified copy of this order and the actual amount, so calculated, shall be released to the petitioner within one month thereafter.

Present writ petition stands allowed in the above terms.

February 11, 2020
naresh.k

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes