208 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.18806 of 2016 (O&M)
Date of decision : February 13, 2020

Jang Singh (deceased) through LRs .... Petitioner

Versus

State of Punjab and others .... Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Rajesh Punj, Advocate for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

Reply filed on behalf of respondent Nos.1, 3 and 5 in the Court today, is taken on record.

In the present writ petition, the challenge is to the order dated 14.06.2016 (Annexure P-16) passed the Accountant General, Punjab, by which the claim of the petitioner for the release of the pensionary benefits was kept pending due to the pendency of CWP No.12498 of 2012 which was pending against the petitioner.

Further, prayer of the petitioner is for issuance of a direction to the respondents to release the pensionary benefits of the petitioner, for which he became entitled after he attained the age of superannuation on 31.03.2015.

The facts as stated in the present writ petition are that the petitioner was working on the post of Superintendent Grade-I when he attained the age of superannuation and retired on 31.03.2015. At the time of the retirement of the petitioner, a complaint, which was made against the petitioner on 05.03.2014, was pending with the Chief Director, Vigilance Bureau, Punjab. Further, in one of the writ petition i.e. CWP No.12498 of 2012, the petitioner was impleaded as respondent which was pending at the time of retirement of the petitioner. After the retirement of the petitioner, his claim for the release of the pensionary benefits was sent to the Accountant General, Punjab, for approval but the Accountant General, Punjab, refused to grant the approval to the release of the pensionary benefits of the petitioner on the ground that a court case is pending against the petitioner and the pension case shall only be settled after the disposal of the said writ petition. This order passed by the respondent-Authority is under challenge with the furhter prayer that the Department be directed to release the pensionary benefits of the petitioner forthwith along with interest.

Upon notice of motion, respondents have filed the reply. In the reply so filed, respondents have stated that there was a complaint, which was filed against the petitioner to the Vigilance Bureau, Punjab, levelling serious allegations and the said complaint was sent by the Vigilance Bureau, to the Under Secretary for inquiry. The respondents have admitted in the reply that the petitioner was exonerated of the allegations made in the said complaint, vide report dated 18.03.2015, which was prior to the retirement of the petitioner. The respondents further stated that as the petitioner was impleaded as a respondent in CWP No.12498 of 2012, which was pending before this Court, the retiral benefits of the petitioner were withheld. In the reply, the respondents further admitted that there was no FIR, no vigilance inquiry or any inquiry was pending against the petitioner on the day of his retirement. The relevant paragraphs of the reply are as under:

"5. That the Vigilance Bureau, Chandigarh sent that complaint to the office of respondent No.3 for inquiry which was entrusted to Smt. Kusum Bector, Under Secretary (Respondent No.5) vide order dated 10.2.2015 who after inquiry exonerated the petitioner and submitted the report on 18.3.2015.

6. That the petitioner was to retire on 31.3.2015, the respondent No.3 sought the opinion of the Legal Remembrancer, Punjab for granting Pension Clearance Certificate for the purpose of sending his pension papers to Accountant General, Punjab vide letter dated 18.3.2015 so as to release him DCRG and other pensionary benefits. Legal Remembrancer, Punjab conveyed its opinion through Department of Personnel vide their memo dated 23.7.2015 stating that the department tenders advice only to the State Government and not to any organization. Therefore, the Respondent No.3 then sought the advice of District Attorney, Patiala vide letter dated 25.7.2015 who advised the Commission to get the final decision of the Vigilance Bureau, Chandigarh and to proceed further as per the rules and instructions relating to Pension Clearance Certificate vide endorsement dated 04.8.2015. The respondent No.3, therefore, sought the clarification from the Vigilance Bureau, Chandigarh vide letter dated 25.8.2015 regarding issuing of pension Clearance Certificate to the petitioner. The Vigilance Bureau, Chandigarh vide its letter dated 07.10.2015 informed the Commission that there are serious allegations against the petitioner in the complaint as well as in the writ petition pending in the Hon'ble High Court. However, no vigilance inquiry or FIR is registered against the petitioner by the Vigilance Bureau, Chandigarh. Hence, the appropriate decision *be taken at your own level. After receiving the intimation from Vigilance Bureau, Chandigarh, the Commission constituted a sub-committee to decide the case of the petitioner vide its order dated 16.2.2016 and decided to issue the pension clearance certificate to the petitioner subject to the decision of the CWP pending in the Hon'ble High Court after obtaining an affidavit in this regard from the petitioner, which was submitted in the office of Commission on 19.2.2016, on the basis of which respondent No.5 issued the pension clearance certificate on 25.2.2016. Thereafter, the case for Pension, DCRG and Commutation of Pension was sent to the office of Accountant General, Punjab vide letter dated 21.3.2016 which was returned by that office vide letter dated 29.4.2016 with the remarks* ***"As the civil writ petition 12498 of 2012 is pending in Punjab and Haryana High Court against the pensioner intimated in forwarding letter page no.2. The pension case may be sent after final decision of the court case."*** *Again the case of the petitioner was sent to the office of Accountant General, Punjab vide letter dated 16.5.2016 which was again returned by that office vide letter dated 14.6.2016 with the observations* ***"A Court case is pending against the pensioner, so the pension case may be sent to this office after settlement of the said court case."*** *Therefore, the sanction for provisional pension was granted by order dated 24.9.2015 and 27.5.16 and the 90% Provisional DCRG was granted by the Chairman of PPSC vide order dated 25.7.2016 after submission of indemnity bond by the petitioner on 19.7.2016.*

7. That in view of the facts mentioned above there is no intentional delay on the part of the answering respondents. The delay, if any, has occurred due to the

> *complications and the involvement of many departments in the decision making process. Therefore, the petitioner is not entitled to the interest on the delayed payments and the present writ petition is liable to be dismissed."*

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

It is very surprising that the pensionary benefits of an employee have been withheld on the ground that the said employee has been impleaded as a respondent in writ petition being CWP No.12498 of 2012 stated to be pending before this Court, though no claim was made against the petitioner in the said writ petition. No Rule has been cited by the learned counsel for the respondents that in case, an employee has been impleaded as a respondent in any litigation, the Department is within the jurisdiction to withhold the pensionary benefits of the said employee after the employee attains the age of superannuation. In the absence of any Rule, it can be safely held that the action of the respondents in withholding the pensionary benefits of the petitioner was beyond their jurisdiction as the said act is not supported by any Rule, Regulation or law.

Further, as per the Punjab Civil Services Rules, which governs the release of pensionary benefits, it is only in case a departmental proceeding or a criminal case is pending against an employee at the time of retirement, the gratuity and leave encashment can be withheld by the Department. In the reply, the respondents have conceded that there were no criminal or departmental proceedings pending against the petitioner. That being so, withholding of the pensionary benefits of the petitioner by the respondents was without any authority and beyond their jurisdiction and the said act was arbitrary and illegal.

Learned counsel for the parties state that during the pendency of the writ petition, the pensionary benefits have been released to the petitioner. That being so, the petitioner, who had suffered prejudice due to the illegal action of the respondents and had not been able to use the amount of pensionary benefit, for which he was duly entitled for, immediately upon his retirement, is entitled for interest.

As per the settled principle of law as settled by the Full Bench of this Court in case of ***"A.S. Randhawa Vs. State of Punjab and others,1997(3) SCT 468"***, it has been held that the amount for which an employee becomes entitled as retiral benefits is to be released within a reasonable time after retirement in case there is no impediment and reasonable time fixed by the Full Bench of this Court is two months from the date of retirement and in case, retiral benefits have been retained by the respondents beyond the said period of 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."*

In the present case, there was no impediment in the release of the pensionary benefits of the petitioner and therefore, he was entitled for the release of his pensionary benefits immediately upon his retirement or within a reasonable period, but the respondents failed to do so, hence, the petitioner is entitled for interest. The case of the petitioner is fully covered by the judgment of Full Bench in ***A.S. Randhawa' case*** (*supra*).

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."*

Keeping in view the above, the claim of the petitioner for grant of interest in the present writ petition is squarely covered by the decision of the Full Bench of this Court in case of ***A.S. Randhawa***(*supra*) and by the coordinate Bench in case of ***J.S. Cheema*** (*supra*). The present writ petition is allowed and the petitioner is held entitled for the grant of interest @ 9% per annum on the amount of the pensionary benefits, from the date it became due till the release of the same.

Let the interest 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 will be released to the legal heirs of the petitioner within a period of one month thereafter, as it is stated by learned counsel for the petitioner that during the pendency of the present writ petition, the petitioner has unfortunately expired.

(HARSIMRAN SINGH SETHI)
JUDGE

February 13, 2020
sarita
Whether speaking / reasoned Yes
Whether Reportable: Yes