

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

CWP No.1692 of 2017
Date of decision : 9.1.2020

Dr. Dharampal

....Petitioner

versus

State of Haryana and others

.... Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Brijender Kaushik, Advocate, for the petitioner.
Mr. Gaurav Jindal, Additional Advocate General, Haryana.

Nirmaljit Kaur, J.

The present writ petition is filed for release of the interest on the delayed payment of the pension and pensionary benefits of the petitioner.

The petitioner retired on 31.5.2013 after attaining the age of superannuation. He is stated to be blind. However, the pensionary benefits were paid to him as late as in January 2016.

Reply has been filed. As per the reply, criminal proceedings involving moral turpitude under Sections 417, 376, 313, 493, 496 IPC was pending against the petitioner in the District Court, Karnal. He was acquitted of the charges on 19.11.2014. An appeal was preferred by the respondents against the said order, which was dismissed on 2.3.2016. Further, as per the provisions contained in Rule 9.15 of Punjab CSR Volume II, only provisional pension can be released and gratuity is not payable until the conclusion of the departmental proceedings and issue on final order and since, the Departmental proceedings against the petitioner were pending at the time of his retirement from Government service, only the benefit of provisional pension could be released. Hence, the respondents

cannot be blamed for the delay.

The reply on the face of it is incorrect. No departmental proceedings were pending against the petitioner. However, only judicial proceedings were pending, in which, he was acquitted on 19.11.2014. The pension should have been released thereafter, but the respondents preferred an appeal, which too was dismissed on 2.3.2016.

The argument that the same could be released only after 2.3.2016, after the dismissal of the appeal, is an afterthought, as the pension was, in fact, released in January 2016 and gratuity etc. was paid on 25.2.2016. This is also evident from Annexure P-16, which is the letter written by the Director Higher Education, Haryana Panchkula to the Accountant General (A&E) Haryana, Chandigarh dated nil in pursuance to the letter dated 20.11.2015 of the Accountant General, Haryana stating therein that there was no Departmental enquiry/judicial proceedings pending against the petitioner and his pension matter is long delayed. His suspension period too has been treated as duty period for all intents entitling him for release of retiral dues. Thus, in case, the argument of learned counsel for the respondents that the same could have been only released after the dismissal of the appeal is to be accepted, then it is not understood as to how they released the balance pension as well as the other pensionary benefits by January 2016 i.e. before the dismissal of the appeal. In any case, there is nothing to show that the petitioner is not entitled to the interest on account of delayed payment in case he is acquitted or is found entitled to the same subsequently. The interest can be denied only in case the delay is on account of the petitioner or the employee himself. The petitioner has been acquitted honourably. Meaning thereby, the complaint was found to be

false. If it is so, the petitioner cannot be deprived of the interest on the delayed payment. He had to suffer not only on account of some false allegations and go through the entire trial but the same shall also result double jeopardy in case he is denied the interest on the said pension.

Clause 5 (i) of the instructions dated 20.2.2002 issued by the Finance Department Government of Haryana No.1/2(152)01-2FR-II reads as under:-

“5. However, these instructions would not be applicable in cases where the payment of retiral benefits is withheld on account of disciplinary proceedings pending against the said employee at the time of his retirement. A further issue would also arise regarding payment of interest on the retiral benefits in case of such employees who are facing disciplinary proceedings at the time of their retirement/superannuation from Government service. These cases should be decided in the following manner:

(i) In the case of an employee against whom disciplinary proceedings are pending at the time of retirement and the employee is clearly exonerated and steered clear of all the charges during the process of disciplinary proceedings and proved innocent, the retiral benefits due to him should be paid alongwith interest from the date of retirement till the date of payment.”

Based on these instruction, this Court in another set of similar circumstances was pleased to grant the interest on the delay payment by observing as under:-

“5. The explanation offered by the respondents to explain the delayed payment of pensionary benefits, apparently, is not justified. The delay to regularize the period of suspension may be justified due to pending CBI inquiry, but once the petitioner has been exonerated and no charge was preferred against him,

the withholding of substantial amount due to him may not be justified. There may be some justification for finalizing the period of suspension upon completion of CBI inquiry, but virtually the action of the respondents in withholding the gratuity and arrears of pension, which have not been paid to him, would not be justified. This aspect is also required to be analyzed in the light of the policy instructions issued by the Government, where it has specifically been provided that when a Government employee is exonerated in the departmental or other proceedings pending against him without taking any action, then the retrial benefits, which had been withheld, are required to be released to him with interest.”

In the case in hand, the petitioner was exonerated and acquitted.

In fact, even the appeal was dismissed.

In view of the above, the writ petition is allowed. Respondent No.2 is directed to pay interest @ 6% per annum from the date the petitioner was found due till the date when he was finally paid.

(NIRMALJIT KAUR)
JUDGE

9.1.2020
sharmila

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No