

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 1529 of 2018 (O&M)

Date of Decision: 18.08.2020

Subhash Chander

... Petitioner(s)

Versus

The Punjab Water Supply and Sewerage Board and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Kshitij Sharma, Advocate
for the petitioner(s).

Mr. Vijay Kumar Kaushal, Advocate
for the respondents.

Anil Kshetarpal, J.

The present writ petitioner has filed a civil writ petition under Article 226 of the Constitution of India with the following substantive prayers:

“A writ of mandamus directing the respondents to pay an amount of interest of ₹ 12,24,239/- @ 18% per annum on the delay period (which is almost 2 years 7 months) for payment of the retiral dues amounting to ₹ 30,17,906/- bearing in mind that these retiral dues were not bounty of the State, but a legitimate right of the petitioner.

A writ of certiorari and quash the action of the official respondents in ordering a recovery of ₹ 1,01,390/- from the retiral dues/gratuity of the petitioner (as paid to him on 24.11.2017), quash the impugned letter dated 25.05.2017 (Annexure P-9) as well as calculation sheet dated 25.05.2017

(Annexure P-10) as the same is impermissible under law, illegal and liable to be set aside and also directing the official respondents to pay the said amount of ₹ 1,01,390/- with interest as detailed hereunder”.

The writ petitioner was employed with the Punjab Waters Supply and Sewerage Board. He, while working as a Senior Assistant, attained the age of superannuation on 28.02.2015. He, in view of the relevant policy of the State Government to consider the retiring employees for extension of retirement age for a period of 2 years, filed a writ petition claiming that he is also entitled to extension for a period of two years. In the writ petition an interim order was passed. Pursuant thereto, he rejoined the service on 20.03.2015. However, on dismissal of the writ petition, he went out of service w.e.f. 24.04.2015.

Before his retirement, pursuant to initiation of disciplinary proceedings, a charge sheet was issued on 25.08.2014, in which he was found guilty after his retirement and an order of punishment of recovery of ₹5,000/- was passed against him on 15.02.2017, validity whereof is not under challenge.

Now, through the present writ petition, he has claimed interest on the delayed release of the retiral benefits apart from seeking refund of the amount recovered representing the salary paid to him after 28.02.2015 for a period of two months, i.e., the period he worked in the office on account of the interim order passed by this Court.

This Court has heard learned counsel for the parties and with their able assistance, gone through the paper-book.

By now, it is well settled that a writ petition for payment of

interest on delay in release of the amount representing retiral benefits is maintainable (ref. to the three Judges' Bench judgment in ***A.S.Randhawa v. State of Punjab (1997) 4 SLR 617***). Similarly, with regard to enabling power to withhold the disbursement of gratuity or death-cum-retirement gratuity, Rule 2.2(c)(1) Chapter II Vol.II of the of the Punjab Civil Service Rules is clear, as interpreted by an another three Judges' Bench in ***Punjab State Civil Supplies Corporation v. Pyare Lal (2014) 4 SCT 711*** is clear. In fact, the three Judges' Bench initially delivered the judgment in the year 2011 reported in ***2012 SCC Online (Punjab & Haryana) 21595***. However, in a review petition, the aforesaid judgment was recalled and ultimately decided in 2014 ***(2014) 4 SCT 711 (supra)***. It has been held that the employer, pending departmental inquiry, has enabling power to withhold the payment of the amount representing gratuity or death-cum-retirement gratuity and leave encashment while interpreting Rule 2.2 (c)(1), Chapter II, Vol.II and Rule 8.21 (aa) Volume-I Chapter-VIII of the Punjab Civil Service Rules.

In view of the aforesaid situation, let us examine the facts of the present case. The order of punishment, which was passed against the writ petitioner on 15.02.2017, has attained finality. He is not entitled to the pension as per service rules. The employer was entitled to withhold the amount payable to him representing the gratuity as well as the leave encashment, pending final order in the disciplinary proceedings. However, the amount of Contributory Provident Fund could not be withheld. The contributory provident fund has been released to the writ petitioner in two instalments; firstly, on 07.12.2006 ₹ 6,11,693/-, secondly on 01.08.2017

giving three months, a reasonable period, interest is payable to the petitioner with effect from 01.08.2015 on the delayed payment of the amount representing CPF.

Similarly, there is a delay in release of leave encashment amount as well as gratuity even after the order of punishment dated 15.02.2017 was passed against him. After giving three months reasonable period for release of the amount, the interest is payable with effect from 01.06.2017 on the aforesaid amount.

Another grievance of the writ petitioner is with respect to the recovery of the amount of salary for a period of two months, the period for which he has worked under the interim order of the court. The aforesaid recovery could not be made because he, under the interim order passed by the Court, had worked. Hence, the writ petitioner is entitled to be paid the salary for the period he had actually worked, i.e. from 20.03.2015 to 24.04.2015.

Consequently, the writ petition is allowed. The respondents are directed to release the following benefits:

1. The salary for the period when the writ petitioner has worked, i.e. from 20.03.2015 to 24.04.2015.
2. The amount of interest on the amount of contributory provident fund from 01.08.2015 till the date of payment at the rate of 8% per annum, if not already paid.
3. The interest on the delayed release of the amount of leave encashment and gratuity from 01.06.2017 till the date of payment along with the interest at the rate of 8% per annum.

The miscellaneous application(s) pending, if any, shall also stand disposed of in terms of the main order.

(Anil Kshetarpal)
Judge

August 18, 2020
“DK”

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No