IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-2204-2017
Date of decision: - 22.01.2020

Nek Singh

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Karan Garg, Advocate
for the petitioner.

Mr. Mehardeep Singh, Additional Advocate General, Punjab.

Mr. Karan Garg, Advocate
for respondent No.4.

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HARSIMRAN SINGH SETHI, J. (ORAL)

The claim raised by the petitioner in the present writ petition is that he retired on 30.04.2015, but his pensionary benefits were not released within a reasonable time after retirement and therefore, he is entitled for grant of interest on the delayed release of the pensionary benefits.

As per the averments made in the writ petition, petitioner was appointed as a Junior Assistant on 05.11.1975 in the Municipal Council, Patran. He kept on working on the said post for a period of 40 years and retired on attaining the age of superannuation on 30.04.2015. After the retirement of the petitioner, though, there was no valid justification with the respondents, still, the pensionary benefits of the petitioner were not released within a reasonable time after the retirement. According to the averments made in para No.4, a total sum of Rs.4 lakhs was paid vide letter dated 21.08.2015 (Annexure P-2) and that too in three installments.

After the retirement, the respondents have calculated the amount for which the petitioner was entilted and the total amount of gratuity and leave encashment for which petitioner was entitled for was calculated as ₹10,35,117/-. As the remaining amount of more than ₹6,00,000/- was not released to the petitioner, he served the respondents a legal notice dated 08.10.2015 (Annexure P-4). Despite legal notice (P-4), no amount, for which the petitioner was entitled as retiral benefits, was released by the respondents and ultimatley, he filed a petition being CWP No.25536 of 2015. The said writ petition was disposed of by this Court on 07.12.2015 directing the Municipal Council, Patran to pass appropriate orders on the claim, which the petitioner raised through his legal notice dated 08.10.2015 (P-4).

In pursuance to the direction issued by this Court, respondents released the remaining amount of Rs.6,35,117/- by 06.05.2016.

After the release of the said amount, the petitioner raised a claim for the grant of interest on the delayed release of the pensionary benefits, which claim was declined by the respondents and therefore, the petitioner filed the present writ petition claiming the interest on the delayed release of the pensionary benefits.

Upon notice of motion, respondents have filed the reply.

In the reply, the only ground taken by the respondents is that keeping in view the financial restrains, retiral benefits of the petitioner could not be released in time, but all the benefits, which the petitioner was entitled for, was released by 06.05.2016. The fact that an amount of ₹4,00,000/- was released up to 21.08.2015 in three instalments is admitted. Respondents have further admitted that the remaining amount was released by 06.05.2016 and that too in installments. The only justification given for delayed release of the pensionary benefits is the financial constraints, which was being faced by the Municipal Council, Patran.

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

The facts stated above are not in dispute. It is admitted by the respondents that the retiral benefits of the petitioner were released after a delay. The justification given by the respondents for the delay in the release of the pensionary benefits is financial constraints, which is not a valid ground keeping in view the law laid down by this Court in **Ram Karan** Vs. **Managing Director, Pepsu Road Transport Corporation and another**, **2005(4) S.C.T. 438**, wherein, it has been held by this Court that the weak financial position is not a valid ground to withhold the payments in respect of the retiral benefits. The relevant paragraph of the said judgment is as under: -

> "8. On careful consideration of the rival submissions and the facts of the case, we do not find ourselves in agreement with the

arguments advanced by the learned Counsel for the respondent-Corporation. In a welfare State it is the duty of the State to ensure the 'right to live' of every individual. The term 'life' as mentioned in Article 21 of the Constitution of India includes livelihood and so many facets thereof. It means that something more than mere existence and inhabitation against the proposition of life and rather it extends to all the facilities by which life is enjoyed. In case a pensioner is not even paid the genuine dues like the medical reimbursement, he is not expected to enjoy the life nor will he feel secure. The Constitution of India contains a large number of rights which guarantee human rights. It recognises the right of every citizen to an adequate standard of life for himself and his family members, which also includes the improvement of living conditions besides providing adequate food, clothing and housing. A welfare State has to take all appropriate steps to ensure the realisation of these rights. The Apex Court in the case of **Chameli Singh v. State of U.P. 1996(2) SCC 549** has held as under:-

> "In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designated to achieve this object. Right to live guaranteed in any civilised society implies to right to food, water, decent environment, education,medial care and shelter. These are basic human rights known to any civilised society.
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> Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organised civic community one should have permanent shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a useful citizen and equal participant in democracy. The ultimate object of making a man equipped with

a right to dignity of person and equality of status is to enable him to develop himself into a cultured being."

9. A right to carry on business is reciprocated with a duty and constitutional obligations provided under the Constitution. Financial stringency may not be a ground for not issuing requisite directions when a question of violation of fundamental rights arises. The Apex Court has also highlighted this aspect in a number of decisions, namely, Municipal Council, VO Ratlam, (1980) 4 S.C.C. 164, **B.L Wadhera v. Union of India AIR 1996 SC 2969, All India Imam Organisation and Ors. v. Union of India and Ors. 1993(3) SCT 531 (SC), Kapila Hingorani v. State of Bihar, 2003 (3) R.S.J. 42**. As far as back as in the year 1993, the Apex Court in All India Organisation's case (supra) observed as under:-

"6... Much was argued on behalf of the Union and the Wakf Boards that their financial position was not such that they can meet the obligations of paying the Imams as they arc being paid in the State of Punjab. It was also argued that the number of mosques is so large that it would entail heavy expenditure which the Boards of different States would not be able to bear. We do not find any correlation between the two. Financial difficulties of the institution cannot be above the fundamental right of a citizen. If the Boards have been entrusted with the responsibility of supervising and administering the Wakf then it is their duty to harness resources to pay those persons who perform the most important duty namely of leading community prayer in a mosque the very purpose for which it is created.

We are surprised at the insensitive attitude adopted by the respondent-Corporation in respect of its own employees/pensioners. An employer is not only to look forward to the economic growth but also to look after the welfare of its employees including health, social security and other human needs. It is the obligation of the State or its functionaries to work within the scope of their authority to combat and overcome the miseries of its employees. The Courts in such a situation are obliged to issue necessary directions to mitigate the extreme hardship of the employees involving violation of their human rights by the State or its functionaries like the respondent-Corporation, which are fully controlled by it."

The Division Bench while deciding the above-said case categorically held that the plea of weak financial position is not a valid ground to withhold the pensionary benefits, therefore, the ground, which has been taken by the respondents to withhold the pensionary benefits in the case of the petitioner, is contrary to the law laid down by the Division Bench and cannot be taken into consideration for denying the benefit of interest on the delayed payments.

The question of law in respect of grant of interest on the delayed payment of retiral benefits has already been settled by the Full Bench of this Court in **A.S. Randhawa Vs. State of Punjab and others**, **1997(3) SCT 468,** wherein, it has been held that the amount for which an employee becomes entitled on account of retiral benefits, is to be released within a reasonable time and reasonable time fixed by the Full Bench of this Court is two months from the date of retirement. This Court in **A.S. Randhawa's (supra)** has further held that in case, retiral benefits have been retained by the respondents for more than 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 writ petition as well, there was no valid justification with the respondents to withhold the pensionary benefits of the petitioner up to 06.05.2016 though he retired on 30.04.2015. Claim of the petitioner is squarely covered for the grant of interest.

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."

A bare perusal of the above judgment would show that where the amount belonging to an employee has been retained and used by the department and that too without any valid justification, the employee has been held entitled to the interest.

Keeping in view the above-said judgments, the reason, which has been advanced by the respondents for the delay in releasing the amount for which the petitioner was entitled for, cannot be considered as a valid ground. In the absence of any valid ground, the petitioner is entitled for grant of interest @ 9% per annum.

In view of the above, the present writ petition is allowed. The respondents are directed to calculate the interest @ 9% per annum on the delayed payments, which have been made to the petitioner. The interest shall be calculated from the day when the petitioner became entitled for the release of the amount till the actual payment were released to her.

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

As the petitioner has been forced to approach this Court for the release of his genuine claim, he will also be entitled for the costs, which are assessed @ ₹15,000/-, to be paid by the respondents alongwith the payment of interest.

Present writ petition is allowed in above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

January 22, 2020
naresh.k

Whether reasoned/speaking? Yes
Whether reportable? Yes