IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-3599-2017
Date of decision: - 10.02.2020

Bhagwant Singh

....Petitioner

Versus

Punjab State Civil Supply Corporation Limited and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Vipin Mahajan, Advocate
for the petitioner.

Mr. Anil Sharma, Advocate
for the respondents.

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HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the challenge is to the order dated 30.10.2015 (Annexure P-9), by which the respondents have informed the petitioner that there are certain recoveries pending against him, which are yet to be deposited and till the deposit of the same, his pensionary benefits cannot be released.

The facts which have been stated in the writ petition are that petitioner was initially appointed as an Inspector Grade-II with the respondent-Corporation in the year 1975. In the year 1980, he was promoted as an Inspector Grade-I and he continuously discharged the duties of the said post till he attained the age of superannuation and retired on 28.02.2006. While the petitioner was in service, he was issued a charge-sheet, which was pending against him on the date of his retirement. The said charge-sheet was decided by the respondents on 24.10.2013 and recovery amounting to ₹52,524/- was imposed upon the petitioner, vide order dated 09.09.2013 (P-6). Keeping in view the non-deposit of the said amount, all the pensionary benefits such as gratuity and leave encashment of the petitioner were withheld. After the imposition of penalty, petitioner started making the representations for the release of the benefits, but the same were not released by the respondents. Ultimately, order dated 30.10.2015 (Annexure P-9) was passed by the respondents that till the recovery amount, which have been mentioned in the said order is deposited, the benefits will not be released. The said order is under challenged in the present writ petition.

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

In the reply, the respondents have stated that till the amount of recovery, detail of which has been given in the impugned order, is deposited by the petitioner, pensionary benefits cannot be released.

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

In the impugned order, the respondents have stated that there are three recoveries are pending against the petitioner, the details of which are as under:-

Sr. No.	Recovery/Case pending	Amount
1.	Recovery imposed vide H.O. Order No.Estt.-Patiala (26)-2013/31366-69 dated 24.10.2013	₹52,524/-
2.	Recovery pending vide report dated 26.5.2015 of District Manager, Punsup	₹13,604.25/-

Sr. No.	Recovery/Case pending	Amount
3.	As per report dated 26.5.2015 of District Manager, Punsup, an execution case pertaining to recovery of ₹2,18552.53 is pending which has been stayed by the Hon'ble Punjab and Haryana High Court for further orders.	₹2,18,552.53/-

As far as the recovery mentioned at Sr. No.1, amounting to ₹52,524/- is concerned, the same was imposed after the retirement of the petitioner on 24.10.2013.

Learned counsel for the petitioner argues that the recovery was imposed for giving less excess in wheat stock, which was stored in the jurisdiction of the petitioner. According to learned counsel for the petitoner, respondents had passed an order on 25.07.2008 (Annexure P-7) wherein, it was decided that as certain employees, who were also imposed the similar punishment for giving less excess and in those cases, this Court had stayed the recovery, till the order is passed by this Court finally adjudicating *lis* pending between employees and PUNSUP, no recovery will be made. The relevant part of decision taken by the Managing Director on 25.07.2008 (P-7) is as under: -

> "That Punsup Employees Union of challenged the norms of excess through 24 CWPs of the year 2000 and in the said CWPs the High Court has stayed the recovery of excess from the petitioners and this Corporation after taking legal opinion in the matter has stayed the recovery of excess from all employees as basic policy of excess has been challenged and matter is sub-judice. The High Court orders continued to remain operative till final decision of the Court. Till such time any orders passed by the Court norms fixed by the Corporation for recovery of losses from various categories of

employees including Field Officers sustain with the stipulation that recovery could not be effected in the cases of less excess from the employees matter being sub-judice."

Above decision clearly shows that no recovery was to be effected from an employee in case less excess is given and hence, the action of the respondent-Corporation for withholding the pensionary benefits for non-deposit of ₹52,524/- on account of less gain given, is contrary to their own decision.

With regard to recovery, which has been mentioned by the respondents at Sr.No.2, amounting to ₹13,604.25/-, learned counsel for the petitioner states that the said recovery has been imposed without holding any enquiry, which fact is not opposed/denied by the respondents in their reply.

Learned counsel for the petitioner states that if the said amount is deducted from his pensionary benefits, the petitioner will have no objection.

With regard to the recovery, which has been mentioned at Sr.No.3, amounting to ₹2,18,552.53/-, learned counsel for the parties agree that the same has already been effected from the petitioner when he was in service.

The facts and circumstances as noticed above show that only one recovery amounting to ₹13,604.25/- was to be done from the petitioner after the retirement. For the said recovery, the respondents withheld the benefit of leave encashment and gratuity, which is approximately ₹10,00,000/-. Petitioner has also given in writing to the respondents on 04.09.2015 (Annexure P-8) to withhold the amount of ₹52,524/- and release the remaining amount of the pensionary benefits. Once, the petitioner has already agreed that the respondents shall withhold the amount of ₹52,524/-, there was no valid justification with the respondents to withhold the pensionary benefits any further. It was incumbent upon the respondents to release the pensionary benefits thereafter within a reasonable time.

Learned counsel for the petitioner prays that after letter dated 04.09.2015, respondents have no valid justification to retain the amount, but even as of now when more than 4 ½ years have elapsed, the retiral benefits has not been released so far.

Once, the petitioner had already given an undertaking for the recovery of the amount from his pensionary benefits amounting to ₹52,524/-, the respondents were not justified in retaining the entire amount. The respondents should have released the same within a reasonable time keeping in view the order passed by this Court in '**A.S. Randhawa Vs. State of Punjab and others**, **1997(3) SCT 468**, where this Court has held that reasonable time for releasing the pensionary benefits is two months after the retirement of an employee in case there is no impediment in the release of the same. Applying the same principle, once the impediments are removed, the respondents are under obligation to release the amount within a period of two months of the removal of the impediments, which were there in the release of the pensionary benefits to an employee at the time of his/her retirement. 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 view of the above, present writ petition is allowed. The respondents shall withhold a sum of ₹66,128.25/- and release the remaining benefits immediately within a period of two months from the date of receipt of certified copy of this order.

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."

As after September, 2015, there was no impediment in the release of the pensionary benefits, petitioner is held entitled for interest @ 9% per annum from 01.11.2015 onwards till the benefits are actually released to him.

Present writ petition stands allowed in the above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

February 10, 2020
naresh.k

Whether reasoned/speaking? Yes
Whether reportable? Yes