IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(345) **CWP-3261-2022**
Date of Decision : September 12, 2022

Girraj Singh **.. Petitioner**

Versus

State of Haryana and others **.. Respondents**

(344) **CWP-2997-2022**

Raj Kumar **.. Petitioner**

Versus

State of Haryana and others **.. Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Gaurav Singla, Advocate, for the petitioner(s) in both petitions.

Mr. Vivek Saini, Addl. Advocate General, Haryana.

Ms. Sehaj Sandhawalia, Advocate, for respondents No. 2 & 3 in both petitions.

HARSIMRAN SINGH SETHI J. (ORAL)

By this common order, two writ petitions, the details of which have been given in the heading of the order, are being disposed of as both the petitions involve the same question of law on similar facts.

The prayer of the petitioner(s) in the present petitions is that despite the fact that the petitioner(s) have retired from service but their pensionary benefits are not being released by the respondents on the ground that there is a paucity of funds.

Learned counsel for the petitioner(s) argues that both the petitioner(s) are retired on 31.03.2021 on attaining the age of superannuation.

The prayer of the petitioner(s) is for issuing a direction to the respondents to release the pensionary benefits of the petitioner(s) forthwith as there is no impediment in the release of the pensionary benefits and the same have only been withheld due to paucity of the funds.

After notice of motion, the respondents have appeared and filed in the reply. In the reply, it has been mentioned that the benefits to the petitioner(s) have already been released. In case of petitioner Girraj, Rs.16,60,965/- has already been released and in case of petitioner Raj Kumar, a sum of Rs.20,23,378/- has been released by way of pensionary benefits and the same have been released on 05.04.2022.

Learned counsel for the petitioner(s) submits that though the benefits have been released but the same have been released after a delay and therefore, the petitioner(s) are entitled for the grant of interest.

Learned counsel for the respondents submits that as there was a paucity of funds, the same is a valid reason for not releasing the pensionary benefits, hence, the claim of the petitioner(s) for the grant of interest may kindly be declined.

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

The question which arises in the present petitions is that whether the paucity of funds with the respondents would constitute as a valid impediment for withholding of pensionary benefits of the petitioner(s) or not.

As per the judgment of the Division Bench of this Court in CWP No. 14426 of 2003 titled as ***Ram Karan Vs. Managing Director, Pepsu Road Transport Corporation and another, decided on 16.08.2005,*** the non payment of the pensionary benefits due to the paucity of funds is not a valid ground. 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 facts 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:-*
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> *"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. xx xx xx xx 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 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, Ratlam, (1980)4 S.C.C. 163, ***B.L Wadhera v. Union of India, All India Imam Organisation and Ors. v. Union of India and Ors., 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."

Hence, the ground being given by the respondents to withhold the pensionary benefits was not available to them keeping in view the settled principle of law.

It is a conceded position that both the petitioner(s) retired on 31.03.2021 whereas, the retiral benefits were paid to them on 05.04.2022.

As per the judgment of the Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab and others, 1997(3) SCT 468,*** the retiral benefits are to be computed and released within a period of two months from the date of the retirement, in case there is no impediment. The relevant paragraph of 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 front 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 is no impediment in release of the pensionary benefits, hence, as payment has been released to the petitioner(s) after a period of two months, the petitioner(s) are entitled for the grant of interest on the delayed release of the pensionary benefits.

Further, a Coordinate Bench of this Court in of ***J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355*****,** has held that where an amount belonging to an employee, has been retained and used by the respondents, upon the release of the said amount, on a later date, the interest has to be given. 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(s) for the grant of interest is allowed. The amount released to the petitioner(s) will also carry interest @ 6% per annum from the date the same became due till the actual payment. Let the respondents calculate the interest within a period of two months from the receipt of certified copy of this order and the amount so calculated shall be paid to the petitioner(s) within a period of one month thereafter.

In case, any of the grievance of the petitioner(s) still survives with regard to the actual benefit for which the petitioner(s) are entitled for but have not been released, the petitioner(s) will be free to approach the respondents by filing appropriate representation and in case any such representation is filed, let the same be decided by the authorities concerned within a period of eight weeks.

Both the writ petitions are allowed in above terms.

A photocopy of this order be placed on the file of other connected case.

September 12, 2022 **(HARSIMRAN SINGH SETHI)**
harsha **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : Yes