

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

201

LPA No.393 of 2021(O&M)

Date of Decision: March 07, 2022

State of Haryana and others

....Appellant

VERSUS

Parveen Bala and another

....Respondents

**CORAM: HON'BLE MR. JUSTICE G. S. SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Hitesh Pandit, Addl. A.G. Haryana
for the appellants.

Mr. Gauravindra Sharma, Advocate for respondent No.1.

(The proceedings are being conducted through video
conferencing, as per instructions).

G.S. SANDHAWALIA, J(Oral).

The present letters patent appeal filed by the State is against the order dated 03.03.2020 passed by learned Single Judge in Civil Writ Petition No. 4172 of 2015, whereby the directions were given to pay interest on the arrears admissible to the writ petitioner-respondent No.1. The same was to be paid from the actual date of promotion i.e. 18.08.2010, till it is finally paid to her. The interest @ 6% per annum was ordered to be paid to the writ petitioner on the said arrears within two months, failing which the same was liable to be paid @ 12%, after expiry of the said period.

The State, thus, is aggrieved on the element of interest from

dated 13.08.2010 (Annexure P-3) and she joined as such thereafter on 18.08.2010, from where learned Single Judge has fixed the entitlement of interest.

Mr. Pandit has vehemently argued that in pursuance of the said directions, principal amount of Rs.27,06,731/- has been paid on 24.03.2020. However, the element of interest is accordingly contested on the ground that the amount, which was liable to be paid was on account of the fact that her junior Fakir Chand had been promoted in the year 1995 and the writ petitioner was granted the deemed date of promotion from 12.10.1995 notionally and the actual benefit was to be admissible to her on the date of joining as a Senior Librarian on 18.08.2010. It is, accordingly, contended that the writ petition was filed in the year 2015 and therefore, the benefit of interest should not have been granted for the last almost 10 years. Secondly, it is argued by Mr. Pandit that Fakir Chand's promotion had been withdrawn on 14.10.2015 (Annexure R-1) and he had been reverted to the post of Junior Librarian and on account of the litigation thereafter, on 28.02.2018 (Annexure R-II), the said order of reversion was withdrawn. It is, thus, contended that for three year's period on account of junior's reversion being withdrawn, the writ petitioner was not entitled for the benefit, for the said period.

Mr. Sharma, on the other hand, has rightly pointed out that there is no delay in filing the writ petition. The same was filed in March, 2015 after the writ petitioner retired on 31.03.2014. Rather, in the writ

petition, it has been specifically averred that representations dated 22.08.2013 (Annexure P-6) and 04.09.2013 (Annexure P-8) had also been filed and therefore, during her service period also, the writ petitioner had been agitating for the benefit which had been granted to her junior. It is, thus, contended that the learned Single Judge had not erred, in any manner, in granting the interest as this amount was due to her on the date of her promotion in the year 2010 itself and interest is only being given to compensate the writ petitioner, on account of the amount being wrongly withheld as per her entitlement, which is at the nominal rate of 6% per annum.

Similarly, it is counted that Fakir Chand's promotion continued since 1995, as vide order dated 28.02.2018 (Annexure R-II), the initial order reverting him was withdrawn and therefore, for all practical purposes, the reversion order never existed. Thus, the benefit has to be given to the writ petitioner on account of the fact that Fakir Chand had been promoted in 12.10.1995 being a reserved candidate and once the petitioner had been promoted in August, 2010, she is entitled for stepping up of her pay.

In the considered opinion of this Court, the fact remains that the writ petitioner was agitating for her right as stated in her representation dated 22.08.2013 (Annexure P-6) and another representation dated 04.09.2013 (Annexure P-8) had been filed. A perusal of the same would go on to show that she had agitated for her seniority list to be corrected that she was senior to Shri Fakir Chand, which she admittedly was during the tenure

of her service. In paragraphs 12 and 14 of the writ petition, she had also specifically made an averment that her pay should be stepped up at par with her junior. Averments made in paragraph 12 and 14 of the writ petition, have not been countered by filing specific reply. The defence of the State was only that Fakir Chand was reverted. In such circumstances, it is apparent that there was no delay on the part of the writ petitioner, who, during her service tenure, had been representing for the stepping up of her pay. Thus, eventually she was compelled to file the writ petition in March 2015, which in the considered opinion of this Court, is within limitation since she had retired on 31.03.2014 and is within a reasonable period of time. Therefore, she cannot be denied the benefit of the claim for interest in the writ petition, which she had made @ 18% per annum.

Coming to the second argument that for the exclusion of the period Fakir Chand has been reverted, would also be of no assistance to the State counsel inasmuch as the reversion order itself was withdrawn on 28.02.2018 from the date it was passed i.e. 14.10.2015 and thus, for all practical purposes, Fakir Chand's promotion from October, 1995 continued. Petitioner was to be given the benefit of stepping up by the Instructions of the State Government (Annexures P-4 and P-5), she being in general category, the moment she was promoted in August, 2010. The said order was passed on 25.02.2020 (Annexure R-3) by giving her the benefit, admissible to her on the date of joining. However, the payment, as noticed

was only made after the impugned order passed by the learned Single Judge on 03.03.2020.

It is a settled principle that once the due amount, which was liable to be paid to an employee a decade earlier has been paid after long, the learned Single Judge was correct by granting interest at the nominal rate of 6% per annum.

A Full Bench of this Court in *A.S. Randhawa v. State of Punjab* 1997(3) S.C.T. 468, while dealing with the issue of interest on delayed retiral benefits, held that writ petition was maintainable for the said claim and if the State commits any default in the performance of its duty thereby denying 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. Similar view was taken by the Apex Court in *S.K. Dua v. State of Haryana & Anr.*, 2008(1) S.C.T. 618, and recently in *Dr. A. Selvaraj v. C.B. M. College and Ors.*, Civil Appeal No.1698 of 2022 decided on 04.03.2022 (Law Finder Doc Id # 1953116).

However, we are in agreement to the extent that in view of the immediate compliance and on account of availing the legal remedy, the default clause of interest @ 12% per annum would not come into play. The State, as pointed out, had paid over Rs.27 lakhs within a period of 20 days from the impugned order, in such circumstances, the interest element @ 6% per annum will be calculated by the State and paid to the writ petitioner-respondent No.1 within a period of two months from today. However, in

case, the payment of interest element is not made within two months, then the order of learned Single Judge regarding interest @ 12% per annum will remain in force.

The present Letters Patent Appeal is, thus, disposed of with the above observations.

All pending miscellaneous applications, if any, also stand disposed of.

(G. S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

March 07, 2022
Sachin M.

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