**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

237 CWP-14798-2020
Date of Decision : 07.04.2022

Om Parkash Goyal ... Petitioner

Versus

State of Haryana and others ... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Kannan Malik, Advocate for
Mr.Gaurav Rana, Advocate,
for the petitioner.

Mr. Narender Singh Behgal, AAG, Haryana.

None for respondent No.3.

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Harsimran Singh Sethi, J.(Oral)

The present petition has been filed with a prayer that the impugned order dated 19.06.2020 (Annexure P-3) be set aside according to which the pensionary benefits admissible to the petitioner have been declined on the ground that department intended to initiate a disciplinary proceedings against the petitioner after his retirement. As per the facts mentioned in the writ petition, the petitioner retired from service on attaining the age of superannuation on 31.05.2018. It is a conceded position between the parties that on the date when the petitioner retired, there were no disciplinary proceedings pending against him.

Learned counsel for the petitioner submits that keeping in view the said fact and as per the settled principles of law settled by the Full Bench of this Court in **A.S. Randhawa Vs. State of Punjab and others, 1997(3) SCT 468,** the petitioner was entitled for release of pensionary benefits within a period of two months of his retirement, failing which the petitioner is entitled for grant of interest on the delayed release of the said benefits. Learned counsel submits that though, no charge sheet was issued to the petitioner before the retirement but the respondent passed the impugned order dated 19.06.2020 (Annexure P-3) withholding the pensionary benefits which was beyond jurisdiction.

As the pensionary benefits were not being extended to the petitioner, the petitioner filed CWP No. 6228 of 2020 before this Court with a prayer that the respondent be directed to release the pensionary benefits admissible to him forthwith, which petition was disposed of by this Court vide order dated 05.03.2020 directing the respondent to decide the legal notice given by the petitioner raising the said grievance. Keeping in view the direction given by this Court dated 05.03.2020, respondent passed an order on 19.06.2020 (Annexure P-3) wherein it was mentioned that though the petitioner retired from service on attaining the age of superannuation but two preliminary inquiries are pending consideration with the respondent-department due to which, all pensionary benefits for which the petitioner is entitled for, cannot be released to him though it was directed that 100% provisional pension be released to the petitioner.

The said order dated 19.06.2020 is under challenge on the ground that once there was no disciplinary proceedings pending against the petitioner on the day of his retirement, the respondents could not withheld the release of the pensionary benefits only on the basis of proposed initiation of disciplinary proceedings against the petitioner.

After notice of motion, the respondents have appeared and it has been conceded by the respondents that an order has been passed dated 14.02.2022 wherein, the preliminary inquiries have been concluded and no allegation could be substantiated against the petitioner in the preliminary enquiries and a direction has been given to release all the pensionary benefits to the petitioner from the due date.

Learned counsel for the respondents submits that as the pensionary benefits have not only been directed to be released but same have actually been released to the petitioner, no further grievance of the petitioner survives.

Learned counsel for the petitioner concedes the fact that after the passing of the order dated 14.02.2022 by the respondents, all the pensionary benefits for which the petitioner is entitled for, has been released to him but submits that as the petitioner has not been able to utilise those benefits since June 2018, the petitioner is entitled for grant of interest on the delayed release of the pensionary benefits.

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

Keeping in view the settled principles of law settled by the Full Bench of this Court in **A.S. Randhawa's case (supra),** wherein it has been held that in case there is no impediment in the release of the pensionary benefits, the same has to be released within a period of two months of retirement failing which, the employee is entitled for the grant of interest. The relevant paragraph of the judgment 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, though there was no impediment but only on the basis of the proposed departmental proceedings, the pensionary benefits of the petitioner were withheld, which act of the respondents is not inconsonance with the settled principles of law.

Further, as per the judgment of this Court in ***CWP No.26406-2015 titled as Subha Chand versus State of Haryana and another, decided on 06.11.2019,*** in case there is no disciplinary proceedings pending against an employee on the date of retirement, even the issuance of charge-sheet subsequent to the retirement, will not give jurisdiction to the respondent-department to withhold the pensionary benefits. The relevant paragraph of the said judgment is as under:-

> *"It is an admitted fact that on the day when the petitioner attained the age of superannuation and retired in the year 2015, there was no charge sheet pending against him and the position for releasing the pensionary benefits to an employee is to be seen on the date of retirement of the employee and not subsequently. Once on 01.03.2015, there was no impediment in the release of the pensionary benefits of the petitioner, the respondents could not have withheld his pensionary benefits. It is the settled principle of law settled by this Court in CWP No.3493 of 1986 titled as L.R. Dhawan vs. State of Haryana and others 1996(3) S.C.T 11 wherein, it has been held that any charge sheet which has been issued after retirement, cannot be made ground for withholding the pensionary benefits of the employee. Relevant paragraph of the judgment is as under:*
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> > *"Gratuity due to an employee is payable to him on the date of retirement. Payment of the gratuity can be deferred in a case where the employee is under cloud at the time of his retirement, namely, in a case where he is facing departmental inquiry or judicial proceedings. If no inquiry or judicial proceedings is pending on the date of retirement of the employee, the Government/employer does not have any authority to withhold the payment of gratuity. Similarly, full pension payable to*

an employee can be withheld during the pending of the departmental inquiry or judicial proceedings. The Government is also possessed with the power to withhold the pension or a part thereof or recover any pecuniary loss caused to the Government from the pension payable to an employee in case such Government servant is found guilty of grave misconduct or negligence in the discharge of his duties during the course of service. Deduction from the pension can be made even on the basis of an inquiry which may be initiated against the employee after his retirement but subject to the fulfilment of the conditions enumerated in proviso to Rule 2.2(b). However, proceedings initiated against an employee under proviso to Rule 2.2(b) cannot be made a ground for withholding of death-cum-retirement gratuity or the pension payable to an employee on the date of his retirement. In the case in hand, no inquiry was pending against the petitioner on the date of his retirement. The proceedings have been initiated against him after over three years and nine months of his retirement from service. That may ultimately lead to the withholding of the pension or part thereof or recovery therefrom in terms of Rule 2.2(b) but there does not appear to be any legal justification for withholding of death-cum-retirement

> *gratuity payable to the petitioner on the ground that inquiry has been initiated against him under Rule 2.2(b) with the issue of notice dated 26.12.1986."*

This question again came up for consideration in Amarjit Singh Vs. Punjab State Civil Supplies Corporation Limited and another, 2016(4) PLR 191, wherein, this Court after relying upon L.R. Dhawan's case (supra) held that the retiral benefits can only be withheld on the basis of a chargesheet, which has been issued prior to the date of the retirement of an employee. The relevant part of the said judgment is as under: -

> *"To the extent gratuity is claimed by the petitioner, this petition CWP-26406 of 2015 -6- must succeed. To claim such benefit, learned counsel for the petitioner relies appropriately on the case law in Narinder Dev Sharma Vs. State of Punjab & another, 1996 (1) SCT 623; L.R.Dhawan Vs. State of Haryana & others, 1996 (3) SCT 11 and Ram Narain Dua Vs. Dakshin Haryana Bijli Vitran Nigam Ltd. & others, 2007 (1) SCT 161. This is because the respondents admit that no charge-sheet was served on the petitioner prior to his retirement and therefore, gratuity could not have been withheld. Neither can gratuity be withheld by initiating inquiry under Rule 2.2 (b) of the Punjab Civil Services Rules, Volume II after employee retires and departmental proceeding were not contemplated during*

> *service. This is for the reason that gratuity is a one-time payment which falls due and payable on the date of retirement and is not a recurring right like pension. However, an enquiry based on a charge-sheet issued after retirement under Rule 2.2 (b) can be conducted and concluded. The charge-sheet was issued in this case on 02.04.2013 for an incident of alleged misconduct which occurred during the period 2009-10, while the petitioner retired from service on 30.04.2011. To that extent no court directions are called for in this petition to draw the curtains on the departmental proceedings.*
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> *For the foregoing reasons, this petition is allowed while setting aside the impugned decision withholding gratuity for no rhyme or reason. Since the amount of gratuity has been withheld for the wrong reason, the petitioner would be entitled to interest on delayed payment @ 8.7% p.a. i.e. the rate payable on long term fixed deposits sitting invested in nationalized Banks."*

Thereafter, while deciding CWP-13449-2014 titled as 'Hans Raj Vs. Registrar, Cooperative Societies, Punjab and others', on 24.05.2017, this Court once again held that the gratuity cannot be withheld on the basis of the charge-sheet, which has been served after the retirement of an employee. The relevant portion of the judgment is as under: -

> *"Now, the further question would arise as to*

whether the gratuity of the petitioner could be withheld or not? The petitioner retired from service on 30.9.2012. Charge sheet was served upon him on 11.4.2014 i.e. after more than one and half years of the said retirement. The gratuity is otherwise required to be released immediately on the retirement. It goes to show that the gratuity of the petitioner was probably not released immediately on account of the impending charge sheet. Petitioner is getting provisional pension and if the department finds that the charges are proved, they are always at liberty to impose a cut in the pension. However, the gratuity of the petitioner cannot be withheld for indefinite period on the basis of the charge sheet which is issued after more than one and half years of his retirement.

Accordingly, the present writ petition is partly allowed to the extent that the gratuity of the petitioner is ordered to be released with interest @ 9% per annum starting three months from the date of retirement till the date of actual payment."

Also the Division Bench of this Court in 'Ram Narain Dua Vs. Dakshin Haryana Bijli Vitran Nigam Ltd. and others, 2007(1) S.C.T. 161, has held that gratuity payable to an employee cannot be withheld on account of allegations which have emanated after the date of retirement of the employee. The relevant paragraph of judgement is as under: -

> *"2. Having heard the learned Counsel for the parties, we are of the considered view that the respondents could not have withheld any amount of gratuity payable to the petitioner on account of allegation which have been emanated after the date of his retirement. Such a course is not available to the respondents. In some what similar circumstances, this Court has earlier also in the case of Hans Raj Sharma v. Uttar Haryana Bijli Vitran Nigam Limited and Ors. 2004(4) SCT 117 (P&H), Civil Writ Petition No. 152 of 2004, decided on October 28, 2004 had allowed the writ petition by following the judgment of Hon'ble the Supreme Court in P.R. Naik v. Union of India, AIR 1972 SC 554. It has been laid down in the aforementioned judgment that issuance of charge-sheet for initiation of departmental enquiry is a sine qua non.*
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> *3. In view of the above, we allow the writ petition and quash the impugned order dated March 1, 2005 (P-15). We further direct the respondents to release the 100% pension, arrears of pension, gratuity and commutation of pension amount to the petitioner within a period of one month from the date a certified copy of this order is presented to the respondents. In case, the needful is not within one month, then the petitioner shall be entitled to interest at the*

rate of 6% per annum from the date the amount is payable till its actual payment."

In the present case, concededly no charge-sheet was pending against the petitioner on the date of his retirement, hence, no pensionary benefits could have been withheld by the respondents merely on the ground that the department intends to initiate a disciplinary proceedings or is conducting a preliminary enquiry to assess whether a disciplinary proceedings needs to be initiated against the petitioner or not. The said ground will not give jurisdiction to respondents to withhold the pensionary benefits and the facts and circumstances of this case clearly shows that withholding the pensionary benefits by the respondents were in an arbitrary and illegal manner.

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 petitioner has made out a case for grant of interest as the delay, which has occurred in releasing the pensionary benefits to the petitioner, is attributable to the respondent and not to the petitioner. The petitioner is entitled for interest on the delayed release of the pensionary benefits @ 6% per annum from the date when the amount became due till the payment of the same. Let the interest be computed within a period of two months from the receipt of a certified copy of this order and the amount so calculated shall be paid to the petitioner within a period of one month thereafter.

The writ petition is allowed in above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

07.04.2022
anju

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