IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No.218 **CWP No.10721 of 2017**
Date of Decision: 14.07.2022

Ram Karan .... Petitioner

Versus

The Haryana State Cooperative Supply
and Marketing Federation Limited and others ... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. D.D.Bansal, Advocate
for the petitioner.

Mr. Padamkant Dwivedi, Advocate
for respondent No.1.

Mr. Kiranpal Singh, AAG, Haryana.

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HARSIMRAN SINGH SETHI, J. (ORAL)

In the present petition, the grievance of the petitioner is that vide impugned order dated 19.04.2017 (Annexure P-32), the benefit of the service, which the petitioner had rendered with respondent No.2 starting from 25.07.1976 till 03.02.2006 has been declined while computing the pensionary benefits of the petitioner such as leave encashment and gratuity.

Learned counsel for the petitioner argues that the said order is contrary to the decision of the respondents and hence, respondent No.1 is liable to release the pensionary benefits of the petitioner by taking into account the service rendered by the petitioner with respondent No.2, keeping in view the decision of respondent No.1 dated 03.12.2007, copy of which has been appended as Annexure P-6.

As per the facts mentioned in the petition, the petitioner was initially appointed by respondent No.2 as Accounts Clerk on 25.07.1976 and was thereafter promoted as a Manager with respondent No.2-society on 04.10.1992. The petitioner kept on working as a Manager with the society, when the petitioner intended to get absorbed as a Manager with respondent No.1 and a request was made by the petitioner to absorb him on the corresponding post of a Manager with respondent No.1. The competent authority of respondent No.1 considered the said request of the petitioner and ultimately, the same was allowed by the Board of Directors i.e. the highest authority with respondent No.1 in their meeting held on 30.10.2007, wherein the Board of Directors held that the previous service rendered by the petitioner with respondent No.2-society will be taken into consideration for the purpose of grant of leave encashment and gratuity. Keeping in view the said decision of the Board of Directors, the petitioner was absorbed on the post of Manager with respondent No.1, where the petitioner continued working till the date he attained the age of superannuation on 31.12.2012.

After the retirement, the petitioner was not paid the leave encashment and gratuity as per his entitlement as respondent No.1 only released the gratuity and leave encashment in respect of the service which the petitioner had rendered with respondent No.1 only. Respondent No.1 took a somersault saying that till the proportionate gratuity and leave encashment as per entitlement of the petitioner is paid by respondent No.2-society, the same can not be released in favour of the petitioner. The petitioner approached respondent No.1 that as per the decision of the Board of Directors that the petitioner is to be given leave encashment and gratuity even for the period when the petitioner served with respondent No.2 and the same can be recovered by Hafed from respondent No.2, but the petitioner be paid his total leave encashment and gratuity for total length of service, which the petitioner had rendered with respondent No.1 as well as respondent No.2. The said prayer of the petitioner was rejected by the Managing Director of respondent No.1 on 19.04.2017 that till the pro rata payments are made by respondent No.2-society, the same can not be released in favour of the petitioner. The said order is under challenge in the present petition.

Respondent No.1 has filed a reply, wherein it has not been denied that the highest body of respondent No.1 i.e. Board of Directors decided to grant the petitioner the benefit of service rendered with respondent No.2 qua the grant of leave encashment as well as gratuity but submits that as respondent No.2 was not extending the proportionate gratuity to respondent No.1 in respect of the service rendered by the petitioner with respondent No.2, the same can not be released to him. Learned counsel submits that the gratuity is to be released on pro rata by respondent No.2 first, then only the total sum can be paid to the petitioner.

Respondent No.2 has not filed any reply controverting the claim of the petitioner.

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

The only question which arises is whether respondent No.1 is liable to pay the total amount of gratuity and leave encashment to the petitioner in respect of the total service rendered by the petitioner with respondents No.1 and 2 or not. Once, it is a conceded position that the highest body of respondent No.1 has taken a decision to pay the gratuity and leave encashment to the petitioner in respect of the service rendered by the petitioner with respondent No.2 also, respondent No.1 can not take a somersault now. The decision which has been given by the Board of Directors, can not be unilaterally turned down by the Managing Director being a subordinate authority. Respondent No.1 is bound to implement the decisions taken by the Board of Directors, in pursuance to which the petitioner joined respondent No.1 in the year 2007. Hence, the respondents are under an obligation to release all the benefits of the petitioner in respect of the service rendered by the petitioner with respondent No.1 as well as respondent No.2 keeping in view the order dated 03.12.2007 (Annexure P-6) and the decision of the Board of Directors taken in meeting held on 30.10.2007. Hence, respondent No.1 is directed to release the gratuity as well as leave encashment admissible to the petitioner for total length of service rendered with respondent No.1 as well as respondent No.2 within a period of six weeks from the receipt of copy of this order.

As far as the argument raised by respondent No.1 that respondent No.2 is not paying the proportionate amount in respect of the gratuity as well as the leave encashment admissible to the petitioner for the period the petitioner was working with respondent No.2, respondent No.1 will be at liberty to claim the said amount from respondent No.2. Respondent No.2 is liable to release the amount to respondent No.1 in respect of the service which the petitioner had rendered with respondent No.2 qua the leave encashment and gratuity. Respondent No.2 was made a party by the petitioner in the present petition but they chose not to appear and to controvert the claim of the petitioner. That being so, this Court is well within its jurisdiction to pass an order holding respondent No.2 liable for the payment of proportionate amount of leave encashment and gratuity in respect of the service rendered by the petitioner with respondent No.2. Respondent No.1 will be at liberty to get the said sum recovered from respondent No.2 but in accordance with law.

Now, the question which arises is that the petitioner retired from service in the year 2012 and has been litigating before this Court to get his admissible dues which were not being paid by the respondents keeping in view the dispute within the respondents themselves. The petitioner can not be made to suffer for an internal dispute within the respondents.

A Coordinate Bench of this Court while passing order in ***CWP-15867-2001*** titled as ***J.S. Cheema Vs. State of Haryana and others,*** decided on 20.11.2013, has held that where an amount belonging to an employee is retained by the department, the said employee becomes entitled for the grant of interest. The relevant paragraph No.5 of the said judgment reads as under:-

> *"In my opinion, even if the assertion made in the written statement is presumed to be correct it would not disentitle the petitioner for claiming interest. 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 laying 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."*

In the present case, the petitioner has not been able to use his benefits for which he is entitled for, for the last almost 9 years. That being so, the petitioner is also held entitled for the interest @ 6% per annum from the date the amount became due till the actual realization of the same.

It is made clear that respondent No.1 will also be within its right in case, they feel that the amount of interest paid to the petitioner is also to be claimed from respondent No.2.

Let the present order be complied with within a period of six weeks from the receipt of a copy of the same.

(HARSIMRAN SINGH SETHI)
JUDGE

14.07.2022
Maninder

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