206

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

****

CWP-14592-2016
Date of Decision: 18.04.2022

Harbhajan Singh

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vivek Sharma, Advocate,
for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

*****

HARSIMRAN SINGH SETHI J. (ORAL)

In the present petition, the challenge is to the order dated 16.02.2016 (Annexure P-8), vide which the pay of the petitioner has been reduced, w.e.f. 01.12.1990, and further recovery from him of the excess amount paid to him has been directed by the respondents. Further prayer of the petitioner in the present petition is that the pensionary benefits, for which he has become entitled for upon his retirement, have not been released to him within a reasonable time and therefore, he is also entitled for the grant of interest on the said delayed release of the pensionary benefits.

At the time of hearing, learned counsel for the petitioner submits that in the present petition, the petitioner will restrict his claims with regard to the grant of interest on the delayed release of the pensionary benefits and with regard to the grant of parity in pay with one Balwinder Sigh, who was junior to the petitioner and was working in the feeder cadre.

Learned counsel for the petitioner argues that the petitioner attained the age of superannuation on 31.10.2013, but he was granted the extension for a period of one year by the respondent-Department. Thereafter, he applied for grant of the extension for a period of second year as well, which was not accepted by the respondent-Department keeping in view the facts that there was a charge-sheet pending against him, which was issued in the year 2008, and he was also facing the criminal proceedings with regard to an FIR, which was registered against him in the year 2009, therefore, the petitioner ultimately retired on 15.01.2015.

Learned counsel for the petitioner argues that in respect of the charge-sheet, which was issued to the petitioner in the year 2008, the enquiry was conducted and the inquiry officer exonerated the petitioner vide his report dated 12.12.2014, which was ultimately accepted by the respondents and the charge-sheet was dropped by them on 05.08.2016. With regard to the FIR, which was registered against the petitioner in the year 2009, after investigation, a cancellation report had already been submitted in April, 2013, which was also accepted by the competent Court of law, meaning thereby that none of the allegations were established against the petitioner either in the departmental proceedings or in the criminal proceedings, hence as his pensionary benefits were withheld by the respondents due to the pendency of the disciplinary as well as the criminal proceedings, the petitioner, who was not at fault, is entitled for the grant of interest on the delayed release of the pensionary benefits, which were actually received by him in the year 2016/17.

Upon notice of motion, respondents have filed the reply, wherein with regard to the release of the pensionary benefits, they have stated that as not only the disciplinary proceedings, but even the criminal proceedings were pending against the petitioner, therefore, withholding of certain pensionary benefits of the petitioner by the respondents was within their jurisdiction, hence no fault can be found with regard to the said action of the respondents.

Learned State counsel submits that after all the proceedings, which were pending against the petitioner, came to an end, the prompt action was taken and the benefits, for which the petitioner was entitled for upon his retirement, were released in his favour. Learned State counsel concedes the factum that none of the allegations were established against the petitioner either before the Department or before the competent Court of law and he was found innocent. Learned State counsel further submits that with regard to the claim of petitioner for the grant of parity with one of his junior, namely Balwinder Singh, the same has been clarified in paragraph No.5 of the additional affidavit filed by the respondents, stating that the petitioner and the said Balwinder Singh were working in different cadres.

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

It is a settled principle of law that in case any departmental proceedings or criminal proceedings are pending against an employee at the time of his/her retirement, the department is well within its jurisdiction to withhold certain pensionary benefits of the said employee till conclusion of the said proceedings, but once those proceedings are concluded, the pensionary benefits of the employee are to be released by the Department concerned within a reasonable period of time. Further, the outcome of the disciplinary proceedings/criminal proceedings that whether the employee concerned was at fault at any given point of time or not, has also to be taken into consideration while granting the interest to the said employee on the delayed release of his/her pensionary benefits by the Department.

In the present case, it is a settled position that prior to the date of retirement of the petitioner, he was already exonerated by the enquiry officer in the departmental proceedings on 12.12.2014 and even with regard to the criminal proceedings pending against the petitioner in the FIR concerned, a cancellation report had been filed after investigation in April, 2015, meaning thereby that no charges were ever framed against the petitioner, hence once there were no charges framed, it cannot be said that any departmental or criminal proceedings were pending against the petitioner on the date of his retirement keeping in view the settled principle of law as laid down by the Hon'ble Supreme Court of India in its judgment passed in the case of ***"Union of India Vs. K.V. Jankiraman", 1991(3) S.C.T. 317***. In the said case, the Hon'ble Supreme Court of India has held that with regard to the departmental proceedings, the date of serving of the charge-sheet is to be treated as initiation of departmental proceedings against the accused and with regard to the criminal proceedings, the date when the charges are framed against an accused is to be treated as initiation of criminal proceedings against an accused as the Court takes cognizance of the proceedings at the time of framing of the charge. The relevant paragraph of the said judgment is as under:-

> *" - x - x -*
>
> *16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a chargesheet in a criminal prosecution*

> *is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. ....*
>
> *- x - x -"*

It is clear that none of the ingredients were present in this case so as to give jurisdiction to the respondents to withhold the pensionary benefits of the petitioner on the date of his retirement, i.e. on 15.01.2015, on the ground that any criminal proceedings were pending against him. That being so, the said action of the respondents, in the facts and circumstances of this case, was beyond their jurisdiction and they were under obligation to release the said pensionary benefits of the petitioner within a period two months from the date of his retirement, which was not done, making the petitioner entitled for the grant of interest keeping in view the judgment of the Full Bench of this Court passed in ***"A.S. Randhawa Vs. State of Punjab and others", 1997(3) SCT 468***, wherein it has been stated that an employee, who has not been released the pensionary benefits within a period of two months from superannuation if there is no impediment, becomes entitled for the grant of interest for the delay in releasing of the pensionary benefits. The relevant paragraph of the said judgment is as under:-

> *" - x - x -*
>
> *8. 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. ...*
>
> *- x - x -"*

Once the Department alleged allegations against an employee and on the basis of those allegations, the amount for which he/she became entitled upon his/her superannuation was withheld, and the Department failed to substantiate those allegations, therefore, the issuance of the charge-sheets or pendency of the same cannot cause prejudice to the said employee. The acts which are attributable to the Department cannot cause prejudice to an employee whose pensionary benefits were first withheld on the basis of pendency of the charge-sheets issued by the Department and thereafter upon the Department failing to prove the allegations alleged in the charge-sheet, by denying him/her the interest on the delayed payments.

Keeping in view the facts and circumstances of this case, once the petitioner is found innocent of the allegations and has suffered prejudice only due to the actions of the respondent-Department and as the petitioner was prevented from availing his pensionary benefits upon his retirement for a sufficient long period of time and petitioner could not use those financial benefits to his benefit, the petitioner becomes entitled for the grant of interest on the delayed payments to mitigate the prejudice/hardship suffered by him, which is in consonance of settled principle of law.

Further, a co-ordinate Bench while passing order in CWP-15867-2001 titled as ***"J.S. Cheema Vs. State of Haryana and others"***, decided on 20.11.2013, held that even where an amount has been retained by a Government Department, which actually belonged to the employee, and has used the same to its benefit, and the employee has suffered prejudice due to the non-release of the said amount, the employee becomes entitled for the grant of interest, so as to compensate him for the said prejudice. The relevant paragraph No.5 of the judgment is as under:-

> *" x -- x -- x*
>
> *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.*
>
> *x -- x -- x"*

Keeping in view the above, it is clear that the pensionary benefits of the petitioner were withheld by the respondents without any valid jurisdiction and hence in order to compensate the delay that occurred in releasing the said pensionary benefits to the petitioner, which is totally attributable upon the respondents themselves, the petitioner is held entitled for the grant of interest on the said delayed release of the pensionary benefits at the rate of 6% per annum from the date the said amount became due till the date of actual payment of the same to the petitioner.

Let the computation of interest, for which the petitioner becomes entitled for under this order, be carried out within a period of two months from the date of receipt of the copy of this order and the interest so calculated be paid to him within a period of next one month.

As far as with regard to the prayer of petitioner for the grant of stepping up of his pay equivalent to one Balwinder Singh, who was otherwise junior to him, let the petitioner file a detailed representation with the respondents, claiming the said benefit and in case any such representation is filed by the petitioner with the respondents, an appropriate speaking order shall be passed by the authorities concerned within a period of eight weeks from the date of receipt of such representation. Further, in case after passing of the said order, the petitioner is found entitled for any benefit, the same be also released in his favour within a period of next four weeks.

Disposed of in the above terms.

18.04.2022 **(HARSIMRAN SINGH SETHI)**
Apurva **JUDGE**

1. Whether speaking/reasoned : Yes

2. Whether reportable : Yes