

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

(232)

CWP-12296-2018

Date of Decision : April 04, 2022

Sunil Kumar Khosla

.. Petitioner

Versus

State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Raj Kumar Garg, Advocate, for the petitioner.

Mr. Kanisth Ganeriwala, Assistant Advocate General, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

Present petition has been filed with a prayer that pensionary benefits of the petitioner, which have been withheld by the respondents, may kindly be got released along with interest.

As per the averments made in the petition, the petitioner was appointed as Accountant in the Milkfed and he remained working there from 20.07.1981 to 25.10.2000. While working with the Milkfed, the petitioner had applied for the post of Legal Assistant in the office of Director, Rural Development and Panchayats, Punjab. While working on the post of Legal Assistant, the petitioner got promotion as Senior Auditor and while working on the said post, the petitioner attained the age of superannuation on 31.03.2017. Thereafter, the petitioner was granted extension in service and petitioner ultimately retired on 30.09.2017.

The grievance of the petitioner in the present petition is that after the retirement, the petitioner was served with two charge sheets, due to which, certain pensionary benefits of the petitioner were withheld though, withholding of the pensionary benefits on the basis of the charge sheet which was served after the retirement, was not permissible. The prayer of the petitioner is that the respondents may kindly be directed to release all the pensionary benefits of the petitioner forthwith along with the interest.

After notice of motion, the respondents have filed the reply wherein, they have submitted that after the petitioner attained the age of superannuation, he was granted extension for a period of six months and after availing the same, the petitioner retired from service on 30.09.2017 but as the petitioner was served two charge sheets, certain benefits of the petitioner were withheld. As per the reply, the charge sheets issued to the petitioner were enquired into and were ultimately dropped as the allegations could not be proved and thereafter, the case of the petitioner was considered for the release of the pensionary benefits and as of now, all the pensionary benefits for which the petitioner is entitled for, have already been released.

Learned counsel for the petitioner concedes the factum that all the pensionary benefits admissible to the petitioner have already been released but the prayer of the petitioner is for the grant of interest on the delayed release of the pensionary benefits as, the pensionary benefits were withheld by the respondents for a considerable long period of time and the same were only released to the petitioner.

The question of law as to whether, under which circumstances, the pensionary benefits of the employee can be withheld, is settled. As per the settled principle of law in case any departmental proceedings or criminal

proceedings pending at the time of the retirement, only in that circumstances there vest a jurisdiction with the respondents to withhold the leave encashment as well as gratuity. The provisional pension and the provident fund cannot be withheld by the respondents under any circumstances.

In the present case, though the petitioner retired on attaining the age of superannuation on 30.09.2017, the GPF was paid on 22.03.2018 i.e. approximately five months after the retirement, the gratuity admissible to the petitioner has been paid on 10.06.2021 and the leave encashment on 25.09.2021.

Learned counsel for the petitioner submits that even the charge sheets issued to the petitioner were after his retirement and were later on dropped by the respondents which clearly shows that the allegations which were being made against the petitioner in the charge sheets, which were the basis of withholding the pensionary benefits, could not be proved by the respondents.

Further, in the present case when there was no charge sheet pending against the petitioner at the time of retirement, the pensionary benefits could not be withheld even otherwise. The settled principle of law in this regard has been enumerated by the judgment of this Bench in ***CWP No.26406-2015 titled as Subha Chand versus State of Haryana and another, decided on 06.11.2019.*** 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:-

“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-cumretirement 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 charge-sheet, 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 5 of 9 :::: Downloaded on - 06-04-2022 12:05:51 :::: 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.

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.

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.”

Even otherwise, even it is assumed for the sake of arguments that the petitioner's pensionary benefits could have been withheld by the respondents due to the pendency of the charge-sheet but as in the present case, the respondents could not prove the charges, hence, pendency of the same cannot cause prejudice to the petitioner.

Once the Department alleged allegations against the petitioner and on the basis of those allegations, the amount for which the petitioner became entitled upon his superannuation was withheld, and thereafter, the Department failed to substantiate those allegations, hence, the issuance of the charge sheets or pendency of the same at the time of retirement cannot be a reason to cause prejudice to the petitioner. The acts which are attributable to the respondents cannot cause prejudice to an employee by firstly withholding his pensionary benefits on the basis of pendency of the charge sheets issued by the Department alleging certain allegations and thereafter, by denying him grant of interest on the delayed payments, despite the fact that the employee was found innocent as the Department concerned failed to prove those allegations.

Keeping in view the facts and circumstances of this case, once the petitioner is found innocent of the allegations alleged and has suffered prejudice only due to the actions of the respondent-Department as the petitioner was prevented from availing his pensionary benefits upon his retirement for a sufficient long period of time and also 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.

This Court in ***CWP No.12146 of 2016 titled as Tara Chand Tusamer versus State of Haryana and another, decided on 22.05.2019***, has held that in case, the charges in the charge sheet are not proved, the employee is entitled for the grant of interest.

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 retiree 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.”

Further, a Coordinate Bench of this Court in ***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 for the grant of interest on the payments which have been released after the delay of two months after the retirement, is made out and the petitioner is awarded interest @ 6% per annum from the date the retiral benefits became due till the same were released. Let the computation of interest under this order be done within a period of two months from the receipt of copy of this order and the interest so computed be released to the petitioner within four weeks thereafter.

The present petition is allowed in above terms.

April 04, 2022
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes