IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

212 **CWP-20277-2014**
Date of Decision :02.08.2022

Ram Chander **...Petitioner**

Versus

Uttar Haryana Bili Vitran Nigam and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Jitender S. Chahal, Advocate for the petitioner.

Mr. Hitesh Pandit, Advocate for the respondents.

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Harsimran Singh Sethi, J. (Oral)

In the present writ petition, the challenge is to the action of the respondents, by which a sum of Rs.2,25,078/- was shown to be recovered from the petitioner.

As per the averments made in the present writ petition, the petitioner while working as Junior Engineer retired from service on attaining the age of superannuation on 31.03.2012. While computing the pensionary benefits of the petitioner, the respondents have shown that the petitioner is liable to make good a sum of Rs.2,25,078/- due to the missing parts and shortage of oil of the damaged transformers, which were under the supervision of the petitioner while he was in service. The said amount was recovered from the petitioner by the respondents while extending his pensionary benefits, which action of the respondents is under challenge in the present writ petition.

Learned counsel for the petitioner further argues that effecting the said recovery out of the total amount recovered, a sum of Rs. 1,16,678/-

was refunded and released to the petitioner on 17.05.2013 i.e. after the delay of more than one year of his retirement. Learned counsel for the petitioner further submits that as per the settled principle of law settled by a Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab and others, 1997(3) SCT 468*****,** an employee is entitled for the release of his/her pensionary benefits within a period of two months of his/her retirement in case there is no impediment in the release of the same. Hence, the petitioner is also entitled for the grant of interest on the said delayed release of amount of gratuity to him by the respondent-department.

Upon notice of motion, the respondents have filed reply wherein, it has been submitted that at the time of retirement of the petitioner, he was liable to make good a sum of Rs.2,25,078/-, which was found recoverable from him due to the missing parts and shortage of oil of the damaged transformers, which were under his supervision. It has further been submitted in the reply that keeping in view the instructions issued by the respondents from time to time, a sum of Rs.1,16,678/- was refunded back to the petitioner on 17.05.2013 along with the remaining amount of gratuity, for which, the petitioner was entitled for, hence, prayer of the petitioner for the release of the said withheld amount of gratuity may kindly be declined .

With regard to the contention of learned counsel for the petitioner that the petitioner is entitled for the grant of interest on account of delayed release of amount of gratuity to him by the respondent-department, learned State counsel submits that at the time of retirement of the petitioner, the respondent-department was contemplating proceedings against the petitioner, due to which, his pensionary benefits were withheld by the respondents and a charge sheet was issued to the petitioner on 02.11.2015 hence, it cannot be said that pensionary benefits of the petitioner were withheld without any valid justification hence, the prayer of the petitioner for the grant of interest may kindly be declined.

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

In the present case, the petitioner is being held liable for missing parts and shortage of oil of the damaged transformer. For the said purpose, the petitioner is to be held guilty on the basis of some evidence that it was only due to his act of omission or commission, the respondents has suffered loss, for which purpose, it is incumbent upon the respondents to hold departmental proceedings against the petitioner and pinpoint the allegations and prove the same on the basis of evidence. Nothing has been placed on record that prior to the retirement of the petitioner any departmental proceedings were initiated against the petitioner holding him guilty of the missing parts and shortage of oil of damaged transformers. That being so, the action of the respondents attributing the shortage of oil of damaged transformers and missing parts to the petitioner and that too after his retirement, is contrary to the settled principle of law.

Further, the petitioner retired in the year 2012 and enquiry, if any, should have been conducted by the respondents while the petitioner was in service but, as no proceedings were undertaken by the respondents so as to hold the petitioner guilty of the allegations so as to recover the amount but the respondents unilaterally after his retirement by just accusing the petitioner of negligence and attributing the missing parts and shortage of oil of the damaged transformers recovered the amount from the retiral benefits of the petitioner, which is totally arbitrary and illegal.

Keeping in view the above, the recovery of sum of Rs.2,25,078/- effected from the petitioner (out of which a sum of Rs.1,16,678/- has already been refunded to the petitioner) without following due process as envisaged under law, is held to be bad and is set aside.

Respondents are directed to refund a sum of Rs.1,08,400/- to the petitioner within a period of two months from the date of receipt of copy of this order.

With regard to the claim of the petitioner for the grant of interest on delayed release of amount of gratuity, it is to be seen whether on the date of retirement of the petitioner any impediment exists or not, which would give jurisdiction to the respondents to withhold his pensionary benefits.

Learned counsel for the respondents very fairly concedes that on the date of retirement of the petitioner, there were no proceedings pending against him and it was only subsequent to his retirement, a charge sheet was issued against him.

Subsequent issuance of a charge sheet does not give jurisdiction to the respondents to withhold the pensionary benefits of the petitioner.

A Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab and others, 1997(3) SCT 468*****,** has held that an employee is entitled for the release of his/her pensionary benefits within a period of two months of his/her retirement in case there is no impediment in the release of the same. 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 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 as conceded by the learned counsel for the respondents, there was no impediment in the release of the pensionary benefits of the petitioner at the time of his retirement, hence, the delay in release of amount of the gratuity to the petitioner is attributable to the respondents only, for which, the petitioner needs to be compensated by way of grant of interest on the said delayed release of amount of gratuity to him.

Resultantly, the prayer of the petitioner for the grant of interest is also allowed. Petitioner is held entitled for the interest @ 6% per annum from the date the gratuity became payable till the same was actually released by the respondents to the petitioner.

Let the computation of interest be done by the respondents within a period of two months from the receipt of copy of this order and the amount so calculated shall be paid to the petitioner within a period of four weeks thereafter.

August 02, 2022 **(HARSIMRAN SINGH SETHI)**
aarti **JUDGE**

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