

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-1527-2017 (O&M)
Date of Decision: 11.07.2022

RAM CHAND GARG

..... Petitioner(s)

Versus

FOOD CORPORATION OF INDIA AND OTHERS

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Vikas Singh, Advocate
for the petitioner.

Mr. H.S. Dhandi, Advocate
for the respondent-FCI.

LISA GILL, J.

Petitioner in this case seeks interest @ 18% on account of delayed payment of arrears of gratuity, dearness allowance, earned leave and also seeks balance payment of Rs.1,23,885/- on account of gratuity along with interest.

Brief facts necessary for adjudication of the matter are that petitioner who joined as Assistant Grade-III with the Food Corporation of India in 1972 was served with charge-sheet dated 29.03.2000 (Annexure P-1) with the allegations that he in connivance with two other employees had committed pilferage of the stock. Petitioner was exonerated of the charges levelled against him vide order dated 23.05.2001 (Annexure P-2). However, show cause notice dated 13.07.2006 was issued to the petitioner by invoking powers under Regulation 74 of the FCI (Staff) Regulation 1971.

Order dated 29.03.2007 (Annexure P-3) was passed setting aside exoneration order dated 23.05.2001 awarded by the Disciplinary Authority and penalty of token recovery of Rs.1,00,000/- along with reduction of scale of pay by three stages for a period for three years with cumulative effect was imposed. Appeal against this order was filed by the petitioner which was ultimately dismissed vide order dated 29.04.2013 (Annexure P-5). In the interregnum, petitioner retired from service on 31.01.2011. Order of punishment as well as appellate order was challenged by the petitioner vide CWP-26217-2013, which was allowed on 01.10.2015 (Annexure P-6). LPA No. 225 of 2016 filed by the respondents was dismissed on 09.02.2016 (Annexure P-7). Similarly SLP filed by the respondents was also dismissed on 05.07.2016.

Grievance raised by the petitioner is that even after CWP-26217-2013 filed by the petitioner was allowed on 01.10.2015, payments due to the petitioner were not released. It is stated that some of the arrears of salary and earned leave etc. were released as late as in November, 2016 and some of the amount due, it is stated, was still being withheld at the time of filing of the petition.

The amount as released to the petitioner as per the reply filed by the respondents dated 29.10.2018, reads as under:-

S. No.	Particulars	Date of Payment	Amount Paid	Remarks
1.	40 days EL Encashment	11/02/2011	36,950/-	
2.	Medical Reimbursement	11/02/2011	8,800/-	
3.	21 days EL	01/04/2011	23,333/-	
4.	Gratuity (DCRG)	28/04/2011	7,16,659/-	
5.	Final EL & HPL	29/04/2011	1,89,001/-	

6.	Pay Fix. On Promotion	24/05/2011	9,934/-	
7.	CPF Final Payment	07/06/2011	16,75,535/-	
8.	Revised DCRG (Gratuity)	21/05/2011	21,551/-	
9.	Supp. CPF	12/07/2012	1,56,011/-	
10.	OTA	16/01/2013	31,853/-	
11.	PLI Final 2010-11	9/10/2015	9,750/-	
12.	In pursuance of setting aside of penalty order.	07/11/2016	3,02,140/-	
13.	FCI DCPS 10%	12/07/2017	9,92/-	
14.	Revised DCRG (Gratuity)	26/07/2017	72,090/-	
15.	40 days EL Arrear (2010)	19/08/2017	4,045/-	
TOTAL PAYMENT HAS BEEN PAID			32,58,644/-	

However, in the replication to the written statement, it is stated that date of payment of revised DCRG is 27.09.2017 and the sum at serial no.12 is incorrectly mentioned whereas in fact a sum of Rs.3,47,709/- was credited to the account of the petitioner on 08.11.2016 i.e. the amount of deduction made from the salary of petitioner pursuant to order dated 29.03.2007.

Learned counsel for the petitioner argues that once the order of punishment was set aside, petitioner is entitled to interest on delayed payment right from the date it became due to him as respondents were not entitled to withhold the amount and deprive the petitioner of the benefit thereof. Petitioner, it is submitted, was forced to file the present writ petition, therefore, this writ petition should be allowed and interest on the delayed payment should be afforded to the petitioner right from the date it became due to him.

Per contra, learned counsel for the respondents argues that penalty of token recovery of Rs.1,00,000/- had been duly imposed upon the petitioner vide order dated 23.05.2001. After the said order was set aside on 01.10.2015 in CWP-26217-2013, respondent-Corporation was availing its right in challenging the same. Amount due towards the petitioner, it is submitted, was released almost immediately after dismissal of the Special Leave Petition by the Hon'ble Supreme Court. Dismissal of the writ petition is prayed for.

Heard learned counsel for the parties and have gone through the file.

It is a settled position that pension/pensionary benefits are not a bounty and that an employer withholding salaries/arrears of an employee without any sufficient cause and utilizing the said money, is liable to pay interest on the said amount for the period of unjustified delay.

In the present case, it is a matter of record that petitioner was charge sheeted vide order dated 29.03.2000, however, he was exonerated of the charges levelled against him vide order dated 23.05.2001. However, order dated 29.03.2007 was passed setting aside order dated 23.05.2001 exonerating the petitioner. Penalty was admittedly imposed upon the petitioner vide order dated 29.03.2007. Therefore, at the first instance, respondents were well within their right to have withheld the amounts in question when the petitioner retired on 31.01.2011 when order dated 29.03.2007 was very much in place. Petitioner's appeal challenging order dated 29.03.2007 was admittedly dismissed by the appellate authority on 29.04.2013. CWP-26217-2013 filed by the petitioner challenging orders dated 29.03.2007 and 29.04.2013 was allowed on 01.10.2015. Learned

counsel for the respondents does not deny that after passing of order dated 01.10.2015, there was no interim order passed by the Division Bench or the Hon'ble Supreme Court of India whereby operation of decision dated 01.10.2015 in CWP-26217-2013 was stayed. In this view of the matter, the respondents were bound to implement the said decision and release the payment due to the petitioner immediately and at least within a reasonable time of passing of decision dated 01.10.2015. It has been held by a Full Bench of this High Court in ***A.S. Randhawa Vs. State of Punjab, 1997(3) SCT 468*** that retiral benefits etc. should be released to the retiree expeditiously and at least within two months of retirement. Argument raised by learned counsel for the respondents that the respondents were engaged in pursuing remedies available to it, therefore no interest is liable to be paid by the respondents, is devoid of any merit, keeping in view the fact that there was no interim order in favour of the respondents.

Another argument raised and strenuously urged by learned counsel for the petitioner is that in the earlier writ petition i.e. CWP-26217-2013, which had been filed by the petitioner, no prayer for interest was raised. Said argument being equally devoid of any merit is rejected. It is to be noted at this stage that in a similar situation, it was held in CWP-13185 of 1992, titled ***Puran Singh V/s. State of Punjab***, decided on 04.01.1995, that an order setting aside orders of withholding salary will not operate as *res judicata* to a subsequent writ petition for claiming interest for the period salary was delayed. Petitioner therein was held entitled to interest on the delayed payment. In ***Puran Singh's*** case (supra) petitioner's right to salary for a particular period was put under cloud by virtue of an order withholding his salary even as he was in service. Departmental authorities therein had

withheld petitioner's salary for certain periods. In such a situation, it was observed as under:-

“9. After giving thoughtful consideration to the submissions of the learned Assistant Advocate-General and having perused the record of the case, I am fully convinced that neither of the contentions of the Assistant Advocate-General merits acceptance. Petitioner's right to get salary for the period between 1.9.1984 to 8.3.1985 and 7.4.1985 to 15.6.1985 was put under cloud by the order dated 23.6.1988. Earlier to the passing of that order he was denied payment of salary for the aforesaid period on the ground of pendency of departmental enquiry for his alleged absence during that period. However, as soon as this Court allowed his petition, the cloud of order dated 23.6.1988 disappeared. Thereafter, there remained no justification whatsoever for withholding the payment of salary in terms of the directions issued by this Court. Till the acceptance of his petition on 1.2.1990 the petitioner could not have possibly made a claim for grant of salary because the same had been ordered to be withheld by the order of the Government dated 23.6.1988. Only after the setting aside of the order of punishment the petitioner could possibly make a claim for payment of salary for the period aforesaid. Therefore, the argument of the learned Assistant Advocate-General that failure of the petitioner to make a claim for award of interest in the previous Writ petition should operate as a bar to the grant of relief in this petition cannot be accepted.”

Therefore, the fact that there was no prayer for grant of interest in the earlier writ petition challenging orders dated 29.03.2007 and 29.04.2013, cannot be a bar to the petitioner for claiming interest on the delayed payments.

Keeping in view the facts and circumstances, while not finding any ground for awarding interest on delayed payment from the date of

retirement of the petitioner, I find that that petitioner is entitled to interest from two months after 01.10.2015 i.e. the date on which orders dated 29.03.2007 and 29.04.2013 were set aside. It is, thus, directed that interest @ 6% per annum on the said delayed payment i.e., w.e.f. 01.12.2015 till the date of actual payment, be released to the petitioner. Petitioner is also found entitled to cost of Rs.20,000/-.

Writ petition is accordingly disposed of.

11.07.2022

Sunil

**(LISA GILL)
JUDGE**

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