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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CM-8308-CWP-2021 in/and
CWP-17368-2020
Date of Decision: 18.04.2022

Vijay Kumar Garg

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

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

Ms. Anju Sharma Kaushik, DAG, Punjab.

Mr. H.S. Jugait, Advocate,
for respondent No.4.

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HARSIMRAN SINGH SETHI J. (ORAL)

CM-8308-CWP-2021:

For the reasons mentioned in the application, the same is allowed and the replication filed on behalf of the applicant/petitioner to the reply of respondents No.1 to 3 is taken on record.

CWP-17368-2020:

The present petition has been filed for the grant of interest to the petitioner on the delayed release of the gratuity amount to him by the respondents, which has been released to him after a delay of two months from the date of his retirement, which period is beyond the stipulated period as fixed by the Full Bench of this Court while passing judgment in ***"A.S. Randhawa Vs. State of Punjab and others", 1997(3) SCT 468***.

Learned counsel for the petitioner argues that in the present case, the petitioner retired on 31.01.2020, but the gratuity amount for which he was entitled for upon his retirement was not released to him by the respondents on the ground that a complaint was pending against him at the time of his retirement. Learned counsel for the petitioner submits that the petitioner was never informed with regard to the said complaint and even pendency of the complaint could not be treated as a disciplinary proceeding pending against him, so as to give the jurisdiction to the respondents to withhold his certain pensionary benefits. Hence, the delay in releasing the gratuity amount to the petitioner is attributable upon the respondents only, therefore, the petitioner be extended the grant of interest on the said delayed release of the gratuity amount by the respondents.

Learned State counsel, by placing reliance upon the reply filed on behalf of respondents No.1 to 3, submits that on the date of retirement of the petitioner, as a complaint was pending against him and also there was a lock-down due to the Covid-19 pandemic at that time, therefore, the pensionary benefits of the petitioner could not be released within the stipulated time, hence prayer of the petitioner for the grant of interest on the delayed release of gratuity amount to him may kindly be declined.

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 laid down in **A.S. Randhawa's case** (supra) that an employee who has not been released the pensionary benefits within a period of two months from superannuation in case 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 -"*

In the present case, the impediment which is being put into operation to justify delay in release of the gratuity amount to the petitioner is pendency of a complaint against him on the date of his retirement. Pendency of a complaint cannot be treated as a disciplinary proceeding pending against an employee as under the Rules, the only jurisdiction to retain the pensionary benefits by the Department concerned is in case any disciplinary proceeding is pending on the date of retirement of an employee. In the present petition, as concededly, no disciplinary proceedings were pending against the petitioner on the date of his retirement as no charge-sheet was ever served upon him, the respondents cannot withhold the gratuity amount for which the petitioner is entitled for upon his retirement in case that someone filed a complaint against the petitioner alleging certain allegations.

Further, as per the reply filed on behalf of respondents No.1 to 3, the gratuity amount was paid to the petitioner in February, 2021, though it has been mentioned therein that the payment of gratuity amount to the petitioner was sanctioned by the Department concerned in December, 2020 and request was sent to the Treasury for release of the said amount. From the perusal of the said reply, it is clear that not only there was a delay in sanctioning the gratuity amount to the petitioner by the respondents but even after the sanctioning of the said amount, the respondents have taken more than two months to release the gratuity amount to petitioner and the said delay of more than one year in release of the gratuity amount to the petitioner is attributable upon the respondents themselves.

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 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, the present petition is allowed and the petitioner is held entitled for the grant of interest on the delayed release of gratuity amount to him at the rate of 6% per annum from the date the said gratuity 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 four weeks.

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

1. Whether speaking/reasoned : Yes
2. Whether reportable : No