IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

241 **CWP-23808-2018**
Date of Decision :12.05.2022

Laxmi Devi **..Petitioner**

Versus

State of Punjab and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rajesh Bansal, Advocate for the petitioner.

Ms. Anju Sharma Kaushik, DAG, Punjab.

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Harsimran Singh Sethi, J. (Oral)

Challenge in the present writ petition is to order dated 10.11.2017 (Annexure P2) passed by the respondents, whereby, a sum of Rs.2,08,235/- has been ordered to be deducted from the pensionary benefits of the petitioner as well as for the grant of interest on the delayed release of the pensionary benefits to the petitioner by the respondents.

Learned counsel for the petitioner argues that the petitioner retired as a Hindi Mistress on 31.12.2017 and at the time of her retirement, there was no impediment in the release of her pensionary benefits but, the same have been released by the respondents beyond the reasonable time. Learned counsel for the petitioner submits that payments have been made to the petitioner in July, 2018 i.e. after the period of more than 06 months of her retirement and while making the payments a sum of Rs, 2,08,235/- was deducted by the respondents without there being any justification. Prayer of the petitioner is for issuance of a direction to the respondents to refund the amount of Rs.2.08,235/- and also to grant interest on the delayed release of the pensionary benefits to the petitioner.

After the notice of motion, respondents have filed reply, wherein, it has been conceded that there is a delay in release of the pensionary benefits of the petitioner but, the same has been attributed on the procedure. With regard to the recovery of sum of Rs.2.08,235/-, respondents have submitted that on the observations of the Audit department that the salary of the petitioner was wrongly fixed and the same needed to be refixed and upon refixation of the salary of the petitioner, it was found that a sum of Rs.2.08,235/- has been paid in excess to the petitioner, which was recovered from her pensionary benefits being a public money.

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

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, no impediment has been brought to the notice of this Court and the delay in the release of the pensionary benefits of the petitioner has not been attributed to the petitioner. Respondents have conceded the fact that delay is attributable to them due to procedure involved but, no such procedure has been brought to the notice of this Court which would have entitled the respondent to withhold the pensionary benefits of the petitioner and not to grant interest on the said delayed release of payments. That being so, prayer of the petitioner for the grant of interest on delayed payment is covered by the judgement passed by the Full Bench of this Court in A.S. Randhawa's case (supra).

Further, a Coordinate Bench of this Court in of ***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."*

The case of the petitioner is squarely covered by the above said decisions in his favour for the grant of interest on the delayed payments.

Resultantly, the prayer of the petitioner is allowed. Petitioner is held entitled for the interest @ 6% per annum on the delayed release payments from the date the pension became due till the actual disbursement of the amount. Let the computation of interest be done by the respondents within a period of two months from the receipt of certified copy of this order and the amount so calculated shall be paid to the petitioner within a period of four weeks thereafter.

As far as the deduction of sum of Rs,2,08,235/- is concerned, the same has been done by the respondents after refixing the salary of the petitioner after her retirement. Law on this issue has already been settled by the Hon'ble Supreme Court of India in **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195,** according to which, no recovery can be effected from a retired employee. In the present case, salary of the petitioner has been refixed by the respondents after her retirement and a recovery of sum of Rs. 2,08,235/- has been effected, which is contrary to the settled principle of law. Paragraph 12 of the said judgement is as under:-

> *"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:-*
> *(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
> *(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order*

of recovery.
(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far out weigh the equitable balance of the employer's right to recover."

In view of the above, a recovery of sum of Rs.2,08,235/- from the petitioner from he pensionary benefits is held to be bad being contrary to the settled principle of law.

Respondents are directed to refund the said amount to the petitioner within a period of two months from the date of receipt of copy of this order.

The writ petition stands allowed.

May 12, 2022 **(HARSIMRAN SINGH SETHI)**
aarti **JUDGE**

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