

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

CWP-28434-2017

Date of Decision: 21.03.2022

Om Parkash

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. D.K. Sihag, Advocate for
Mr. Jagdish Mitter, Advocate,
for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

(Through Video Conference)

HARSIMRAN SINGH SETHI J. (ORAL)

The present petition has been filed for release of the pensionary benefits which have been withheld by the respondents on the basis of the show-cause notice issued to the petitioner on 11.11.2014 (Annexure P-5).

Learned counsel for the petitioner argues that the petitioner was issued a show-cause notice on 11.11.2014 in respect of allegation that one Yoga Lecturer, namely, Jai Bharti was allowed to continue in service after 58 years of her age, for which, the petitioner was responsible. At the time when the petitioner retired on 31.05.2015, the said show-cause notice was still pending and keeping in view the said pending show-cause notice, some of the retiral benefits of the

petitioner were withheld by the respondents. The present petition was filed by the petitioner alleging that the enquiry is not being finalized by the respondents, which is causing prejudice to him, and therefore, appropriate direction be issued to the respondents to finalize the enquiry and release his withheld pensionary benefits.

After notice of motion was issued, the respondents have filed the reply and in the reply, they have annexed the order dated 15.02.2018 (Annexure R-3/T) vide which, the show-cause notice dated 11.11.2014 issued to the petitioner, has been withdrawn.

Learned counsel for the petitioner submits that as the pensionary benefits of the petitioner were withheld by respondent No.1 on the basis of the pending show-cause notice and respondent No.1 failed to substantiate the allegations alleged therein, and the retiral benefits of the petitioner have been released after a delay, the petitioner is entitled for the grant of interest on the delayed release of the pensionary benefits, keeping in view the judgment of the Full Bench of this Court passed in “**A.S. Randhawa Vs. State of Punjab and others**”, 1997(3) SCT 468, wherein it has been stated that an employee who has not been released the pensionary benefits within a period of two months from his superannuation without any valid justification, becomes entitled for the grant of interest for the delay in releasing of the pensionary benefits.

Learned State counsel on the other hand submits that as there was a show-cause notice pending against the petitioner on the date of his retirement, the withholding of the certain pensionary benefits was within the jurisdiction of the Department and after the said show-cause notice was withdrawn in February, 2018, all the benefits for which the petitioner was entitled for, have been released

to him, and therefore, the petitioner is not entitled for the grant of interest on the said delayed release of payments.

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

Though, on the date when the petitioner attained the age of superannuation, the departmental proceedings were pending against him, which would have justified the action of the respondent in withholding certain pensionary benefits but after the said proceedings have been dropped, the only question which is left to be decided by this Court in the present case is that whether the petitioner is entitled for the interest on the delayed release of the retiral benefits to him or not.

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 the Department failed to substantiate those allegations, therefore, the issuance of the show-cause notice or pendency of the same cannot cause prejudice to the petitioner. The acts which are attributable to the respondent cannot cause prejudice to an employee whose pensionary benefits were first withheld on the basis of pendency of the show-cause notice issued by the Department and thereafter upon the Department failing to prove the allegations alleged in the show-cause notice, by denying him the interest on the delayed payments.

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

period of time and 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.

It is a settled principle of law laid down by the Full Bench of this Court while passing judgment 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 without any valid justification, employee becomes entitled for the grant of interest for the delay in releasing of the pensionary benefits.

Further, 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, in the present case, the delay in release of the pensionary benefits cannot be attributed to the petitioner, the same has caused prejudice to the petitioner despite being innocent rather, non-release of the pensionary benefits caused prejudice to the petitioner despite being innocent. The present petition *qua* the grant of interest is allowed, the petitioner is held entitled for interest at the rate of 6% per annum on the delayed payments of the retiral benefits from the date it was to be released to the petitioner till the actual payments were released to him.

Let the calculation of the interest under this order be done within a period of two months and the amount so calculated be released to the petitioner within a period of four weeks thereafter.

21.03.2022

Bhumika

(HARSIMRAN SINGH SETHI)

JUDGE

1. Whether speaking/reasoned : Yes
2. Whether reportable : Yes