IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(237) **CWP-27594-2018**
Date of Decision : September 15, 2022

Ajaib Singh **.. Petitioner**

Versus

Registrar Cooperative Societies Haryana and another .. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. C.R. Dahiya, Advocate, for the petitioner.

Mr. Sandeep Singh Mann, Additional Advocate General, Haryana.

Mr. Rajeev Sharma, Advocate, for respondent No.3.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present petition, the prayer of the petitioner is for the release of the pensionary benefits for which the petitioner became entitled for after the petitioner attained the age of superannuation and retired on 31.05.2014.

Learned counsel for the petitioner argues that there is no impediment in the release of the pensionary benefits of the petitioner but the same are not being released despite expiry of approximately eight years from retirement. Learned counsel for the petitioner submits that as per the judgment of the Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab and others, 1997(3) SCT 468***, the employee is entitled for the release of the pensionary benefits within a period of two months of the retirement in case there is no impediment, failing which, employee is entitled for the grant of interest, hence, the respondents may be directed to release the pensionary benefits of the petitioner forthwith along with interest.

After notice of motion, the respondents have filed the reply. In the reply, respondent No. 3 submits that though the retiral benefit is to be extended to the petitioner but keeping in view the financial position of respondent No.3, the same could not be released.

Learned counsel for respondent No.3 submits that even as of now, the financial position of respondent No.3 is such that they do not have the money to release the pensionary benefits of the petitioner.

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

The claim of the petitioner with respect to the retiral benefits is not disputed. The only objection taken by respondent No.3 is the difficult financial situation of respondent No.3 to pay the same. Whether the said ground is a valid ground to be taken to withhold the pensionary benefits of an employee, is to be adjudicated in the present petition.

The said question is no longer res integra.

The Division Bench of this Court in CWP No. 14426 of 2003 titled as ***Ram Karan Vs. Managing Director, Pepsu Road Transport Corporation and another, decided on 16.08.2005,*** has already held that financial difficulty is no ground to deny the pensionary benefits to an employee. The relevant paragraph of the said judgment is as under:-

> *"8. On careful consideration of the rival submissions and the facts of the case, we do not find ourselves in agreement*

with the arguments advanced by the learned Counsel for the respondent-Corporation. In a welfare State it is the duty of the State to ensure the 'right to live' of every individual. The term 'life' as mentioned in Article 21 of the Constitution of India includes livelihood and so many facts thereof. It means that something more than mere existence and inhabitation against the proposition of life and rather it extends to all the facilities by which life is enjoyed. In case a pensioner is not even paid the genuine dues like the medical reimbursement, he is not expected to enjoy the life nor will he feel secure. The Constitution of India contains a large number of rights which guarantee human rights. It recognises the right of every citizen to an adequate standard of life for himself and his family members, which also includes the improvement of living conditions besides providing adequate food, clothing and housing. A welfare State has to take all appropriate steps to ensure the realisation of these rights. The Apex Court in the case of ***Chameli Singh v. State of U.P. 1996(2) SCC 549*** *has held as under:-*

"In any organised society right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designated to achieve this object. Right to live guaranteed in any civilised society implies to right to food, water, decent environment, education,medial care and shelter. These are basic human rights known to any civilised society.
xx xx xx xx Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organised civic community one should have permanent

shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being."

9. A right to carry on business is reciprocated with a duty and constitutional obligations under the Constitution. Financial stringency may not be a ground for not issuing requisite directions when a question of violation of fundamental rights arises. The Apex Court has also highlighted this aspect in a number of decisions, namely, Municipal Council, Ratlam, (1980)4 S.C.C. 163, ***B.L Wadhera v. Union of India, All India Imam Organisation and Ors. v. Union of India and Ors., Kapila Hingorani v. State of Bihar, 2003 (3) R.S.J. 42****. As far as back as in the year 1993, the Apex Court in All India Organisation's case (supra) observed as under:-*

"6... Much was argued on behalf of the Union and the Wakf Boards that their financial position was not such that they can meet the obligations of paying the Imams as they arc being paid in the State of Punjab. It was also argued that the number of mosques is so large that it would entail heavy expenditure which the Boards of different States would not be able to bear. We do not find any correlation between the two. Financial difficulties of the institution cannot be above the fundamental right of a citizen. If the Boards have been entrusted with the responsibility of supervising and administering the Wakf then it is their duty to harness resources to pay those persons who perform the most important duty namely of leading community prayer in a mosque the very purpose for which it is created.

We are surprised at the insensitive attitude adopted by the respondent-Corporation in respect of its own employees/pensioners. An employer is not only to look forward *to the economic growth but also to look after the welfare of its employees including health, social security and other human needs. It is the obligation of the State or its functionaries to work within the scope of their authority to combat and overcome the miseries of its employees. The Courts in such a situation are obliged to issue necessary directions to mitigate the extreme hardship of the employees involving violation of their human rights by the State or its functionaries like the respondent-Corporation, which are fully controlled by it."*

Keeping in view the above, the ground which is being taken by the respondents to deny the pensionary benefits to the petitioner is not a valid ground and hence, cannot be accepted. Hence, the respondents are directed to release the pensionary benefits of the petitioner within a period of eight weeks from the receipt of copy of this order.

The question which further arise is that the petitioner retired from service on 31.05.2014 and eight years have already passed since the petitioner is waiting for the release of the pensionary benefits, hence, the petitioner is entitled for the grant of interest on the said delay or not.

As per the judgment of the 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 the pensionary benefits within a period of two months of the retirement in case, there is no impediment, failing which, employee is entitled for the grant of interest. 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."

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."

Keeping in view the above, the petitioner is also held entitled for interest on the withheld pensionary benefits @ 6% per annum from the date the same became due till the actual payment. Let the pensionary benefits along with interest be released to the petitioner within a period of two months from the receipt of certified copy of this order.

Present petition is allowed in above terms.

September 15, 2022 **(HARSIMRAN SINGH SETHI)**
harsha **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : Yes