235 (2 Cases)

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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Date of Decision: 24.03.2022

(I) CWP-27681-2018

Hardeep Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

(II) CWP-27760-2018

Rajpal

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vivek K.Thakur, Advocate, and
Mr. Arjun Dev, Advocate,
for the petitioner(s) (in both the cases).

Mr. Kannan Malik, AAG, Punjab.

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HARSIMRAN SINGH SETHI J. (ORAL)

This common order will dispose of both the connected petitions, details of which have been given in the heading, as the common question of law arises in both of them and for the purpose of passing this order, the facts are being taken from CWP-27681-2018.

In the present petition, prayer of the petitioner is for the release of the pensionary benefits for which he had become entitled for upon his retirement, i.e. on 29.02.2016.

Learned counsel for the petitioner argues that three days prior to the retirement of the petitioner, an FIR No.26, dated 26.02.2016, was registered against him under Section 166-A(b) of the IPC, at Police Station Rahon, SBS Nagar. Learned counsel for the petitioner submits that on the basis of registration of the said FIR, the pensionary benefits admissible to the petitioner were withheld by the respondents. Learned counsel further submits that not even the provisional pension has been released to the petitioner till now, which is totally arbitrary and illegal as even where the proceedings are pending against an employee, he is entitled for grant of the provisional pension along with the Provident Fund. Learned counsel for the petitioner submits that keeping in view the facts and circumstances of this case, no retiral benefits could have been withheld by the respondents, especially when a cancellation report has already been submitted by the Investigating Agency in the said FIR No.26, dated 26.02.2016. Learned counsel further submits that the respondents be directed to release the pensionary benefits of the petitioner along with the interest on the delayed payments.

Learned State counsel submits that keeping in view the averments made in the reply filed on behalf of the respondents, the pensionary benefits of the petitioner have been withheld by the respondent-Department due to the pendency of FIR No.26, dated 26.02.2016. Learned State counsel further submits that though the cancellation report has been prepared and submitted before the competent Court of law but as the same is yet to be accepted, therefore, the pensionary benefits of the petitioner have rightly been withheld by the respondent-Department.

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

The first question which arises for consideration by this Court is that in the facts and circumstances of this case, can it be said that the criminal proceedings were pending against the petitioner at the time of his retirement, so as to give the jurisdiction to the respondents to withhold his pensionary benefits, or not. The said question of law already stands decided by the Hon'ble Supreme Court of India in its judgment passed in the case of ***"Union of India Vs. K.V. Jankiraman", 1991(3) S.C.T. 317***. In the said case, the Hon'ble Supreme Court of India has held that with regard to the departmental proceedings, the date of serving of the charge-sheet is to be treated as initiation of departmental proceedings against the accused and with regard to the criminal proceedings, the date when the charges are framed against an accused is to be treated as initiation of criminal proceedings against an accused as the Court takes cognizance of the proceedings at the time of framing of the charge. The relevant paragraph of the said judgment is as under:-

> *" - x - x -*
> *16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a chargesheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover*

> *procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. ....*
>
> *- x - x -"*

Keeping in view the above, and the fact that nothing has been brought to the notice of this Court to show that charges were framed against the petitioner in the FIR registered against him on the date when he retired, or even as of now, therefore, it cannot be said that on the date of his retirement, any proceedings were pending against him so as give the jurisdiction to the respondents to withhold his pensionary benefits. Even otherwise the cancellation report has already been submitted before the competent Court of law in respect of the FIR in question, since long.

Further even where the proceedings are pending against an employee, as per the settled principle of law, the employee is entitled for 100% of the Provisional Pension, and therefore, 100% Provisional Pension as well as Provident Fund of the petitioner could not have been withheld by the respondent-Department.

In the present case, the petitioner has not been treated fairly by the respondents in respect of the release of his pensionary benefits.

Keeping in view the above, prayer of the petitioner for the release of his pensionary benefits is allowed as on the date when the petitioner became entitled for the grant of pensionary benefits, there were no proceedings which could be treated to have been pending against him so as to give jurisdiction to the respondents to withhold his pensionary benefits. That being so, as the petitioner had retired in February, 2016, i.e. six years ago, and he has been restrained from using his pensionary benefits, the petitioner also becomes entitled for the grant of interest on the said delayed payments.

As per 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 superannuation if 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 -"*

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 Government 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"*

In the present case also, the amount which was retained by the respondent-Department under the pretext of pendency of the disciplinary proceedings against the petitioner has been used by the Department to its benefit and hence, the case of the petitioner for the grant of interest on the delayed payments is covered by the above said ratio given by the learned co-ordinate Bench of this Court.

Keeping in view the above, the petitioner is entitled for the interest on the delayed payments of the pensionary benefits, which are to be released to him under this order, at the rate of 6% per annum from the date it became due till the date of actual release of the same. Let the pensionary benefits admissible to the petitioner be released to him within a period of two months from the date of receipt of copy of this order along with the interest as granted.

Allowed in the above terms.

Photocopy of this order be placed on the file of connected case.

24.03.2022 **(HARSIMRAN SINGH SETHI)**
Apurva **JUDGE**

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