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

(222) **CWP-8365-2016**
Date of Decision : May 10, 2022

Balbir Singh **.. Petitioner**

Versus

State of Haryana and another **.. Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Parveen Chauhan, Advocate, for the petitioner.

Mr. Narender Singh Behgal, Assistant Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present petition, the challenge is to the order dated 07.12.2015 (Annexure P-2) by which recovery of Rs.1,33,089/- has been done from the gratuity of the petitioner.

Learned counsel for the petitioner argues that while working in the Department of Archeology and Museum, Haryana, Panchkula, the petitioner retired from the post of Assistant on attaining the age of superannuation on 30.04.2012. Thereafter, the respondents were to extend the pensionary benefits, which were not extended to him within a reasonable time for the reason best known to them and ultimately while extending the pensionary benefits, a sum of Rs.1,33,089/- has been deducted from the gratuity of the petitioner vide impugned order dated 07.12.2015 (Annexure P-2), which is impermissible in law. The said order is under challenge in the

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present petition.

After notice of motion, the respondents have filed the reply wherein, the respondents have mentioned that the pensionary benefits of the petitioner were delayed as the petitioner submitted his pension paper eight months after the retirement whereas the same were required to be submitted eight months prior to the retirement. In the reply, it has been further submitted that there were some shortages of furniture items in the store and keeping in view the said, the recovery has been done. The written statement is silent as to whether, any enquiry has been done before pin pointing the fault upon the petitioner for the said default/shortages.

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

In the present case, there is nothing on record to show that fault of shortages was pin pointed upon the petitioner after holding a due enquiry. In the absence of any enquiry wherein, the petitioner has been given due opportunity, no fault or shortages can be attributed to the petitioner especially when the recovery of the shortages is to be done from the petitioner after retirement. That being so, the recovery of the said shortages is impermissible in law and that too from the retiral benefits. The respondents were under an obligation to hold an enquiry into the allegations of misconduct while the petitioner was in service and as the respondents failed to do so, no shortages can be put upon the petitioner subsequent to the retirement and that too after three years of his retirement when the petitioner was not employee of the respondents any more.

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Keeping in view the above, recovery of Rs.1,33,089/- done from the pensionary benefits of the petitioner is held to be arbitrary and illegal and beyond the jurisdiction of the respondents. Let the said amount be refunded to the petitioner within a period of two months from the receipt of copy of this order.

Learned counsel for the petitioner prays for the grant of interest on the said amount, which has been withheld illegally.

Once, the recovery was impermissible and the petitioner has not been able to use the said money and the same has been retained by the respondents, keeping in view the judgment of the Coordinate Bench of this Court in ***J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355*****,** where an amount belonging to an employee, has been retained and used by the Department, the employee becomes entitled for the interest, the petitioner has become entitled for the grant of interest. 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, amount of Rs.1,33,089/- will also carry interest @ 6% per annum from the date the same became due till the actual release of the same.

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The present petition is allowed in above terms.

May 10, 2022 **(HARSIMRAN SINGH SETHI)**
harsha **JUDGE**

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

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