IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3720 of 2018
Date of Decision:-31.03.2022

Gurmail Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- None for the petitioner.

Mr. Kannan Malik, AAG, Punjab
assisted by Mrs. Jaswinder Kaur, Assistant Director,
O/o DPI(S), S.A.S. Nagar, Punjab.

HARSIMRAN SINGH SETHI J.(Oral)

The present petition has been filed for the release of the pensionary benefits, for which the petitioner is entitled for and also for quashing the order dated 08.6.2012 (Annexure P-2), whereby the respondents restricted the provisional pension to 90% of the entitlement of the petitioner.

The facts, as stated in the present petition are that the petitioner attained the age of superannuation while working as a Principal with the Education Department, Punjab, on 31.07.2015. The petitioner was granted extension in service for a period of one year upto 31.07.2016 but as the petitioner was facing criminal proceedings, vide order dated 14.06.2016, the extension granted to the petitioner was cancelled and he was retired from the service from the date of the said order. It is conceded position that on the date when the petitioner retired from service, the petitioner was facing criminal proceeding in respect of FIR No.16 dated 02.03.2014, under Sections 306, 506, 34 IPC, registered at Police Station Malaud, Police District Khanna, District Ludhiana. After retirement, the petitioner became entitled for the grant of pensionary benefits and General Provident Fund as well as amount of General Insurance Scheme, which benefits were released to the petitioner on 06.05.2016 itself i.e. in the month of May 2016 itself prior to the date the petitioner's extension in service granted to the petitioner was cancelled. The leave encashment, for which the petitioner was entitled for was released to him on 06.12.2016 and as the criminal proceedings were pending against the petitioner, the respondents decided only to grant 90% provisional pension to him vide order dated 08.06.2017, which provisional pension was increased to 100% vide order dated 28.02.2020.

Learned counsel for the petitioner argues that even as of now, the gratuity, for which the petitioner became entitled for, has not been released to him only due to the pendency of the criminal proceedings against him. Unfortunately, the petitioner died awaiting release of pensionary benefits, on 13.06.2021 and the information with regard to the said fact was brought to the notice of the Department on 17.09.2021 but even as of now, the family pension in favour of the widow of the petitioner is yet to be extended. As of now, the 100% pension being paid to the petitioner, is to be regularized and the gratutity amount, for which the petitioner was entitled in respect of the services rendered with Educational Department, is yet to be released and the family pension in favour of the widow is also yet to be released by the respondents apart from the interest, if any, for which the petitioner was entitled for on the delayed release of pensionary benefits.

Learned counsel for the respondent-State submits that as there were criminal proceedings pending against the petitioner at the time of his retirement, the Department was well within its jurisdiction to stop certain pensionary benefits and therefore, the amount of gratuity, which has been withheld by the respondents, is within their jurisdiction. The learned counsel for the respondents further submits that though, the other pensionary benefits have already been released, but the delay is procedural and not intentional and therefore, the petitioner will not be entitled for the interest on the said payments. Learned State counsel submits that keeping in view the instructions given to him by Mrs. Jaswinder Kaur, Assistant Director, O/o DPI(S), S.A.S. Nagar, Punjab, within a period of next two weeks, all efforts will be made and not only the gratuity for which the petitioner is entitled for, will be released to his widow but even the family pension, for which the sanction has already been given, will be released in favour of the widow.

I have heard learned counsel for the respondents and have gone through the papere book myself.

The question, which arises for determination in the present proceedings is whether the pension of the petitioner could have been stopped due to the pendency of the criminal proceedings or not. A Full

Bench of this Court in ***Dr. Ishar Singh vs. State of Punjab and another, 1994(1) SCT 563***, has categorically held that the employee has to be paid 100% provisional pension even if any proceedings are pending against the said employee and the liberty to retain the pensionary benefits is only limited to the leave encashment and the gratuity. That being so, learned counsel for the respondents has not been able to point out that under what provision of law or which settled principle of law gave the jurisdiction to the respondents to withhold the pension, for which the pensioner is entitled for. That being so, not extending 100% provisional pension to the petitioner is beyond the jurisdiction of the respondents.

With regard to the grant of gratuity, the same could have been withheld by the respondents due to the pendency of criminal proceedings, which was being faced by the petitioner at the time of his retirement, which proceedings are pending even as of now. Unfortunately petitioner has died on 13.06.2021 and by the said date he was not held guilty, hence no benefits of the petitioner can be withheld by the respondents any further and the widow of the petitioner is entitled for the grant of gratuity amount forthwith without any further delay.

Further, as , the petitioner was never held guilty prior to his death even in criminal case, the pendency of the same cannot cause prejudice to him and therefore, he will be entitled for interest on the said release of gratuity amount as well keeping in view the settled principle of law settled by Co-ordinate Bench in ***J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355*** , the relevant paragraph of which 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."*

Further, a Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab and others, 1997(3) SCT 468***, has held that employees are entitled for the release of the pensionary benefits within a reasonable time of their retirement unless there is a justifiable cause to withheld the same. In the present case, there was no justifiable cause with the respondents to retain the pensionary benefits of the petitioner. 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, the leave encashment of the petitioner was released after a delay of more than two months, the similar is the case with regard to the grant of pension. That being so, the delay is attributed to the respondents as nothing has been brought to the notice of this Court that there was any impediment in release of those benefits.

Keeping in view the settled principles of law noticed hereinbefore in **A.S. Randhawa'**s case (supra) and **J.S. Cheema**'s case (supra), the petitioner becomes entitled for the grant of interest on the delayed release of pensionary benefits such as leave encashment, arrears of pension, gratuity as well as the family pension, which have not been released to the widow of the petitioner despite the fact that the same should have been released to her within a period of two months of the death of the petitioner. The widow of the petitioner would be entitled for an interest @6% per annum on the pensionary benefits except GPF and GIS from the date the amount became due till the release of the same.

As, two benefits, such as the family pension and gratuity are yet to be released, the office of the Accountant General, Punjab is directed to conclude the process of grant of the said benefits in favour of the widow within a period of two weeks from the date of receipt of copy of this order, failing which, the delay, if any, will be attributable to the office of the Accountant General, Punjab, for which they might be liable to pay interest from their own pocket.

The present petition is disposed of in the above terms.

March 31, 2022 **(HARSIMRAN SINGH SETHI)**
Vijay Asija **JUDGE**

Whether speaking/reasoned Yes / No
Whether Reportable Yes / No