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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-5561-2018
Date of Decision: 11.03.2022

Dharampal

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Anandeshwar Gautam, Advocate, for
Mr. Narinder Singh, Advocate,
for the petitioner.

Mr. Narender Singh Behgal, AAG, Haryana.

Mr. Ravinder Budhwar, Advocate,
for respondents No.2 to 4.

(Through Video Conference)

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<u>HARSIMRAN SINGH SETHI J.</u> (ORAL)

The present petition has been filed with a prayer that the Office orders dated 31.12.2015 and 18.04.2016 (Annexures P-1 and P-2), vide which the recovery has been done from the pensionary benefits of the petitioner, may kindly be set aside as the same has been done without holding any inquiry into the allegations. Further prayer of the petitioner is that though he had retired from service on attaining the age of superannuation on 31.01.2016 but his pensionary benefits were only released to him in October, 2017, and as such delay is attributable to the respondents, therefore, the petitioner may kindly be compensated with interest.

After notice of motion, the respondents have filed a reply, wherein it has been stated that on the date when the petitioner retired, i.e. on 31.01.2016, there were number of charge-sheets which were pending against him, which were issued to him while he was in service and therefore, keeping in view pendency of those disciplinary proceedings, the retiral benefits of the petitioner could not be released to him and when the authorities concerned dropped those charge-sheets on 07.09.2017, immediately within a period of one month, all the retiral benefits for which the petitioner became entitled for were released to him, and therefore, in the facts and circumstances of this case, there is no delay which is attributable to the respondents, so as to award interest on the pensionary benefits which were released to the petitioner. In the reply, it has further been submitted that certain shortages in the items which were within the jurisdiction of the petitioner and the area concerned was under the supervision of the petitioner at one given point of time, while he was in service, hence keeping in view the shortages which were ascertained, the recovery of loss caused was effected from the pensionary benefits of the petitioner, vide orders dated 31.12.2015 and 18.04.2016, annexed at Annexures P-1 and P-2, therefore, no fault can be found in those recoveries and prayer of the petitioner for setting aside the said orders may kindly be rejected.

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

No doubt, when the petitioner retired from service on 31.01.2016, there were disciplinary proceedings pending against him, but it is a conceded position that in none of those, the petitioner was found guilty and the charges were not established against him, rather the same were dropped by the respondents themselves on 07.09.2017. That being so, though the respondents were justified in retaining the pensionary benefits of the petitioner due to the pendency of the said disciplinary proceedings against the petitioner at the time of his retirement, but once the respondents failed to establish the charges against the petitioner, issuance of the charge-sheets by the respondents, cannot cause prejudice to him with regard to the grant of pensionary benefits so as to claim interest on the delayed release of pensionary benefits.

Once the Department alleged allegations against the petitioner and on the basis of those allegations, the amount for which the petitioner became entitled for upon his superannuation was withheld, and the Department failed to substantiate those allegations, therefore, the issuance of the charge-sheets or pendency of the same cannot cause prejudice to the petitioner. The acts which are attributable to the respondents cannot cause prejudice to an employee firstly by withholding the pensionary benefits on the basis of pendency of the charge-sheets issued by the Department alleging certain allegations and thereafter, by denying the grant of interest on the delayed payments, despite the fact that the employee was found innocent as the Department concerned failed to prove those allegations.

Keeping in view the facts and circumstances of this case, once the petitioner is found innocent of the allegations alleged against him and has suffered prejudice only due to the actions of the respondent-Department 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.

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*
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> *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 grant of interest on the delayed payments is covered by the above said judgment given by the learned co-ordinate Bench of this Court.

As there is a delay in releasing the pensionary benefits to the petitioner and the said delay is attributable to the respondents, petitioner is held entitled for the grant of interest at the rate of 9% per annum from the date his pensionary benefits became due till the release of the same to the petitioner.

With regard to the recoveries which have been done from the petitioner, nothing has been brought to the notice of this Court that any regular inquiry has been conducted against the petitioner so as to hold him responsible for the loss of the missing parts, for which the petitioner has been held liable so as to recover the amount from his pensionary benefits. Once no proceedings have been undertaken so as to pin point the cause of loss upon the petitioner, the order of recovery of amount passed at the time of the retirement of the petitioner, by simply stating that certain items were found missing from the area, which remained under his supervision at one given point of time while in service, and that too by not giving him due opportunity to defend himself, cannot be taken as a ground to impose punishment of recovery from the petitioner. In order to hold a person a guilty of some loss, definite reasons have to come on record based upon evidence and that too after giving due opportunity of hearing to the concerned employee on whom the allegations are being alleged. Keeping in view the fact that before passing the orders dated 31.12.2015 and 18.04.2016 (Annexures P-1 and P-2), no inquiry was held and the procedure as envisaged under the Rules for holding a person responsible for shortage was not followed, straightaway recovering the amount from the petitioner is not at all permissible. The said recoveries by the respondents are held to be bad.

Keeping in view the above, the respondents are directed to refund the amount which has been recovered from the petitioner vide orders dated 31.12.2015 and 18.04.2016 (Annexures P-1 and P-2).

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 two weeks thereafter. Amount recovered from the pensionary benefits of the petitioner be also refunded to him within above stated period of two months.

Writ petition is allowed in above terms.

11.03.2022 **(HARSIMRAN SINGH SETHI)**
Apurva **JUDGE**

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