IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.24711 of 2019
Date of Decision:-06.04.2022

Sat Narain Bansal

...Petitioner

Versus

State of Punjab and others

...Respondents

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

Present:- Mr. Amrik Singh, Advocate
for the petitioner.

Ms. Kanika Sachdeva, AAG, Punjab.

HARSIMRAN SINGH SETHI J.(Oral)

The present petition has been filed with a prayer that the pensionary benefits of the petitioner were released after an inordinate delay and therefore, he is entitled for the grant of interest on the delayed release of the pensionary benefits. The further prayer of the petitioner is that after the retirement, vide order dated 01.3.2019 (Annexure P-5), a sum of Rs.90,231/- have been recovered from his pensionary benefits, which is not permissible keeping in view the settled principle of law. The prayer of the petitioner is for refund of Rs.90,231/- and also the payment of interest on the delayed release of the pensionary benefits.

Upon notice of motion, respondents have filed the reply, wherein the respondents have stated that the delay, which has been occurred in release of the pensionary benefits is attributable to the petitioner himself as he did not submit the pension papers six months prior to his retirement and therefore, the release of his pensionary benefits was delayed and the delay is to be attributed to the petitioner only. With regard to the recovery, the respondents have stated that one benefit was wrongly extended to the petitioner while in service before 23.3.2005, which benefit needed to be withdrawn and therefore the recovery, which has been done from the petitioner is on the basis of said withdrawal and as the petitioner had submitted an undertaking after his retirement, the recovery of the amount is permissible keeping in view the settled principle of law settled by the Hon'ble Supreme Court in ***Civil Appeal No.3588 of 2006****, titled '****High Court of Punjab and Haryana and others vs. Jagdev Singh****'*.

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

The question, whether, a benefit extended to an employee while in service, which benefit was enjoyed by the employee for a period of five years before the withdrawal, recovery of the excess amount is permissible or not is covered by the direction given by Hon'ble Supreme Court of India in ***"State of Punjab and others Vs. Rafiq Masih (White Washer) etc.", 2015(1) S.C.T., 195.*** Paragraph 12 of the said judgment reads as under :-

> *" - xxx - xxx -*
>
> *12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the*

following few situations, wherein recoveries by the employers, would be impermissible in law:-

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

- x - x -"

A bare perusal of the above would show that no recovery can be done from a retired employee especially with regard to withdrawal of benefit, which an employee continued getting for a period of more than five years before the withdrawal of the said benefit. The case of the petitioner is covered by paragraph 12 of the judgment in **Rafiq Masih** (supra) with regard to recovery of the excess amount paid to him.

As far as the question of undertaking which is being relied upon by the respondent-State, the said undertaking was only given at the time when the petitioner retired and the same cannot be made applicable with regard to the benefit of increment, which was extended to the petitioner much earlier to the said undertaking. The undertaking given by the petitioner at the time of retirement cannot be made applicable even for the withdrawal of a benefit which was extended to the petitioner while in service. Therefore, the undertaking being relied upon cannot be made applicable in the present case so as to bring the case of the petitioner within the purview of the judgment of Hon'ble Supreme Court in **Jagdev Singh** (supra).

Further the question with regard to grant of interest on the delayed payment, the same has already been settled by the Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab and others, 1997(3) SCT 468***, according to which an employee is entitled for release of the pensionary benefits within a period of two months of the retirement in case there is no impediment. In the present case, there was no impediment in the release of the pensionary benefits of the petitioner but still the same have been released beyond the period of two months, which makes the petitioner 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."*

With regard to the objection being raised by the respondents, that the delay is attributable to the petitioiner as he did not fill the pension papers six months prior to the date of retirement, the same cannot be made applicable for the reason that as per the averments made in the reply itself, the pension of the petitioner was sanctioned on 08.6.2018 by the respondents themselves on the basis of the pension papers filled by the petitioner. Nothing has come on record that if the pension is extended to the petitioner after fixing the same, why not the leave encashment and the gratuity. This shows that the objection being taken by the respondents is only to overcome the burden of grant of interest to the petitioner as the payment is concededly beyond two months of the retirement as fixed by the Full Bench in ***A.S. Randhawa's*** case (supra).

Keeping in view the above, the claim of the petitioner for grant of interest on the delayed payment of leave encashment and gratuity is made out. The petitioner is held entitled for interest @6% per annum from the date the pensionary benefits became due till the same is released. Petitioner is also held entitled for the refund of the recovered amount from him and the said refund will also carry interest @6% per annum from the date the recovery was effected till it is refunded. Let the computation of the benefits be done within a period of two months from the date of receipt of copy of this order and the amount so computed, be released to the petitioner within a period of one month thereafter.

April 06, 2022 **(HARSIMRAN SINGH SETHI)**
Vijay Asija **JUDGE**

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