IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.35361 of 2019
Date of Decision.30.03.2022

Constable Bikramjit Singh and others ...Petitioners

Vs

State of Punjab and others ...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Amit Jhanji, Sr. Advocate with
Mr. Abhishek Kumar, Advocate
for the petitioners.

Mr. Sehaj Bir Singh, DAG, Punjab.
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JAISHREE THAKUR J. (ORAL)

The petitioners herein are aggrieved against the letter dated 17.07.2014, whereby instructions have been issued to the department to refund the amount deposited by the employees under the New Pension Scheme as single share, without interest, and the balance amount to be deposited in the account of the Government.

Learned counsel for the petitioners would contend that the petitioners who joined service between the years 1992-1994 on daily wages, were regularized w.e.f. 01.01.2004 and were put under the New Pension Scheme. As per the notification dated 12.12.2006, 10% of the basic pay plus dearness allowance was to be deducted from the salary of the employees towards contribution to the New Pension Scheme and the same was to be matched by the Government. Subsequent to their joining, a writ petition was filed seeking benefit of their service, when they had worked as daily wagers, towards their length of service for the benefit of pension, which writ petition came to be allowed in terms of the judgment rendered in ***Harbans Lal vs State of Punjab 2012(3)S.C.T.362***. Thereafter, a policy decision was taken to return the share of the employees, lying in the Permanent Account Number(PRAN) of all those, who had contributed under the New Pension Scheme and to bring them into the Old Pension Scheme. However, the State decided that the amount of contribution of the employees would be refunded without interest.

The petitioners are aggrieved against such action. It is submitted that they have been contributing since the date of their employment into the New Defined Contributory Pension Scheme and in case, they are not refunded the same with interest, they would be put to great financial loss. It is submitted that their amount has been utilized by the Government for all these years and they were not allowed the benefit from such utilization. He would rely upon judgment rendered in ***J.S. Cheema versus State of Haryana and others 2014(1) S.C.T.782*** subsequently followed in ***Vinod Kumari Sharma vs. State of Punjab and others 2019(3)S.C.T.351,*** in which the High Court has said that pensionary benefits which have been withheld without justification and used by respondents, when returned would be returned with interest. In the judgment rendered in J.S. Cheema (supra), it has been held "Even if the assertion made in the written statement is presumed to be correct it would not disentitle the petitioners from 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."

Counsel for the respondent-State opposes the prayer made by contending that interest that accrued on the amount deposited by the employee, would be used for paying the pension.

I have heard counsel for the parties and have also perused the pleadings of the case and the case law cited as well as the stand of the respondent-State. There is no doubt that the petitioners have been contributing to the New Defined Contributory Pension Scheme which is now sought to be returned to the petitioners herein, without interest. The State admittedly has been utilizing the money. In case, the State had borrowed money from bank, they would have to return it with interest thereon, which would be a similar situation in the present case. The ratio of the judgment as relied upon is squarely applicable to the facts and circumstances of the case.

Consequently this writ petition stands allowed. The petitioners would be entitled to their share of refund of money, at the interest of 8.1% per annum, which is the current interest payable on the investments made to the provident funds. Let the needful be done within a period of four months from the date of receipt of copy of this order.

(JAISHREE THAKUR)
JUDGE

March 30, 2022
P.Bhatt

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