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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-1859-2021 (O&M)
Date of Decision: 12.04.2023

Dalbir Singh and others

....Petitioner(s)

Versus

State of Punjab and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. A.K. Khunger, Advocate, for the petitioners.

Mr. Sandeep Chopra, DAG, Punjab.

Mr. A.S. Bains, Advocate, for respondent Nos.4 and 5.

JASGURPREET SINGH PURI, J. (Oral)

CM-438-CWP-2022

The present application has been filed under Section 151 of the Code of Civil Procedure praying for recalling of order dated 17.12.2021 passed by a Co-ordinate Bench of this Court in the present case.

Learned counsel for the applicants has submitted that it is a case where the prayer of the petitioners is for grant of retiral benefits as they retired from respondent No.5-Municipal Council which is being represented through its Executive Officer and is impleaded as respondent No.5. However, the petitioners have also impleaded the Administrator who is the SDM as respondent No.4 who was not a proper party since the Municipal Council has already been represented through its Executive Officer as

respondent No.5. He submitted that vide order dated 17.12.2021 it has come on record that respondent No.5 has already filed reply. However, since respondent No.4 did not file reply, a Co-ordinate Bench of this Court had imposed a cost of Rs.50,000/- to be borne by respondent No.4 personally. Learned counsel further submitted that firstly respondent No.4 was not even a proper and necessary party and secondly there was no requirement for respondent No.4 to have filed reply since the main contesting respondent is respondent No.5 who has already filed reply and therefore the imposition of cost of Rs. 50,000/- to be borne personally by respondent No.4 may be modified and recalled being unjust.

This Court had issued notice in the present application to the counsel for the petitioners.

Mr. A.K. Khunger, Advocate appearing on behalf of the petitioners has submitted that he has no objection in case the present application is allowed in view of the facts and circumstances as stated by the learned counsel for respondent Nos. 4 and 5.

In view of the aforesaid position and after hearing the learned counsel for the parties, this Court deems it fit and proper to allow the present application especially in view of the fact that respondent No.5 had already filed reply and there was no requirement for respondent No.4 to have filed reply.

Consequently, the present application is allowed and order dated 17.12.2021 to the extent of imposition of cost of Rs. 50,000/- to be borne personally by respondent No.4 is recalled and consequently modified to the extent that respondent No.4 shall not be liable to pay any cost.

Main case

The present petition has been filed under Articles 226/227 of the Constitution of India seeking a writ in the nature of *Mandamus* directing the respondents to release the arrears of retiral benefits of the petitioners i.e gratuity and leave encashment alongwith interest @ 18% per annum.

Mr. A.K. Khunger, Advocate appearing on behalf of the petitioners who are six in number has submitted that all the petitioners had retired on different dates in the year 2020 and their respective date of retirement has been mentioned in para No.3 of the petition as they retired from 30.04.2020 to 31.05.2020. He submitted that the grievance of the petitioners is that the retiral benefits pertaining to gratuity and leave encashment etc. which is to be paid by the Municipal Council was paid to them with delay and therefore the petitioners are entitled for the grant of interest in view of a Full Bench judgment of this Court in ***A.S. Randhawa Versus State of Punjab and others, 1997(3) SCT 468 (F.B.)***. He further submitted that there is no justification for such a delay in this regard.

On the other hand, Mr. A.S. Bains, Advocate on behalf of Municipal Council-respondent No.5 while referring to short reply filed by the Municipal Council submitted that in fact all the petitioners have been paid the entire amount of their retiral benefits and regarding which figures have been stated in para No.3 of the affidavit/reply in which it has been so stated that total amount of all the petitioners amounting to Rs. 1,37,67,913/- was due and out of which Rs. 84,23,633/- was already paid to the petitioners immediately after their retirement but the balance amount of Rs. 53,44,280/- was released in the month of August, 2021. He submitted that the reasons

for the delay was firstly there was paucity of funds with the Municipal Council and secondly due to Covid-19 pandemic which had started in the month of March, 2020, the offices were also shut down and this also caused delay in the disbursal of the amount.

I have heard the learned counsel for the parties.

The only grievance of the petitioners is with regard to grant of interest on the delayed payments of gratuity and leave encashment etc. which is payable by respondent No.5-Municipal Council. As per the reply filed by the Municipal Council, out of the total amount of Rs. 1,37,67,913/-, Rs. 84,23,633/- was already paid to the petitioners after their retirement for which there was no delay but the dispute is only with regard to delay of Rs. 53,44,280/-. The ground taken by the learned counsel for the Municipal Council that due to Covid-19 pandemic, the delay has been caused will not be sustainable in the present case because the onset of Covid-19 pandemic was from the end of March, 2020 and thereafter for 3-4 months there was lock down in the entire country and for that non-processing of the payment is well justified but it is a case where there was a delay ranging between 1 and 1 ½ years for which the ground taken by the learned counsel for the Municipal Council with regard to Covid-19 pandemic will not be justified. So far as the second ground which has been taken by the learned counsel for the Municipal Council with regard to the paucity of funds is also not sustainable because it is a settled law that paucity of funds is no ground for non-grant of retiral benefits since retiral benefits is not the bounty of the State but it is a Constitutional Right protected under Article 300-A of the Constitution of India. Apart from the above, a Division Bench of this Court

in *Ram Karan Versus Managing Director, PRTC [2005(3) PLR 580]* has also held that paucity of funds is not a ground for delay in the retiral/pensionary benefits.

In view of the above, the present petition is partly allowed. All the six petitioners shall be entitled for the grant of interest of the aforesaid amount of delayed payment of Rs.53,44,280/- pertaining to all the six petitioners @ 6% per annum. However, the date from where the aforesaid interest is to be calculated will be four months after the date of their retirement till the date of its disbursement. The Municipal Council is directed to calculate the aforesaid amount and to pay the petitioners within a period of four months from today. In case the aforesaid interest amount is not paid within the aforesaid period of four months, then the petitioners shall be entitled for future interest @ 9% per annum instead of 6% per annum .

12.04.2023

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)**JUDGE**

: Yes/No
: Yes/No