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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-4288-2020

Date of decision : 19.12.2023

Sat Pal

...Petitioner

Vs.

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Pankaj Bains, Advocate for
Mr. Vijay Sharma, Advocate for the petitioner.

Mr. T.P.S.Walia, AAG, Punjab.

Mr. HPS Ghuman, Advocate
for respondent No.3.

DEEPAK MANCHANDA, J. (Oral)

1. Petitioner has filed this writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondents to grant interest @ 12% per annum on the delayed payments of revised pension and gratuity.
2. The facts in brief leading to the filing of the present case are that the petitioner-Sat Pal filed a petition bearing CWP No.22333 of 2010 seeking issuance of directions to respondents for counting the period of service rendered by the petitioner as daily wager, towards qualifying service for pension benefits, which was disposed of vide order dated 31.10.2014 (Annexure P-1), wherein the writ qua the claim of the petitioner for counting of the service rendered by him on daily wage basis prior to his regularization, was

allowed and respondents were directed to count the period of service as a daily wage towards qualifying service for pensionary benefits and necessary exercise in this regard was to be carried out within a period of three months and the revised pensionary benefits along with arrears to be released within a further period of three months, however, the same benefits along with arrears were not released to the petitioner inspite of directions by this Hon'ble Court. Therefore, petitioner moved representations dated 16.09.2016 and 05.12.2016 (Annexures P-2 and P-3) with request to release the arrears of revised gratuity and same were released after delay of more than 1 ½ years i.e. on 27.03.2017. Thereafter, petitioner submitted application dated 11.09.2017 (Annexure P-4) to the respondents for grant of interest on delayed payments of revised pension and gratuity. When no action was taken on the same, petitioner through his counsel issued demand notice dated 27.02.2019 (Annexure P-5) for grant of delayed payments of revised pension and gratuity from the date it became due till actual payment, but no response has been received from respondent-department. Hence this writ petition.

3. Learned counsel for the petitioner contends that as there is an inordinate and unexplained delay in releasing of the pensionary benefits, the petitioner is entitled for the interest on the said delayed payments. He further submits that petitioner has already served legal notice to the respondents, but the same has not been decided till date, therefore, he prays that necessary directions be issued.

4. On the other hand, learned State counsel while referring to the reply dated 12.10.2020 submits that petitioner is not entitled to the claim as the post held by the petitioner was a non-provincialised cadre post and as provided

u/s 71(7) of Punjab Municipal Corporation Act, 1976, respondent No.3 was his appointing authority and it was within his purview to take appropriate decision on the demand raised by the petitioner.

5. Learned counsel representing respondent No.3 submits that petitioner was paid gratuity, leave encashment and provident fund along with other pensionary benefits as per Civil Services Rule, 1970, but he is not entitled to interest on the revised pensionary benefits, therefore, he prays for dismissal of the petition.

6. I have heard learned counsel for the parties and gone through the case file carefully.

7. The Hon'ble Supreme Court on the issue of payment of interest in the case of “*H.Gangahanume Gowda Vs. Karnataka Agro Industries Corpn.Ltd.*”, 2003 AIR (Supreme Court) 1526, has held as under:-

7. It is evident from [Section 7\(2\)](#) that as soon as gratuity becomes payable, the employer, whether any application has been made or not, is obliged to determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity. Under [Section 7\(3\)](#), the employer shall arrange to pay the amount of gratuity within 30 days from the date it becomes payable. Under sub- [section 3\(A\)](#) of [Section 7](#), if the amount of gratuity is not paid by the employer within the period specified in sub-section (3), he shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits; provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on that ground. From the provisions made in [Section 7](#), a clear command can be seen mandating the employer to pay the gratuity within the specified time and to pay interest on the delayed payment of gratuity. No discretion is available to exempt or relieve the employer from payment of gratuity with or without interest as the case may be. However, under the proviso to [Section 7\(3A\)](#), no interest shall be payable if delay in payment of gratuity is due to the fault of the employee and further condition that the employer

*has obtained permission in writing from the controlling authority for the delayed payment on that ground. Under [Section 8](#), provision is made for recovery of gratuity payable under the Act, if not paid by the employer within the prescribed time. The Collector shall recover the amount of gratuity with compound interest thereon as arrears of land revenue and pay the same to the person entitled. A penal provision is also made in [Section 9](#) for non-payment of gratuity. Payment of gratuity with or without interest as the case may be does not lie in the domain of discretion but it is a statutory compulsion. Specific benefits expressly given in a social beneficial legislation cannot be ordinarily denied. Employees on retirement have valuable rights to get gratuity and any culpable delay in payment of gratuity must be visited with the penalty of payment of interest was the view taken in [State of Kerala & Ors. vs. M.Padmanabhan Nayyar \[1985 \(50\) FLR 145\]](#). Earlier there was no provision for payment of interest on the delayed payment of gratuity. Sub-section (3A) was added to [Section 7](#) by an amendment, which came into force with effect from 1st October, 1987. In the case of **Charan Singh vs. M/s. Birla Textiles and Another [1988 (57) FLR 543 SC]**, this aspect was noticed in the following words:*

"There was no provision in the Act for payment of interest when the same was quantified by the Controlling Authority and before the Collector was approached for its realization. In fact, it is on the acceptance of the position that there was a lacuna in the law that Act 22 of 1987 brought about the incorporation of sub-section 3(A) in [Section 7](#). That provision has prospective application."

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9. It is clear from what is extracted above from the order of learned Single Judge that interest on delayed payment of gratuity was denied only on the ground that there was doubt whether the appellant was entitled to gratuity, cash equivalent to leave etc., in view of divergent opinion of the courts during the pendency of enquiry. The learned Single Judge having held that the appellant was entitled for payment of gratuity was not right in denying the interest on the delayed payment of gratuity having due regard to [Section 7\(3A\)](#) of the Act. It was not the case of the respondent that the delay in the payment of gratuity was due to the fault of the employee and that it had obtained permission in writing from the controlling authority for the delayed payment on that ground. As noticed above, there is a clear mandate in the provisions of [Section 7](#) to the employer for payment of gratuity within time and to pay interest on the delayed payment of gratuity. There is also provision to recover the amount of gratuity with compound interest in case amount of gratuity payable was not paid by the employer in terms of [Section 8](#) of the Act. Since the employer did not satisfy the mandatory requirements of the proviso to [Section 7\(3A\)](#), no discretion was left to deny the interest to the appellant on belated

payment of gratuity. Unfortunately, the Division Bench of the High Court, having found that the appellant was entitled for interest, declined to interfere with the order of the learned Single Judge as regards the claim of interest on delayed payment of gratuity only on the ground that the discretion exercised by the learned Single Judge could not be said to be arbitrary. In the first place in the light of what is stated above, the learned Single Judge could not refuse the grant of interest exercising discretion as against the mandatory provisions contained in [Section 7](#) of the Act. The Division Bench, in our opinion, committed an error in assuming that the learned Single Judge could exercise the discretion in the matter of awarding interest and that such a discretion exercised was not arbitrary.”

8. In the light of judgment referred above, where no satisfactory explanation for the delay in disbursing the retrial benefits as well as interest on the same has come-forth, the prayer of the petitioner for payment of interest on delayed payment is accepted. The respondent No.3 is directed to pay the same @ 6% per annum for the period of delay on the amounts as paid to petitioner.
9. The respondent No.3 is directed to pay interest as aforesaid within three months from the receipt of certified copy of this order.
10. The writ petition is accordingly disposed of.

19.12.2023

vanita

Whether speaking/reasoned :
Whether Reportable :

(DEEPAK MANCHANDA)

JUDGE

Yes No
Yes No