

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

(202)

CWP-9676-1994**Date of Decision : August 04, 2023****Parmatama Ram****.. Petitioner****Versus****State of Haryana and others****.. Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Mani Ram Verma, Advocate, with
Mr. Nipun Verma, Advocate, for the petitioner.

Mr. Harish Rathee, Sr. Deputy Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

1. Present petition has been filed challenging the order dated 23.04.1985 (Annexure P-2) by which, the petitioner was allowed to cross efficiency bar w.e.f. 13.01.1975 but only notionally and no arrears of salary has been granted.

2. Learned counsel for the petitioner argues that once the petitioner has been allowed to cross the efficiency bar with retrospective effect, the petitioner is entitled for the arrears as the petitioner was in service during the said period and discharging his duty.

3. Learned counsel for the petitioner submits that the grant of notional benefit, in the facts and circumstances of the present case, does not arise hence, the impugned order dated 23.04.1985 (Annexure P-2) is liable to be set aside qua the denial of the arrears of the salary, which the

petitioner became entitled for after the crossing of efficiency bar by increasing his salary from Rs.170 to Rs.178 per month.

4. Learned State counsel submits that though it is a matter of fact that by the impugned order dated 23.04.1985 (Annexure P-2), the efficiency bar of the petitioner has been allowed to be crossed from the due date but it is also a matter of fact that the case of the petitioner was considered every year for the crossing of the efficiency bar after the year 1975 but he was not found fit hence, the order dated 23.04.1985 (Annexure P-2) is to run prospectively and the grant of arrears have rightly been declined.

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

6. It is a conceded fact that the petitioner reached a stage in the service career so as to cross efficiency bar for fixing the pay scale while working on the post of Inspector. Vide order dated 23.04.1985 (Annexure P-2), the respondents have granted the said benefit with retrospective effect from the date the petitioner was entitled for crossing of the efficiency bar and his pay had also been increased from Rs.170 to Rs.178/- per month from the due date i.e. 13.01.1975. Once, the benefit of crossing efficiency bar has been extended with retrospective effect i.e. 13.01.1975, the denial of the arrears of salary to the petitioner is totally arbitrary and illegal and without any valid justification especially when the petitioner was in service during the said period and was discharging his duties. Once, the petitioner has been found entitled for higher pay and the petitioner has already discharged the duties for the said period, the benefit of higher pay should be given by award of arrears as well.

7. The argument of the learned State counsel that the claim of the petitioner was considered for crossing of the efficiency bar every year but

he was not found fit till the passing of the order Annexure P-2 in the year 1985 hence, the same has to be prospective, cannot be accepted as in the impugned order, the benefit has been given to the petitioner with retrospective effect i.e. from 13.01.1975. Hence, the argument being raised by the learned State counsel is contrary to the language of the order dated 23.04.1985 (Annexure P-2) and cannot be accepted.

8. Keeping in view the above, the condition imposed in the order dated 23.04.1985 (Annexure P-2) that the petitioner will not be paid any arrears for the period 13.01.1975 till 18.01.1983 after allowing the crossing of the efficiency bar with retrospective effect is held to be bad and is set aside. The respondents are directed to grant the petitioner the arrears for which he becomes entitled for in pursuance to the crossing of the efficiency bar from 13.01.1975.

9. Further prayer of the petitioner is that the petitioner had already retired from service on attaining the age of superannuation on 30.11.1991 but his pensionary benefits were delayed by a period more than two months hence, he is entitled for interest on the delayed release of pensionary benefits as well. He has mentioned in paragraph 9 of the petition the dates on which the actual payments were made, which fact has gone un-rebutted by the respondents while filing the reply.

10. As per the judgment of the Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab and others, 1997(3) SCT 468***, the employee is entitled for the release of pensionary benefits within a period of two months from the date of the retirement, in case there is no impediment failing which, the employee will be entitled for the grant of interest so as to compensate the delay. 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 retiree 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 from 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.”

11. In the present case, keeping in view the averments made in paragraph 9 of the writ petition, which have gone un-rebutted, the delay in release of the pensionary benefits is more than two months hence, the petitioner becomes entitled for the grant of interest on the said delayed release of pensionary benefits from the date the entitlement accrued for the release of the pensionary benefits till the actual disbursement of the same. The petitioner is held entitled for interest @ 6% per annum from the date of retirement till the actual release of the pensionary benefits. Let the order be complied with within a period of two months from the receipt of copy of this order.

12. The writ petition is allowed in above terms.

August 04, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes