IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA-1137-2004 (O&M)
Date of Decision :16.02.2023

Ishwar Devi Chand ...Appellant

Versus

State of Haryana and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Sanjeev Roy, Advocate for
Mr. IPS Doabia, Advocate for the appellant.

Ms. Vibha Tewari, AAG, Haryana.

* * *

Harsimran Singh Sethi, J. (Oral)

CM-2820-C-2004

As prayed for, application is allowed.

RSA-1137-2004

Present regular second appeal has been filed challenging order dated 11.11.2003 passed by the Lower Appellate Court by which, judgment and decree dated 19.07.2000 of the trial Court by which, relief of interest on the delayed release of pensionary benefits was granted to the appellant-plaintiff, has been set aside and the claim of the appellant for the grant of interest on the delayed release of the financial benefit has been declined.

In the present regular second appeal prayer of the appellant-plaintiff is that she is entitled for the grant of interest on the delayed release of the pensionary benefit to her by the respondent-department and the judgement and decree of the Lower Appellate Court be set aside.

Certain facts need to be mentioned herein so as to appreciate the controversy in a correct perspective.

The appellant-plaintiff retired on attaining the age of superannuation on 30.06.1996 but it is a conceded position that pensionary benefits were paid to her by the respondent-department starting from January, 1998 onwards. It is also a conceded position that there was no impediment in the release of the pensionary benefits but the same were delayed and even the arrears of the new pay scale which were extended to the employees w.e.f 1.1.1996, were paid to the appellant-plaintiff after much delay.

The trial Court after considering the evidence on record held that there was no valid justification with the respondent-department to withhold the pensionary benefits of the appellant-plaintiff and granted the benefit of interest on the delayed release of the pensionary benefits and the arrears of salary, which judgment and decree of the trial Court dated 19.07.2000 was challenged by the respondent/State before the Lower Appellate Court and the Lower Appellate Court vide order dated 11.11.2003 set aside the judgment and decree dated 19.07.2000 of the trial Court on the ground that as the appellant-plaintiff was herself a Drawing and Disbursing Officer and she knew that she is going to retire on attaining the age of superannuation on 30.06.1996 still she submitted her pension papers approximately three months prior to her retirement whereas, the same should have been submitted at least 06 months prior to her date of retirement hence, there is no intentional delay on the part of the respondent-department in releasing the pensionary benefits of the appellant-plaintiff hence, the grant of interest on the delayed release of pensionary benefits to the appellant-plaintiff by the trial Court vide judgment and decree dated 19.07.2000 was held to be bad and the said judgment and decree of the trial Court was set aside. The said order dated 11.11.2003 of the Lower Appellate Court is under challenge in the present regular second appeal.

Learned counsel for the appellant-plaintiff argues that the judgment dated 11.11.2003 has been passed by the Lower Appellate Court without considering the relevant facts that the delay in releasing the pensionary benefits is of approximately two years whereas, as per the settled principle of law settled by the Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab and others, 1997(3) SCT 468***, an employee is entitled for the release of his/her pensionary benefits within a period of two months of his/her retirement in case there is no impediment in the release of the same and as in the present case, there was no impediment, the respondent-department was liable to release the pensionary benefits of the appellant-plaintiff by 31.08.1996 whereas, the same were released approximately two years after the said date. Hence, the appellant-plaintiff is entitled for the grant of interest on the delayed release of the pensionary benefits. Learned counsel for the appellant-plaintiff further submits that even if, it is assumed that pension papers were submitted by the appellant-plaintiff three months prior to her retirement, then department could have been given proportionate time to release the pensionary benefits but delay of two years cannot be put upon the appellant-plaintiff that she has submitted the pension papers three months prior to her retirement instead of six month as required under the rules governing the service so as to deny the interest on the delayed payments and the said fact has not been considered by the

Lower Appellate Court while passing the judgement and decree dated 11.11.2003.

Learned counsel for the respondent-State submits that no due certificate, which the appellant-plaintiff was required to submit upon her retirement was submitted in the year 1998 hence, the delay in releasing the pensionary benefits of the appellant-plaintiff cannot be termed as fault of the respondent-department so as to entitle the appellant-plaintiff for the grant of interest for the same.

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

The facts which have been stated hereinbefore are not in dispute. As per the settled principle of law settled in A.S. Randhawa (supra) the pensionary benefits were required to be released within a period of two months of the retirement in case there is no impediment failing which, an employee is entitled for the grant of interest. Relevant paragraph of the judgement 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."*

In the present case, the appellant-plaintiff retired on 30.06.1996 whereas, her pensionary benefits were released from 1998 onwards i.e after the period of two years. That being so, especially, when no impediment was brought on record by the respondent-State to withhold the said pensionary benefits, appellant-plaintiff is held entitled for the grant of interest on the delayed release of the pensionary benefits as well as arrears of salary.

Even otherwise, the 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 respondent-department, 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."

Learned counsel for the respondents submits that once no due certificate was submitted by the appellant in the year 1998, delay in the release of pensionary benefits cannot be attributed to the department as the submission of no due certificate was the duty of the appellant herself.

The said argument is totally fallacious and cannot be accepted as nothing has come on record that any material was pending towards the appellant so as to deny her no due certificate. No due certificate is to be issued by the department and in case department delays the issuance of the same and that too without any valid justification, the said act of the employer cannot cause prejudice to the employee concerned. In the present case, in the absence of any allegation that any material or amount pending against the appellant due to which 'No due certificate' was not issued, the delay in issuance of no due certificate is to be attributed to the department only and not to the employee concerned hence, the argument being raised by the learned counsel for the respondents to deny the payment of interest on the delayed release of benefits on the ground that no due certificate was issued by the department in the year 1998 i.e. after more than two years of retirement cannot come to the rescue of the respondent-department so as to escape the liability of payment of interest.

In the present case, the Lower Appellate Court has failed to appreciate the settled principles of law stated hereinbefore and has merely gone into the fact that pension papers were submitted by the appellant-plaintiff three months prior to her retirement instead of six months prior to the retirement, which is not a correct appreciation of the facts of the present case, keeping in view the settled principles of law hence, there is a perversity in the findings recorded by the Lower Appellate Court in the judgment and decree dated 11.11.2003, keeping in view the facts on record as well as the settled principles of law and the same is accordingly set aside.

Appellant-plaintiff is held entitled for the grant of interest on the delayed release of pensionary benefits as well as arrears of salary @ 6% per annum from the date the appellant-plaintiff retired till the actual payments have been made.

Let the present order be complied with within a period of three months from the date of receipt of certified copy of this order. Decree sheet be prepared in the above terms.

February 16, 2023 **(HARSIMRAN SINGH SETHI)**
aarti **JUDGE**

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