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2023:PHHC:153633

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-20274-CWP-2023 in/and
CWP-13415-2020
DECIDED ON: 02.12.2023

RAM CHANDER

.....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Mohnish Sharma, Advocate
for the petitioner.

Ms. Dimple Jain, DAG, Haryana.

Mr. Sanjeev Majra, Advocate
for respondents No.2 to 9.

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SANDEEP MOUDGIL, J (ORAL)

CM-20274-CWP-2023

This is an application for placing on record office memo dated 18.02.2022, regarding payment of commutation of 40% pension in respect of petitioner issued by respondent No.6 as Annexure P-8.

For the reasons mentioned in the application, the same is allowed subject to all just exceptions. Annexure P-8 is taken on record.

Accordingly, the instant application stands disposed of.

CWP-13415-2020

1. The instant writ petition has been preferred under Articles 226/227 of the Constitution of India praying for quashing of no demand certificate dated 04.02.2020 (Annexure P-3), vide which the respondents have deducted an amount of Rs.6,85,363/-, out of retiral benefits to which the petitioner was legally entitled at the time of retirement on 31.01.2020.

2. Further the prayer in the writ petition has been made to seek writ in the nature of mandamus to get released the gratuity, commutation of pension, 100% pension apart from the above stated deducted amount.

3. The respondents No.2 to 9 has preferred a short reply dated 21.04.2023 by way of an affidavit of Mr. Vinod Kumar Goyal, Executive Engineer, City Division UHBVN, Panipat to made an attempt to justify the deduction of amount to the tune of Rs.6,85,363/- stating it to be outstanding in the miscellaneous advances of the petitioner and in para 4 thereof, it was stated as under:-

> *"4. The payment will be made to petitioner shortly through the Office of XEN Central Store UHBVN, Panipat after getting the release order of gratuity and commutation from the CAO, UHBVN Panchkula."*

4. The said affidavit was supported with a memo No.Ch-151/CR-7A/288 dated 04.10.2023, whereby the detail of amounts was given in a tabular form, which can be referred as under:-

As per NDC of this office the amount was placed in the miscellaneous advance of the subject cited retiree which was to be recovered from him	Rs.6,85,363/-
But the amount of gratuity was payable	Rs.5,81,227/-
The amount of (Rs.6,85,363-Rs.5,81,227) Rs.1,04,136/- cannot be recovered because the amount of gratuity (Rs.5,81,227) is less than the recoverable amount (Rs.6,85,363). Hence the amount not recovered from the petitioner.	Rs.1,04,136/-
Recovery was made from his pension Rs.8,000 per month for 4 months i.e. 8000*4. Out of recoverable amount Rs.1,04,136 as	Rs.32,000/-

per Gratuity Payment Order No.15474 dated 02.12.2021 issued by the Sr. A.O. UHBVN Panchkula.	
Total amount recovered from the retiree out of NDC Rs.685363 (Rs.5,81,227+Rs.32,000)	Rs.6,13,227/-
Recovery of one annual increment recoverable so amount paid out of total recovered amount Rs.6,13,227/- after the recovery of Punishment Rs.28,500/-. The total amount recovered (Rs.6,13,227-Rs.28,500)	Rs.5,84,727/-
The payment was made vide cheque no.636158 dated 25.05.2023	Rs.5,84,727/-

5. Today, an application on behalf of the petitioner has been putforth before this Court to place on record memo dated 18.02.2022, regarding payment of commutation of 40% pension to the petitioner as issued by respondent No.6, which was taken on record as Annexure P-8 to the writ petition, wherein in para 3 of the said application, averments qua the details of payment has been made, which was to be released and have also specifically pleaded the delay in releasing the amount i.e., leave encashment vide cheque dated 30.04.2020, Pension vide PPO issued on 23.06.2020 apart from gratuity to the petitioner was released along with commutation of pension through cheque dated 25.05.2023, after the delay of more than 3 years and 3 months. Apart from that the commutation of 40% pension to the petitioner to the tune of Rs.9,76,889/- has been ordered to be paid vide memo dated 18.02.2022, which has been received by the petitioner vide cheque dated 17.05.2022 with a delay of 2 years and 3 months.

6. Mr. Sanjeev Majra, Advocate appearing for respondents No.2 to 9 when countered with the said averments made in the instant application, who has already received in advance, a copy of the same, is not in position to dispute the delay, which has actually taken place as is evident on record as well.

7. It is, by now a well settled via catena of judgments of the Court that pension payable to a retired government servant is no longer a bounty which is

payable on the sweet will and pleasure of the government. It has been held to be a valuable right which flows to such an employee by virtue of the rules governing his employment. Reference in this regard be made to ***"Deokinandan Prasad v. Stale of Bihar and Ors.", AIR 1971 S.C. 1409*** wherein the Supreme Court expressed referring to the material provisions in the pension rules to hold that the grant of pension did not depend upon an order being passed by the authorities to that effect. It may be that for the purposes of qualifying the amount having regard to the period of service and other allied matters, it may become necessary for the authorities to pass an order to that effect as the right to receive pension flows to the government servant not because of the said order but by virtue of the rules which have a statutory force. Similar view has been taken by the Supreme Court in "***State of Punjab v. Iqbal Singh", A.I.R. 1976 S.C. 667 and "State of Kerala and Ors. v. M. Padmanabhan", AIR 1985 S.C. 356*** reiterating its earlier view which would be pertinent to quote hereinbelow:-

> *"Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."*

8. A full Bench of this Court in "***A.J. Randhwa, Supdg Engineer vs. State of Punjab and others", (1997) 117 PLR 6*** dealing with a question of entitlement to interest on delayed payment of retiral benefits held as under:-

> *"7.There is, thus, no doubt and in fact it was conceded before us by the learned Advocate General appearing for the respondents that right to pension is a right to property and not a bounty to be paid on the sweet will and pleasure of the Government. It may or may not be a fundamental right but, it is definitely a constitutional right being a right to property and also a statutory right government by the Pension*

Rules. It is common case of the parties that the right to receive pension by the petitioner is governed by the rules contained in the Punjab Civil Service Rules, Vol. II framed under proviso to Article 309 of the Constitution. This being so, a retired government employee has, beyond doubt, a right to approach this court for the issuance of a writ of mandamus or for any other order or direction to enforce his legal right to claim pension or any other retiral benefits the disbursement of which may have been unjustifiably withheld by the State.

8. The duty of the State to disburse pension immediately on the retirement of an employee has a statutory recognition and it is so enjoined in Rule 9.1; of the Pension Rules (as applicable in the State of Haryana) which is in the following terms :-

"All authorities dealing with applications for pension under these rules should bear in mind that delay in the payment of pensions involves peculiar hardship. It is essential to ensure, therefore, that a Government employee begins to receive his , pension on the date on which it becomes due.

Note :- In order to prevent cause for complaint on the part of pensioner, it is most important that pension cases should always be given as high a degree of priority as is possible."

9. At this juncture it would also be appetite to notice observations made by the Apex Court in ***"S.K. Dua Vs. State of Haryana and another", (2008) 3 SCC 44***, the relevant part of which is:-

"this Court was dealing with a case where the appellant was paid provisional pension but other retirement benefit were not given including CVP, leave encashment, gratuity etc. There was a disciplinary proceeding and ultimately the appellant was found exonerated from all the charges. In the said circumstances, the benefits were given after four years. As regards the question, as to on what basis interest would be granted for delayed payment, we notice the following statement of law made by this Court:

"14. In the circumstances, prima facie, we are of the view that the

> *grievance voiced by the appellant appears to be well founded that he would be entitled to interest on such benefits. If there are Statutory Rules occupying the field, the appellant could claim payment of interest relying on such Rules. If there are Administrative Instructions, Guidelines or Norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence Statutory Rules, Administrative Instructions or Guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of bounty is, in our opinion, well-founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents. (Emphasis Supplied)"*

10. In yet another case law "***J.S. Cheema Vs. State of Haryana", 2014(13) RCR (Civil) 355***, this Court held that where an amount belonging to an employee, was retained and used by the respondents, upon the release of the said amount, on a later date, the interest has to be given.

11. This Court having examined the case in hand at the touchstone of above discussed judicial pronouncements alongwith the facts involved in the present petition, has no hesitation to hold that the retiral benefits including leave encashment, gratuity and other emoluments are not only the legal rights of the petitioner but have been declared fundamental right, but have been withheld and delayed without any justifiable cause in an arbitrary manner and therefore, the petitioner cannot be allowed to suffer on that account to which he has not been attributed any lapse on his part. Therefore, the respondents are directed to grant 6% interest per annum on account of the delay, as detailed hereinabove read out from para 3 of the application within a period of two months from the date of receipt of the certified copy of this order.

12. In case, within the stipulated period, the retiral benefits are not released, it shall carry interest at the rate of 12% per annum till the date of its actual realization.

13. Writ petition is disposed of in the aforesaid terms.

(SANDEEP MOUDGIL)
02.12.2023 **JUDGE**

Poonam Negi

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