

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

CWP-13321-2013 (O&M)

Date of Decision: 24.04.2023

Harbans Lal Sharma

....Petitioner(s)

Versus

State of Punjab and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Harbans Lal Sharma, petitioner in person.

Mr. Arun William, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. 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 sanction regular pension, gratuity, commutation, GIS and other retiral benefits of the petitioner alongwith interest @ 18% per annum.

2. Mr. Harbans Lal Sharma appearing in person has submitted that he filed the present petition in the year 2013 and during the pendency of the present petition, the retiral benefits have been paid to the petitioner on different dates and now the scope of the present petition is only pertaining to grant of interest on the delayed payments which may be granted to him in view of a Full Bench judgment of this Court in *A.S. Randhawa Versus State of Punjab and others, 1997(3) SCT 468*. He submitted that he joined the Department of Co-operation, Punjab on 13.05.1981 at Fazilka and in the

year 2003, he was selected in Punjab Civil Services Executive & Allied Services Exam and was appointed as Employment Officer in the Department of Employment-respondent No.2 on 12.01.2005 after being relieved from the Department of Cooperation as he had applied through proper channel. He submitted that during the period when he was working in the Department of Cooperation, Punjab, he was inflicted with the punishment of dismissal from service regarding which he had filed a civil suit. The civil suit was dismissed but thereafter it was assailed by the petitioner before the first Appellate Court. The first Appellate Court however allowed the appeal of the petitioner and the dismissal order was set aside vide order dated 20.04.1999. The State filed RSA against the aforesaid judgment which was dismissed and therefore the judgment passed by the first Appellate Court in favour of the petitioner had attained finality. Thereafter petitioner filed execution before the learned Executing Court in which directions were issued on 12.11.2005 that the decree holder is entitled to due arrears of pay and allowances according to law and an inevitable conclusion which follows from the judgment and decree dated 20.04.1999 is that the decree holder would continue to be in service till another fresh order is passed according to law and the judgment debtors are directed to pay due arrears of salary and allowances of the decree holder after calculating the same in accordance with law till 17.12.2005. The petitioner submitted that after the decree was passed in his favour by the Appellate Court, the department did not conduct any de novo inquiry and no fresh order was passed and in this way, the order setting aside the dismissal order attained finality. He submitted that against the aforesaid orders passed by the learned Executing Court, Ferozepur, the State preferred a civil revision

No.3678 of 2006 which was dismissed. Thereafter the State preferred an SLP before the Hon'ble Supreme Court which was also dismissed vide order dated 19.01.2016. He submitted that during the aforesaid period after the decree and during the execution proceedings or thereafter there was no interim order by any higher Court including High Court and Supreme Court and the respondents were bound to have paid the pensionary benefits to him after his retirement.

3. The petitioner submitted that as per chart which has been prepared vide Annexure P-20 depicts the dates on which the retiral benefits have been received by the petitioner. He submitted that he is aggrieved by delayed payments pertaining to three components i.e. leave encashment, gratuity and GIS and so far as the delayed payment in commutation is concerned, he is not pressing the aforesaid component. He also submitted that so far as GIS is concerned, there was a dispute between the GIS Credits while he was in service in the Department of Cooperation which was ultimately resolved but the Department of Employment Generation did not pay the aforesaid amount on the ground that some deductions were to be made. He submitted that so far as the component of GIS is concerned, he may be permitted to file a comprehensive representation before respondent No.2 by giving the entire dates and facts and time bound directions be issued to respondent No.2 to decide the representation on the basis of all the documents which are to be supplied by him alongwith representation since detailed facts are involved in the present case. He further submitted that respondent No.2 should also be directed to consult the office of the Registrar Cooperative Societies, Punjab by referring to the record pertaining to the service rendered by him in the Department of Cooperation

pertaining to the GIS credits and thereafter to pass a speaking order within a time bound manner and for that purpose liberty may be granted to him to make a representation in this regard.

4. The petitioner submitted that now therefore the only scope left in the present petition is pertaining to grant of interest on the delayed payments of leave encashment and gratuity. While referring to the chart Annexure P-20, he stated that different dates have been provided when the amount was paid. He submitted that the aforesaid two components are to be further divided into two parts. The first part pertains to the service rendered during the period spent in the Department of Cooperation and second part relates to the period spent in the Department of Employment Generation.

5. So far as the component of leave encashment is concerned, the amount of Rs.4,46,931/- was paid pertaining to the undisputed period spent in the Department of Employment Generation on 10.12.2012 with a delay of 4 months and 10 days and so far as the remaining period pertaining to the period spent in the Department of Cooperation, the amount of leave encashment was paid of Rs. 44,829/- on 28.04.2016 with a delay of 3 years, 9 months and 3 days. So far as the gratuity of the undisputed period spent in the Department of Employment Generation to the tune of Rs. 6,16,512/- is concerned, it was paid after a delay of 3 years, 9 months and 3 days and for the period spent in the Department of Cooperation, an amount of Rs. 1,79,816/- was paid on 30.11.2016 after a delay of 4 years and 4 months and after illegally deducting an amount of Rs. 16,795/- and therefore he should be paid interest on the aforesaid amount.

6. On the other hand, Mr. Arun William, learned AAG, Punjab submitted while referring to the reply filed by State that so far as the leave

encashment of Rs. 4,46,931/- pertaining to the undisputed period spent in Department of Employment Generation is concerned, the same was paid on 10.12.2012 which was after 4 months of retirement but the delay was caused because the petitioner himself had submitted the pension papers on 07.06.2012 which was just one month before his retirement whereas he ought to have submitted the pension papers six months prior to his retirement in accordance with the instructions issued by the State and therefore the aforesaid delay of 4 months was justified. So far as the other amount of Rs. 48,829/- pertaining to the period of service rendered by the petitioner in the Department of Cooperation is concerned, delay of 3 years and 9 months has been caused because the petitioner was at litigation with the Department of Cooperation and the matter was even pending till the Hon'ble Supreme Court in SLP and the delay was caused due to await the decision of the SLP. So far as delay in disbursement of amount of gratuity is concerned, the same was delayed because there was some amount pertaining to GIS i.e Rs. 16,795/- which was required to be adjusted from the gratuity and therefore the gratuity was not paid.

7. I have heard the learned counsel for the parties.

8. The only scope of the present petition is now pertaining to delayed payments of leave encashment and gratuity. So far as the prayer of the petitioner with regard to GIS is concerned that he may be granted liberty to file a separate representation, the same seems to be just and proper and even the learned State counsel has not objected to the same. Therefore it is directed that so far as the grievance of the petitioner pertaining to GIS is concerned, liberty is granted to the petitioner to file a comprehensive representation to respondent No.2 by giving the entire details with regard to

the same. In the event of the petitioner filing a comprehensive representation to respondent No.2, then respondent No.2 shall consult office of the Registrar Cooperative Societies, Punjab alongwith the entire record pertaining to the period spent by the petitioner in the Department of Cooperation to his GIS credits and thereafter shall pass a well-reasoned speaking order within a period of four months from today. Needless to say that before passing the order, the petitioner shall be granted opportunity of hearing.

9. So far as the components of leave encashment and gratuity are concerned, the same is the only subject matter which is to be adjudicated in the present case for the grant of interest.

10. So far as the component of leave encashment pertaining to Rs. 4,46,931/- as per Annexure P-20, the same was pertaining to the period which was spent by the petitioner in the Department of Employment Generation, the same was paid on 10.12.2012 after a delay of 4 months and 10 days. The learned State counsel had stated that it was because the pension papers of the petitioner were submitted by him just one month before his retirement whereas it should have been submitted six months before retirement which caused the delay seems to be just and proper. An argument was raised by the petitioner that the department did not give the 'No Due Certificate' and that was the reason as to why there was a delay in submission of pension papers is a disputed question of fact but only fact remains is the petitioner submitted the pension papers just one month before his retirement and therefore the aforesaid delay of 4 months and 10 days cannot be termed as unjustified and therefore the petitioner is not entitled for any interest on the aforesaid component of leave encashment

pertaining to Rs. 4,46,931/-.

11. So far as the leave encashment of Rs.48,829/- which was of the period spent in the Department of Cooperation, it was paid to the petitioner on 28.04.2016 i.e. after a delay of 3 years, 9 months and 3 days. The justification for delay as given by the learned State counsel was that since the dispute was pending in the Civil Court and thereafter even before the Hon'ble Supreme Court, the delay was caused. Such an explanation given by the learned State counsel is not acceptable. The decree was passed in favour of the petitioner way back in the year 1999 whereby his dismissal order was set aside and rather the Executing Court had directed the State to pay the arrears and all the dues. Thereafter as per the learned counsel for the parties, there was no stay or any interim at any stage thereafter even upto the Hon'ble Supreme Court and therefore the mere fact that an SLP was pending which was ultimately dismissed cannot become a ground for withholding the pensionary benefits of the petitioner pertaining to leave encashment. The delay of 3 years, 9 months and 3 days is totally unjustified and for that the petitioner is entitled for interest.

12. So far as the gratuity of Rs. 6,16,512/- pertaining to the undisputed period of service rendered by the petitioner in the Department of Employment Generation is concerned, there was a delay of 3 years, 09 months and 3 days and for the amount of Rs. 1,79,816/- which was paid on 30.11.2016, there was a delay of 4 years and 4 months. The learned State counsel again raised a plea pertaining to the same that the subject matter of the petitioner pertaining to the Department of Cooperation was pending and therefore it was delayed with an additional ground that there was one amount of GIS which was to be recovered from the petitioner and because of that

reason the gratuity was not paid and was withheld, is also not sustainable in view of the fact that gratuity can be withheld only under Rule 2.2 (c) of the Punjab Civil Services Rules Volume-II and that can be done only when there is any judicial or disciplinary proceedings pending but in the present case admittedly there was neither any judicial nor any disciplinary proceedings pending against the petitioner nor any order was passed by office for withholding the gratuity and therefore the payment of gratuity after a long period of 3 years and 4 years respectively on two components is not justified and therefore the petitioner is entitled for interest on the same.

13. In view of the aforesaid facts and circumstances, the present petition is partly allowed. The petitioner shall be entitled for interest on the following components i.e. leave encashment of Rs. 48,829/-, gratuity of Rs. 6,16,512/- and gratuity of Rs.1,79,816/- @ 6% per annum w.e.f. 30.09.2012 i.e. after adding two years from the date of retirement till the disbursement. The respondent No.2 is directed to calculate the aforesaid amount @ 6% per annum and to pay the petitioner within a period of three months from today. In case the aforesaid amount is not paid within the aforesaid period of three months, then the petitioner shall be entitled for future interest @ 9% per annum instead of 6% per annum.

24.04.2023

rakesh

(JASGURPREET SINGH PURI)**JUDGE**

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