

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

**CWP No.1328 of 2017(O&M)
Date of Decision: 26.05.2023**

Rahdey Sham Goyal

.....Petitioner

Vs

State of Haryana and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Satyavir Singh Yadav, Advocate
for the petitioner.

Mr. Tapan Kumar Yadav, DAG, Haryana.

Mr. Sunil K. Dhandra, Advocate
for respondent No.3.

RAJ MOHAN SINGH, J.(Oral)

[1]. The petitioner has preferred this writ petition for the issuance of an appropriate writ in the nature of mandamus, directing the respondents to pay interest on the delayed payments of gratuity and leave encashment and also for release of pension and family pension as per Rules.

[2]. The petitioner has prayed in this petition that after giving original option in the year 1992-93 not to take pension, he

subsequently gave his changed option on 20.08.2008, which was duly received by the respondent-Department and thereafter, no action was taken by them. The petitioner has submitted that he is ready and willing to pay back the employer share of Contributory Provident Fund along with the interest till date and in the event of doing so, he is entitled for pension under the Rules.

[3]. At this stage, the claim of the petitioner as regards the release of pension cannot be entertained, except to direct the competent authority to decide his claim in view of stand taken by the respondents in para No.5 of the written statement at the earliest in accordance with law. So far as claim with regard to interest on the amount of gratuity and leave encashment is concerned, the same is found to be worth acceptance.

[4]. The petitioner was appointed as Peon in the office of Municipal Committee, Karnal in the year 1973 and thereafter, he was promoted as Clerk on 16.03.1992. On 05.03.1993, the petitioner gave his option not to adopt the pension scheme and preferred to remain on non-pensionable post. Thereafter, the petitioner retired from the post of Clerk on 30.05.2011. The amount under Contributory Provident Fund has already been released to the petitioner on 07.06.2011. The petitioner was entitled for release of gratuity and leave encashment, but the same were withheld on account of involvement of the petitioner

in FIR No.64 dated 27.01.2010 under Sections 406, 408, 419, 420, 465, 466 and 120-B IPC, Police Station Civil Lines, Karnal. The petitioner was acquitted in the aforesaid case on 19.01.2016 and thereafter, he filed his representation for release of the amount under gratuity and leave encashment along with the interest.

[5]. The amount of gratuity and leave encashment has been released only on 30.06.2016. As per Government instructions, the retiral dues of the employees are to be finalized after three months of his retirement. In the absence of any such criminal case having been registered against the petitioner, the petitioner was entitled for his retiral dues w.e.f. 01.09.2011. It was only due to pendency of the criminal case, the payment of amount was deferred. During this intervening period, the amount remained with the respondent-Department and the respondent-Department must have earned some interest on the amount in question.

[6]. Since the petitioner has been acquitted, therefore, the benefit accrued on the amount withheld by the respondents has to be repaid to the petitioner along with principal amount.

[7]. In view of above, total amount of gratuity and leave encashment of Rs.4,84,181/- needs to be paid to the petitioner @ 6% from 01.09.2011 till final realization of the amount. The respondents are also directed to decide the application dated

12.08.2008 filed by the petitioner for change of his option from non-pensionable post to pensionable avenue in accordance with law at the earliest.

[8]. Disposed of accordingly.

26.05.2023	(RAJ MOHAN SINGH)
Prince	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No