

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-16593-2017
Date of decision : 05.09.2023

Mohinder Singh ...Petitioner

Vs.

Punjab State Power Co-Op Ltd.
Patiala and others ...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Lalit Kumar, Advocate for
Mr. Sunil Kumar Sharma, Advocate for the petitioner.

Mr. Sehajbir Singh, Advocate
for the respondents.

DEEPAK MANCHANDA, J.(Oral)

1. By filing the present writ petition under Article 226/227 Constitution of India, petitioner seeks issuance of a writ in the nature of mandamus for directing the respondents to pay interest @ 12 % on the delayed payment made in the year 2017 as regards the financial up-gradation on completion of 9 and 16 years of regular satisfactory service.
2. Learned counsel for the petitioner submits that the petitioner was appointed as a Foreman on 10.03.1983 with the respondent department in sports category, but upto 2003 he was not paid any increase in salary allowance on completion of 9 and 16 years of regular service. In the year 2003, petitioner applied for leave and after that he informed in his office by telegram that he would not be able to join the office due to ill health of his wife. On 02.03.2004,

petitioner joined the office and a show cause notice was issued to him for his absence from duty. In reply to the show cause notice, petitioner submitted that due to unavoidable circumstances, he remained absent, however, the department proceeded to stop two annual increments of the petitioner and declared his absent period as non duty period, later on it was declared as leave of kind due. Aggrieved against the same, petitioner approached this Hon'ble Court through CWP-21345-2015, which was dismissed as withdrawn vide order dated 17.11.2015 with liberty to avail alternative remedy. On 14.01.2016, petitioner approached the respondent No.3 by filing a departmental appeal, but the same was not decided by the respondent/department and the petitioner then by filing CWP-14838-2016 again approached this Court, which was decided by giving directions to respondent No.3 to decide the petitioner's appeal dated 14.01.2016, and the same was decided on 23.01.2017 by passing a speaking order, whereby the petitioner's absence period was declared as duty period and two annual increments were granted, but payment for the same has been made in 2017 without any interest on delayed payment. Therefore, petitioner submitted a representation dated 19.05.2017 (Annexure P-7) to respondent No.3 with a prayer to pay interest on delayed payment made to the petitioner on account of payment of 9/16 year increase in salary allowance, but no response has been received so far. Learned counsel prays that necessary directions be issued to the respondents.

3. Reply by way of short affidavit of Er.Kuldeep Singh Thakur, Sr.Executive Engineer, PSPCL, City Division, District Hoshiarpur on behalf of respondent Nos.1 to 3 has been filed in the Court today and the same is taken on record.

4. In compliance of the order dated 25.01.2023, an amount of Rs.10,000/- as costs have been deposited vide receipt dated 01.09.2023. A photocopy of the receipt is taken on record.

5. Learned counsel representing the respondents has invited the attention of the Court to the order dated 23.01.2017 passed by respondent No.3 in compliance of the order dated 24.08.2016 passed in CWP-14838-2016 and contends that the petitioner was marked absent from duty w.e.f.03.09.2003 to 01.03.2004 and due to his intentional absence, show cause notice was served upon him on 29.11.2004. As per the reply to the show cause notice, petitioner remained absent from duty due to illness of his wife, however, no medical certificate was shown in support of his explanation, therefore, the reply being unsatisfactory, the competent authority stopped two annual increments of the petitioner.

6. Learned counsel for the respondent has further drawn the attention of the Court to the reply dated 03.09.2023, wherein it is stated that petitioner has already been granted the 9 years and 16 years time bound promotional scale along with arrears upto the year 2003 and he is not entitled to any interest on delayed payments as the delay in the payment of promotional scale is not due to any *malafide* reason on the part of the respondent-corporation. He submits that no interference is warranted.

7. Learned counsel for the parties have been heard and case file has been perused carefully.

8. By way of present writ petition the only claim raised is with regard to interest on delayed payment admittedly which was paid in the year 2017. The respondent-corporation stopped two annual increments of the

petitioner and declared his absence as non-duty period, later on which was declared as a leave of kind due. Aggrieved against the same, petitioner approached this Court by way of filing CWP No. 21345- 2015, wherein he prayed for setting aside the office order No. 308 dated 01.07.2005 and office order No. 537 dated 11.09.2007 passed by the Chief Engineer (OP), North Jalandhar, PSPCL, which was dismissed as withdrawn vide order dated 17.11.2015 with the liberty to avail alternative remedy. On 14.01.2016, petitioner approached the respondent No. 3 by filing a departmental appeal, but when same was not decided, he again approached this Court through CWP No.14838-2016, which was disposed of with a direction to respondent No. 3 to decide the petitioner's appeal dated 14.01.2016 and the same was decided by the competent authority vide order dated 23.01.2017.

9. While deciding the appeal moved by the petitioner, the adjudicating officer i.e Senior Executive Engineer, Operation Senior Division, P.S.P.C.L Hoshiarpur specifically mentioned and noted in its order dated 23.01.2017 that vide office order No. 537 dated 11.09.2007, the Chief Engineer Operation (North) had already regularized the absence period of Mohinder Singh (petitioner) as duty period and had granted 9/16 year TBPS increase in salary allowance and it is also mentioned that arrears up to the year 2003 have already been paid to the petitioner. The relevant paragraph of the order dated 23.01.2017 is reproduced hereinbelow for reference-

“5) That it is pertinent to note that Chief Engineer (North) Jalandhar vide office order No. 537 dated 11.09.2007 has regularized absent period of Mohinder Singh as duty period of Mohinder Singh and has been granted 9/16 year TBPS increase in salary allowance. The details of which are as under:-

I) 9 year TBPS issued w.e.f. 10.03.1992 by Cantt.

Division Jalandhar vide office order No 246 dated 27.10.2016 arrear Rs. 7994/- paid by Cantt. Division Jalandhar vide cheque no. 240287 dated 07.11.2016 and 16 years TBPS issued w.e.f. 10.03.1999, vide office order no. 282 dated 30.11.2016 issued by Deputy Chief Engineer Op. PSPCL Hoshiarpur and arrear paid in salary of 12-2016 by Mahilpur Division Rs. 1,21,387/- upto 12-2003.

Thus, the arrears upto the year 2003 are paid to Mohinder Singh.

That there is no other issue to be dealt with by deciding authority because all the claim of Mohinder Singh has been accepted and only the payments are to be made to him after the approval of PIC (Periodical Increment Certificate) from Accounts Officers EAD Section PSPCL Patiala and the same will be paid to him as soon as approval is granted.”

10. The above averments, which have been made in the writ petition have gone un-rebutted in the reply. Once the respondents have themselves admitted that the claim of the petitioner had already been decided vide office order No. 537 dated 11.09.2007, wherein the absence period of the petitioner had been regularized and due increase has been granted where only delayed payments were to be made, the petitioner is entitled for the interest on delayed payment. Further, once the amount has been retained by the department, the department is liable to pay the interest on the said retained amount. 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 is 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 these circumstances, even if there is no negligence on the part of the respondent-Corporation, it cannot be denied that money which rightly belonged to the

petitioner was in the custody of the respondent-corporation and was being used by it. In view of the above, it can be safely said that once the amount was released by the respondents after an inordinate and unexplained delay, the petitioner become entitled for the interest.

11. In view of the above, as there is no justifiable reason with the respondents to withhold the amount due to the petitioner who was held entitled for interest on the delayed payments. The petitioner shall be granted interest @ 6% per annum from the date it became due till the same was released to him.

12. Let the calculation of the interest be done by the respondent-Corporation within a period of two months from the date of receipt of certified copy of this order and the amount so calculated by the respondents shall be released to the petitioner within a period of one month thereafter.

13. The writ petition stands allowed in the above terms.

(DEEPAK MANCHANDA)
JUDGE

05.09.2023

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No