IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

208 **CWP-2173-2016**
Date of Decision:-20.09.2023

HARISH KUMAR **...Petitioner**

Versus

STATE OF HARYANA & ORS **...Respondents**

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ajay Chaudhary, Advocate
for the petitioner.

Mr. Gaurav Jindal, Addl. A.G., Haryana.

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SANDEEP MOUDGIL, *J. (Oral)*

The instant petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of writ in the nature of certiorari for quashing the impugned order dated 18.08.2015(Annexure P-14), by which the appeal of the petitioner has been dismissed and further order dated 03.04.2014 (Annexure P-12), vide which the penalty of compulsory retirement is confirmed.

Learned counsel for the petitioner confines his prayer in the instant petition to grant of interest, on account of delayed payment of pensionary benefits and other retiral emoluments, which became due to him in the year 2010, at the time when the petitioner was compulsory retired from services, but the benefits were paid to him in June, 2015.

As far as prayer with regard to challenge the order dated 18.08.2015(Annexure P-14) is concerned, he does not press the said prayer.

Learned counsel for the petitioner submits that on account of delay in conducting the departmental proceedings as well as allowing the petitioner to continue in service till June, 2010, despite the fact that he was caught red handed and arrested on 06.11.2006, he is entitled to be paid interest on the benefits, which became due to him in June, 2010 but paid in June, 2015.

On the other hand, learned State counsel submits that the departmental proceedings were concluded on 10.07.2013, and, therefore delay occurred is neither intentional nor attributable to the answering respondent and therefore, the question to grant interest would not arise on the pensionary benefits for the petitioner. Hence, prayed for dismissal of the writ petition.

Heard, learned counsel for the parties.

The admitted facts before this Court are crystalised such as an FIR got registered against the petitioner under Section 7 of the Prevention of Corruption Act on 22.11.2008 and during the pendency of such prosecution/trial proceedings on 14.06.2010 an order was passed during his suspension period for compulsory retirement in public interest without revoking his suspension period. Further after the order of compulsory retirement, a charge-sheet was issued to the petitioner on 26.04.2011 on those very same allegations for which the trial proceedings in FIR No.58 dated 06.11.2008 was pending. He was acquitted by the trial Court vide judgment dated 30.01.2012 and in the departmental proceedings, the inquiry report was submitted on 10.07.2013. It is further evident on the record, which was also not disputed by the respondents that at this stage as well an objection was raised by the petitioner apart from earlier representation dated 03.09.2012 saying that holding of this departmental proceeding is unwarranted and illegal as well as unfair on account of the fact that he stands acquitted in the criminal proceedings. The respondents still went ahead issuing a show-cause notice dated 18.12.2013 imposing a penalty of “dismissed from service” to be effective from the date of his compulsory retirement and finally the order dated

20.06.2014 was passed by the Director General Urban Estates, Haryana confirming his penalty of compulsory retirement from the date 21.06.2010. However, it was also ordered that his subsistence allowance already allowed and paid to him during suspension period will be treated as full and final payment for the period of suspension, though, no further payment will be made to the petitioner for the same. Assailing the said order, an appeal was also filed before the State Government but it also met the very fate of dismissal on 18.08.2014.

In the written statement vide para 6 it could be easily made out that petitioner did not submit his pension paper within time, but as and when the papers were submitted they were forwarded to the Accountant General, Haryana and the relief of pension and other benefits was allowed, while also considering his earlier service and pay being drawn in the previous department i.e., Haryana State Minor Irrigation Tubewells Corporation.

This Court could not loose sight of the findings given by the trial Court, while acquitted him of charges under Section 7 of PC Act granting him benefit of doubt but cannot be termed as honourable acquittal exonerating him fully of the charges.

At this stage, Mr. Ajay Chaudhary, Advocate for the petitioner gives up the relief sought for setting aside the order dated 18.08.2014 (Annexure P-14), but confines the claim upto interest alone. In this backdrop of facts, this Court is not left with the question as to whether the petitioner is entitled to claim interest on the delayed payment as the legitimate rights were released to the petitioner in June 2015. There is no denial to the fact that the incident is of 06.11.2006, when alleged bribe of Rs.10,000/- was taken by the petitioner and was ordered for compulsory retirement on 14.06.2010, whereas the respondent-department issued the charge-sheet qua this act of commission and omission on 26.04.2011 i.e. five years later to the incident, which was well within the knowledge of respondent on 06.11.2006 itself. Even further, the departmental proceedings concluded on 03.04.2014 and finally culminated on dismissal of appeal vide order dated 18.08.2014 (Annexure P-14). The pensionary benefits and other consequential relief on compulsory retirement were released after passing of the order of punishment dated 03.04.2014.

In the light of aforesaid factual aspects unfolded from the record before this Court, I have no hesitation to hold that it is the respondents lethargic and insensitive approach in dealing the case of petitioner who were on the one hand very swift in passing the order for compulsory retirement on 14.06.2010, but consumed considerable inordinate span to conclude the departmental proceedings on 03.04.2014, despite the fact that petitioner was acquitted from the trial Court as late as on 30.01.2012. It is on this account, the pensionary benefits and other retiral emoluments came to be released even more than one year later to the conclusion of departmental proceedings i.e., in June 2015 as was a candid admission on the part of Mr. Gaurav Jindal, learned counsel for respondents.

It is by now well settled by a 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 which governed his employment. Reference in this regard be made ***to Deokinandan Prasad v. Stale of Bihar and Ors., AIR 1971 S.C. 1409*** wherein their Lordships of the Supreme Court expressed this view. The learned Judges after referring to the material provisions in the pension rules further held 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 but 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. The same view was expressed 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 the Supreme Court reiterated its earlier view aid it will be of interest to quote the following observations from this judgment:-

> *"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."*

Thus, a right to pension has been held to be a right in property ,and till the Constitution (Forty Fourth Amendment) Act, 1978 was brought into force, property right was a fundamental right under Article 19(1)(f) of the Constitution. After the enforcement of the said amendment, property right is no longer a part of fundamental rights and has been provided for as a constitutional right in Article 300A and in terms thereof no person can be deprived of his property save by authority of law.

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."

At this juncture it would 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:*
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> *"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)"*

A reference can also be made to a decision of this Court in *J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355***,** wherein it was 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.

In the light of discussion made hereinabove, it is abundantly clear that there was a delay in releasing the pensionary benefits and other consequential reliefs on the part of respondents for no fault of the petitioner and even otherwise in the written statement as well, it is not the case of respondents to attribute any role for such delay.

Resultantly, supported by the observations in judicial pronouncements discussed hereinabove, which are fully applicable to the facts of instant petition, the writ petition is accepted to the extent of interest on delayed payment of retiral benefits and the respondents are held liable to make good for such delayed release of legitimate dues of the petitioner.

Hence, the respondents are directed to pay interest at the rate of 6% per annum to the petitioner for the delayed period i.e. from 14th June, 2010, when the petitioner was compulsory retired, till its realisation in June, 2015, within a period of two months from the date of receipt of a certified copy of this order.

The instant writ petition stands allowed in the aforesaid terms.

20.09.2023 **(SANDEEP MOUDGIL)**
P.Bhatt **JUDGE**

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