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

CWP-22822-2017
Date of decision : 23.02.2023

Jagmohan Sharma and others ...... Petitioners

versus

Punjab State Power Corporation Limited and another ...... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. ADS Jattna, Advocate
for the petitioners.

Mr. Vaibhav Narang, Advocate
for the respondents.

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PANKAJ JAIN, J. (Oral)

Petitioners are before this Court seeking writ in the nature of mandamus in form of directions to the respondents to pay higher Gratuity/higher Leave Encashment/Grant Increments/Recoveries from the wrongly fixed Pay Scales/Pension/arrears higher Gratuity/higher Leave Encashment etc. alongwith 24% interest to the petitioners pursuant to order dated 20.09.2016 (P-8) passed by the Apex Court.

2. The petitioners who were work charged employees claimed parity of pay scales with the regular employees claiming that they have been discharging the same duties as are being discharged by the regular employees. The matter went upto the Apex Court wherein the following order was passed:-

> "The special leave petitions have remained pending in this Court for a long period. However, on hearing the parties, we find that the issue of recovery is not the main issue. The learned Single Judge as well as

> the Division Bench held that there was more than one conscious decision taken at various point of time by the petitioners-Board to accord parity of pay scales between the regular employees and the work-charged employees like respondents holding corresponding posts. On going through the impugned judgment, we find good reasons have been assigned as to why the petitioners-Board having consciously decided to accord parity could not have, sub silentio decided, to treat the respondents on different footing.
>
> We find no merit in these special leave petitions. The special leave petitions are accordingly dismissed.
>
> Pending applications, if any, shall stand disposed of."

3. Counsels are *ad idem* that so far as the dues of the petitioners are concerned pursuant to the said order, already stand cleared. However, the dispute w.r.t. the interest as claimed by the petitioners still survives.

4. Counsel for the petitioners submits that at the time of making recoveries from the petitioners, the respondents relied upon Finance Circular No.41/95 dated 17.12.1995 and the petitioners were made to pay interest calculated @ 12%. He thus submits that the petitioners now will be within their right to claim rate of interest at the same rate.

5. Per contra, counsel for the respondents has submitted that since now the issue relates only to the interest on delayed payments, the matter needs to be adjudicated before the Civil Court and this Court should refuse to exercise extra ordinary jurisdiction under Article 226 of the Constitution of India. Reliance is being placed upon order passed by Apex Court in '***Suganmal vs. State of Madhya Pradesh and others, AIR 1965 SC 1740'*** and the judgment passed by this Court in '***Daulat Ram Trilok Nath and others vs. The State of Punjab and others, AIR 1876 P H 304'.***

6. I have heard counsel for the parties and have gone through the records of the case.

7. So far as the preliminary objections raised by the petitioners w.r.t. the entertainment of the present writ petition is concerned and reliance on the judgment in the case of Suganmal (supra), the same merits rejection. In Suganmal’s case (supra), the issue was related to an assessment order passed by the Tax Authorities having been reversed in the appeal. Same is the case in Daulat Ram’s case (supra). So far as the issue w.r.t. the payment of tax is concerned, the same was never before the Writ Court. It is in these circumstances that the Apex Court held that the mere order of Appellate Authority w.r.t. non authorization of collection of tax does not saddle the State with the liability to return the amount to the assessee. Whether such question would fall within the ambit of Section 72 of the Contract Act needs to be adjudicated before the Civil Court. In the present case, it is not the case as was in Suganmal’s case. Herein the issue is between employer and employee. The right of the petitioner stems out from his claim for parity having its genesis in Article 14 of the Constitution of India. Admittedly, recovery was made by the employer and that too on charging interest @ 12 %.

8. In view of the aforesaid facts, I do not find any reason to hold that while returning back, the employer should not pay the same rate of interest.

9. Resultantly, the present wit petition is allowed. Respondents are directed to pay interest on delayed payments to the petitioners @ 12% interest as was charged by them vide Annexure P-3 relying upon Finance Circular No.41/95 dated 17.12.1995. Needful be done within a period of 12

weeks from the date of receipt of certified copy of the order. In case the same is not paid within the said period, the delayed payment shall carry an interest of 18% thereafter.

10. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

23.02.2023
Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No