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

**CWP-26674-2018**
**DECIDED ON: 16.12.2023**

**SUNIL BHATIA .....PETITIONER**

**VERSUS**

**HYPNL AND ORS. .....RESPONDENTS**

**CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Ms. Monika Sangwan, Advocate for the petitioner.

Mr. S.K.Mahajan, Advocate for the respondents.

**SANDEEP MOUDGIL, J (ORAL)**

1. The jurisdiction of this Court has been invoked under Article 226/227 of the Constitution of India for issuance of directions to the respondents to grant interest on delayed payment amounting Rs. 1,66,642/- which was paid after a lapse of more than five years as per Government notification on 20.02.2002 (Annexure P-5).

2. Brief facts of the present case are that the father of the petitioner-deceased Sh. Ram Kishan Bhatia retired after attaining the age of superannuation on 31.03.1989. The father of the petitioner was getting regular pension from the department after his retirement. Sh. Ram Kishan Bhatia expired on 27.02.2013 after his death, her widow Smt. Sudesh Kumari was paid the family pension w.e.f. 27.02.2013 by the departments @ Rs. 3500/- per month plus other allowances. Smt. Sudesh Kumari widow of the petitioner made a representation to the EAO Pension Section, Haryana Vidyut Prasaran Nigam Limited, Panchkula to release the family pension in the name of Sudesh Kumari, after expiring of her husband on 27.02.2013. Smt. Sudesh Kumari wife of Sh.

Ram Kishan Bhatia also expired on 18.01.2015. The department has not paid the pension w.e.f. 28.02.2013 to 18.01.2015 which was lying due with the department. The petitioner being legal heir made numerous representations to the department to release the arrears of pension but they did not take further any step to release the withheld amount to the petitioner and others as there were six number of legal heirs due to which petitioner was asked to produce succession certificate before the respondents for which he filed civil suit and got decided in his favour in 19.01.2018 and thereafter, the department released the arrears of family pension in his favour amount to Rs. 1,66,642/- but no interest has been paid on the delayed payment.

3. Learned counsel for the petitioner contends that the petitioner made a representation dated 29.08.2018 to the department to release the interest on the delayed payment which was due w.e.f. 27.02.2013 up to the date of death i.e. 18.01.2015 of Smt. Sudesh Kumari who is the mother of the petitioner. However, the department has not released the same. As per the notification of Government of Haryana, Finance Department (Annexure P-5), interest is to be paid on the delayed payment.

4. Learned Counsel for the respondents on the other hand vehemently argues that there is no delay on the part of the respondents as the petitioner has submitted the succession certificate on 07.06.2018 and the amount was disbursed on 03.08.2018 vide cheque No. 724408 to the petitioner.

5. Heard learned counsel for the respective parties.

6. 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. State 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."*

7. 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.

8. 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.

9. 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."*

10. 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:*

*"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)"*

11. 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 respondents, upon the release of the said amount, on a later date, the interest has to be given.

12. Coming back to the present case in hand wherein the petitioner has sought the interest on the delayed payment that became due to the respondents from 27.02.2013 to 18.01.2015 and it has been more than five years since the filing of the present petition that the respondents have not released any interest towards the delayed payment as no fault can be fastened upon the petitioner because since 2015 only he has been making various representations to get interest on the delayed payment. However, no heed has been paid towards his grievance forcing him to file this petition in the year 2018.

13. In the light of discussion made hereinabove, it is abundantly clear that there was a delay in releasing the pensionary benefits on the part of respondents for no fault of the petitioner.

14. 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.

15. Hence, the respondents are directed to pay interest at the rate of 6% per annum to the petitioner for the delayed period within a period of two months from the date of receipt of a certified copy of this order.

16. The instant writ petition stands allowed in the aforesaid terms.

16.12.2023 **(SANDEEP MOUDGIL)**
sham **JUDGE**

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