IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-28957-2018
DECIDED ON: 23.08.2023

KAMLESH JAIN

...PETITIONER

VERSUS

HARYANA WAREHOUSING CORPORATION

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. R.K. Malik, Senior Advocate
with Mr. Sandeep Dhull, Advocate
for the petitioner.

Mr. Vishal Garg, Advocate
for respondent.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court has been invoked under Article 226 of the Constitution of India for issuance of a writ in nature of mandamus for directing the respondent to release the interest on delayed payment of Rs.2,89,854.55/- which had been wrongly withheld by the respondent from the retiral benefits payable to the petitioner.

2. Learned counsel for the petitioner contended that the petitioner retired from service of the respondents w.e.f. 30.06.2008, however, an amount of Rs.2,89,854.55 was withheld by the Corporation from the retiral benefits of the petitioner. It has been averred that the petitioner alongwith similarly placed employees had earlier filed a ***CWP No. 908 of 1988*** titled ***Ashok Kumar Gupta &Ors. v. State Warehousing Corporation*** and ***CWP No.1024 of 1998*** titled as ***K.S. Naban&Ors. v. State Warehousing Corporation,*** which came to be decided vide common judgment and order dated 20.12.2011 (Annexure P-1) vide which this Court directed that the recoveries for the pay already granted on the basis of

revised scale shall not be recovered, however, despite those orders, the respondents have proceeded to recover the above-stated amount from the petitioner.

In view of the non-payment of the retiral benefits, the petitioner preferred another CWP No. 4575 of 2014 titled ***Kamlesh Jain v. Haryana Warehousing Corporation***, which was decided vide order dated 05.05.2015 (Annexure P-2), in the following terms:

> *"Heard.*
>
> *It is admitted case of the parties that the petitioner never misrepresented or concealed any fact. The circumstances in which the undertaking, that the petitioner will have no objection to the recovery of the excess pay, was executed, have not come on record. The poor employee had no option except to succumb to the pressure of the establishment. In the circumstances, the undertaking, if any, deserves to be ignored. The action of the respondent is not tenable in view of the order passed in CWP No. 1024 of 1988 and ratio of law laid down in Budh Ram's case (supra).*
>
> ***In view of above, the present petition is allowed and the respondent is directed to refund the amount Rs.2,89,584.55, within 4 months from the receipt of certified copy of this order***.*"*

3. This Court was apprised that the respondent-corporation filed an LPA No. 1346 of 2015 which was also dismissed vide judgment dated 21.04.2016 (Annexure P-3). However, despite the judgment dated 05.05.2015 followed by dismissal of LPA vide judgment dated 21.04.2016, the arrears were not released. As such, the petitioner was constrained to file contempt petition bearing COCP No. 765 of 2017 and ultimately on 06.09.2018, the above amount of Rs.2,89,854.55 was released to the petitioner. It may be relevant to reproduce the order dated 07.09.2018 (Annexure P-4) vide which the COCP was dismissed as under:

> *"Counsel for the respondent state that the payment of an amount of Rs.2,89,589.55 has been made to the petitioner.*
>
> ***Counsel for the petitioner states that there is a delay on the part of the respondent in making the payment.***
>
> ***In case the petitioner feels aggrieved because of the delay on the part of the respondent, she may avail of the remedy in accordance with law.***
>
> *The contempt petition is disposed of.*
>
> *Rule issues to the respondent stands discharged."*

4. Learned counsel for the respondents contends that though vide order dated 05.05.2015, the respondent was directed to refund the amount Rs.2,89,584.55, however, no interest was allowed by the Court. As such, the petitioner is not entitled to any interest amount and admittedly, the amount in the present case has been released only on 06.09.2018 i.e. after over three years from the date of passing of the order dated 05.05.2015. The respondent, cannot be permitted to rely on the judgment dated 05.05.2015, to state that no interest has been granted therein, when the respondent itself has failed to comply with the directions issued by the Court in a timely manner. No benefit is liable to be granted to the wrongdoer.

Further, the respondent has sought to rely on the judgment in the case of ***Union of India v. M/s Orient Enterprises etc.*** ***[1998 AIR (SC) 1729]***, however, the reliance of the respondent on said decision is misplaced, as the same was dismissed while holding that there was no right accrued to file a writ petition in order to claim refund and/or interest which is payable under the statute being the Customs Act, 1962 in the said case. Similarly, the reliance of the respondent on the decision in case of ***Godavari Sugar Mill Ltd. v. State of Maharashtra [2011 (2) SCC 439]*** is also misplaced as the same relates to the maintainability of a writ petition to enforce a civil liability arising out of breach of contract or a tort. However, in the present case, the question of amount payable under a statute or a contract does not arise as the refund was directed vide an order passed by this Court in exercise of its writ jurisdiction.

5. It is well settled that High Court while enforcing a fundamental or a statutory right has ample power to grant the consequential relief including the payment of interest on the money which have been wrongfully withheld by the Government without any authority of law. The Court is well-within its right to interfere with the arbitrary action on the part of the respondent-corporation as has been held by the Apex Court in ***U.P. Pollution Control Board v. Kanoria Industrial Ltd. [2001 (2) SCC 549].***

6. Accordingly, this writ petition is allowed and the respondents are directed to grant interest @ 9% per annum from the date the amount was withheld along with cost of Rs.50,000/- as litigation expenses, within a period of one month from the receipt of certified copy of this order.

23.08.2023
V.Vishal/er

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*